

WHATCOM COUNTY COUNCIL AGENDA BILL

NO. 2016-246

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
Originator Paula Harris	AH	7-27-16	<div style="text-align: center;"> RECEIVED AUG 02 2016 WHATCOM COUNTY COUNCIL </div>	8/9/16	Finance/WCFCZDBS
Division Head: Gary Stoyka	js	7/28/16			
Dept. Head: Jon Hutchings	JH	7/28/16			
Prosecutor: Dan Gibson	DG	07/29/16			
Purchasing/Budget: Brad Bennett	Bb	7/27/16			
Executive: AS	AS	8.1.16			

TITLE OF DOCUMENT:

Interlocal Agreement between the City of Lynden and the Whatcom County Flood Control Zone District for the City's Pepin Creek Project and Design of Bank Stabilization Measures along Double Ditch Creek

ATTACHMENTS:

Cover Memo

SEPA review required? () Yes () NO
 SEPA review completed? () Yes () NO

Should Clerk schedule a hearing? () Yes () NO
 Requested Date:

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE: (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)

The proposed Interlocal Agreement provides for up to \$210,000 of Flood Control Zone District funding to be provided to the City of Lynden as reimbursement of the cost of design of bank stabilization measures associated with the Coty's Pepin Creek project.

COMMITTEE ACTION:**COUNCIL ACTION:**

Related County Contract #:

Related File Numbers:

Ordinance or Resolution Number:

Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County's website at: www.co.whatcom.wa.us/council.

JON HUTCHINGS
DIRECTOR



MEMORANDUM

RECEIVED

JUL 29 2016

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 the City of Lynden for the City's Pepin Creek Project

DATE: July 27, 2016

Enclosed are two (2) originals of Interlocal Agreement between the Whatcom County Flood Control Zone District (FCZD) and the City of Lynden 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 with the City of Lynden for the sum of \$210,000 for reimbursement of bank stabilization design costs associated with their Pepin Creek project.

Background and Purpose

The City of Lynden has been developing a project to address flooding in north Lynden in the vicinity of Benson and Double Ditch Roads. Phase 1 of the project involves relocating the stream that currently flows in a ditch along Benson Road into a new stream corridor located between Double Ditch and Benson Roads. The Benson Road ditch currently flows east into Fishtrap Creek, but will be rerouted to the west to flow into Double Ditch, a tributary that enters Fishtrap Creek further downstream than the current ditch outlet. There are existing bank erosion and stability issues on Double Ditch Creek downstream of where the new creek, known as Pepin Creek, will outlet. The City of Lynden has requested financial assistance from the FCZD to support design of bank stabilization measures to address these areas.

Funding Amount and Source

This interlocal agreement is in the amount of \$210,000, consistent with the budget allocation in the adopted 2016 FCZD budget.

Please contact Paula Harris at extension 6285 or Gary Stoyka at extension 6218, if you have any questions or concerns regarding the terms of this agreement.

Encl.

WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No.

201607021

Originating Department:	Public Works
Division/Program: (i.e. Dept. Division and Program)	River and Flood
Contract or Grant Administrator:	Paula Harris
Contractor's / Agency Name:	City of Lynden

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: _____
 (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: 169114

Is this agreement excluded from E-Verify? No ☐ Yes ☒ If no, include Attachment D Contractor Declaration form.

If YES, indicate exclusion(s) below:

<input type="checkbox"/> Professional services agreement for certified/licensed professional.	<input type="checkbox"/> Contract for Commercial off the shelf items (COTS).
<input type="checkbox"/> Contract work is for less than \$100,000.	<input type="checkbox"/> Work related subcontract less than \$25,000.
<input type="checkbox"/> Contract work is for less than 120 days.	<input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.
<input checked="" type="checkbox"/> Interlocal Agreement (between Governments).	

Contract Amount:(sum of original contract amount and any prior amendments): \$ <u>210,000</u> This Amendment Amount: \$ _____ Total Amended Amount: \$ <u>210,000</u>	Contracts that require Council Approval (incl. agenda bill & memo) <ul style="list-style-type: none"> Professional Services Agreement above \$20,000. Bid is more than \$50,000. Professional Service Contract Amendments that have an increase greater than \$20,000 and other contracts with a cumulative increase greater than \$50,000. RENEWALS: Council approval is not required when exercising an option to renew that is provided in the original contract.
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Summary of Scope: The proposed Interlocal Agreement provides funding to the City of Lynden for streambank stabilization design so that the rerouting of flows associated with the City's Pepin Creek project will not exacerbate existing bank stability problems in the downstream system.

Term of Contract:	Expiration Date: Upon completion of project
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Contract Routing:	1. Prepared by: <u>Paula Harris</u>	Date: <u>7-27-16</u>
	2. Attorney signoff: <u>Daniel L. Gibson</u>	Date: <u>07/29/16</u>
	3. AS Finance reviewed: <u>bbennett</u>	Date: <u>7/27/16</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 THE CITY OF LYNDEN AND THE
WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT RELATING TO THE
CITY'S PEPIN CREEK PROJECT AND DESIGN OF BANK STABILIZATION
MEASURES ALONG DOUBLE DITCH CREEK**

This Agreement is made and entered into by and between the City of Lynden, a Washington municipal corporation (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 area of the City, the Lynden Urban Growth Area, and unincorporated Whatcom County north of Main Street and west of Benson Road experience drainage issues from flood waters originating in Canada and the north County that flow south in the Benson Road ditch and Double Ditch ditches through Lynden to Fishtrap Creek; and

WHEREAS, these flood events cause life safety, economic and social impacts to the City and north County residents; and

WHEREAS, the City has been working to develop a new Pepin Creek channel/corridor located between Benson and Double Ditch Roads to safely convey these flood waters to Fishtrap Creek (Pepin Creek project); and

WHEREAS, existing bank erosion and stability issues downstream of Main Street may preclude adding the combined flow of both roadside ditch systems (Double Ditch and Benson Roads) to this new Pepin Creek channel until these issues can be investigated; and

WHEREAS, the City and the District realize and understand the benefits of the proposed Pepin Creek project to their respective entities; and

WHEREAS, the Flood Control Zone District Advisory Committee unanimously supported inclusion of funding for bank stabilization design in the District's budget, provided the City works in good faith to supply any excess material generated from the Pepin Creek project to the District for use in levee back-sloping, and provided the City acquired the lands needed to implement Phase 1 of the Pepin Creek project (up to the airport property); and

WHEREAS, the City has acquired all but one parcel necessary to complete the Pepin Creek, from multiple owners, and is currently negotiating with the final property owner for acquisition of the last remaining parcel; and

WHEREAS, the City fully expects to finalize negotiations with this last property owner and acquire said property by not later than September 15, 2016;

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 funding for streambank design consulting services associated with the Pepin Creek project. No property will be acquired or disposed of pursuant to this Agreement.

2. PARTY RESPONSIBILITIES

A. CITY OF LYNDEN RESPONSIBILITIES

1. The City shall retain a consultant qualified in streambank stabilization design and manage the consultant contract. The City will comply with all applicable laws, rules and regulations relating to procuring these services.
2. The City shall provide the District copies of the deliverables produced by the consultant including design reports and preliminary and final construction plans.
3. The City shall request reimbursement from the District for the consultant services at least annually and not more than quarterly throughout the design process. Copies of consultant invoices should be provided to document the expenses incurred by the City for which reimbursement is requested.
4. When Phase 1 or subsequent phases of the Pepin Creek project are put out to bid, the City shall include provisions in the contract documents that identify one or more potential permitted waste site(s) to be provided by the District for any excess material generated by said project that is to be exported off-site.

B. FLOOD CONTROL ZONE DISTRICT RESPONSIBILITIES

1. The District shall provide up to two-hundred and ten thousand dollars (\$210,000) of financial support to the City for consultant services to design streambank stabilization measures associated with the Pepin Creek project.
2. If the City indicates that it anticipates excess material will be generated during any phase of construction of the Pepin Creek project, the District will evaluate said material for its suitability for use in levee back-sloping, and if suitable, the District will obtain permits for the material to be used to back-slope the levee, providing a permitted waste site for the excess material.

3. PAYMENT

The District will provide payment to the City to reimburse the cost of consultant design services provided for bank stabilization measures associated with the Pepin Creek project in an amount not to exceed \$210,000 within thirty (30) days of receiving the City's reimbursement request.

4. TERM OF AGREEMENT

The period of performance for this Agreement shall commence on the date of execution and shall expire and terminate upon the final construction phase of the Pepin Creek project.

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:

Steve Banham, Director
City of Lynden Public Works Department
300 4th Street
Lynden, WA 98264
(360) 354-3446
banhams@lyndenwa.org

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

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

By: _____

Title: _____

Date: _____

Approved as to form:

Attorney for the City of Lynden

WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT

By: _____

Title: _____

Date: _____

Approved as to form:

Daniel I. Gibson
Chief Civil Deputy Prosecutor for
Whatcom County