2016-278 WHATCOM COUNTY COUNCIL AGENDA BILL NO. **CLEARANCES** Initial Date **Date Received in Council Office Agenda Date** Assigned to: 8/30/2016 Sept. 27, 2016 JNT Finance: FCZD RECEIV Originator: BOS MM Division Head: SEP 20 2016 Dept. Head: WHATCOM COUNTY Prosecutor: 8/31/2016 COUNCII. bb Purchasing/Budget: Executive: TITLE OF DOCUMEN Interagency Agreement with Washington Department of Ecology to sponsor the 2016-2017 Washington Conservation Corps Crew. **ATTACHMENTS:** 1. Interagency Agreement SEPA review required? Should Clerk schedule a hearing? ( ) Yes ( X ) NO (X) NO ) Yes **Requested Date: SEPA** review completed? ) Yes ) NO 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.) Interagency Agreement between the Washington Department of Ecology and the Whatcom County Flood Control Zone District for the 2016-2017 Washington Conservation Corps crew. The crew will implement and maintain watershed restoration and stormwater projects and assist with water quality monitoring. Cost is not to exceed \$60,000. **COMMITTEE ACTION: COUNCIL ACTION:** 

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.

**Ordinance or Resolution Number:** 

Related File Numbers:

**Related County Contract #:** 

WHATCOM COUNTY PUBLIC WORKS DEPT. Natural Resources 322 N. Commercial St., Suite 110 Bellingham, WA 98225-4042





SEP 1 5 2016

#### **MEMORANDUM**

JACK LOUWS COUNTY EXECUTIVE

TO:

Jack Louws, County Executive

Honorable Members of the Whatcom County Council acting as the Whatcom

County Flood Control Zone District Board of Supervisors

Through:

Jon Hutchings, Public Works Director

FROM:

Gary Stoyka, Natural Resource Manager

John N. Thompson, Senior Planner

RE:

Interagency Agreement with Washington State Department of Ecology for the

2016-2017 Washington Conservation Corps Crew

DATE:

September 2, 2016

Enclosed are two (2) originals of an Interagency Agreement between Washington Department of Ecology and the Whatcom County Flood Control Zone District for your review and signature.

#### Requested Action

Public Works respectfully requests that the County Executive, following authorization by the County Council acting as the Whatcom County Flood Control Zone District (District) Board of Supervisors, enter into an Interagency Agreement for \$60,000 with the Washington Department of Ecology for District sponsorship of a Washington Conservation Corps (WCC) Crew.

#### Background and Purpose

This new agreement provides the District, in partnership with the Nooksack Salmon Enhancement Association (NSEA), a six-person crew for the period October 3, 2016 through September 17, 2017. This agreement builds on over 15 years of collaborative work with NSEA. The crew will continue work on behalf of Whatcom County to implement new watershed restoration projects, maintain existing restoration and stormwater projects, and assist with water quality monitoring and improvements.

#### Funding Amount and Source

The agreement is not to exceed \$60,000 and is included in the 2016 and proposed 2017 Public Works Natural Resource budget. NSEA will provide the remaining \$65,050 of the \$125,050 annual sponsor share under a separate agreement with Ecology. Ecology provides the remaining \$69,950 for a total annual crew cost of \$195,000.

Please contact Gary at extension 6218 or John at extension 6295, if you have any questions or concerns regarding the terms of this agreement.

Encl.

## WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No. 201609008

Originating Departm	nent:	Public Works							
Division/Program: (i.	e. Dept. Division and Program)	Natural Resources							
Contract or Grant Ac	dministrator:	John N. Thompson, Sr. Planner							
Contractor's / Agenc		Washington Department of Ecology							
Is this a New Contr Yes ⊠ No [	ract? If not, is this an Amendment or Ren								
_	ire Council Approval? Yes \( \subseteq \) No \( \subseteq \) Board of Supervisors)	If No, include WCC: (see Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)							
Is this a grant agree Yes \( \sum \) No \( \sum \)		number(s): CFDA#:							
Is this contract gran Yes ☐ No [2]		contract number(s):							
Is this contract the r Yes \( \sum \) No \( \sum \)	result of a RFP or Bid process?  If yes, RFP and Bid number(s):	Contract Cost Center:							
	scluded from E-Verify? No $\square$ Yes $\boxtimes$								
☐ Contract work i☐ Contract work i	usion(s) below: ervices agreement for certified/licensed pro s for less than \$100,000. s for less than 120 days. ement (between Governments).	ofessional.  Contract for Commercial off the shelf items (COTS).  Work related subcontract less than \$25,000.  Public Works - Local Agency/Federally Funded FHWA.							
Contract Amount:(su prior amendments):  \$ 60,000  This Amendment An \$  Total Amended Amo		<ul> <li>Contracts that require Council Approval (incl. agenda bill &amp; memo)</li> <li>Professional Services Agreement above \$20,000.</li> <li>Bid is more than \$50,000.</li> <li>Professional Service Contract Amendments that have an increase greater than \$20,000 and other contracts with a cumulative increase greater than \$50,000.</li> </ul>							
\$	unt:	RENEWALS: Council approval is not required when exercising an option to renew that is provided in the original contract.							
Control Zone District	will provide for a 6-person Washington Conse ent and maintain watershed restoration and sto	hington Department of Ecology and the Whatcom County Flood rvation Corps crew from October 2016 through September 2017. rmwater projects and assist with water quality monitoring. Cost							
Term of Contract:	October 3,2016- Sept. 17, 2017	Expiration Date: Sept. 17, 2017							
	<ol> <li>Prepared by: John N. Thompson</li> <li>Attorney signoff: Daniel L. Gibson</li> <li>AS Finance reviewed: bbennett</li> <li>IT reviewed (if IT related):</li> <li>Contractor signed:</li> <li>Submitted to Exec.:</li> <li>Council approved (if necessary):</li> </ol>	Date: 8/30/2016  Date: 08/30/16  Date: 08/31/16  Date: Date: Date: P- /5 - /6.  Date: Pate: Pate							
	8. Executive signed:	Date:							
	9. Original to Council:	Date:							

COUNTY ORIGINAL





#### INTERAGENCY AGREEMENT (IAA) BETWEEN

The State of Washington, Department of ECOLOGY
AND
Whatcom County Flood Control Zone District

THIS AGREEMENT is made and entered into by and between the Dep as "ECOLOGY", and Whatcom County Flood Control Zone Di "SPONSOR."	<del></del>
IT IS THE PURPOSE OF THIS AGREEMENT to provide Washington Complete environmental or disaster services projects, pursuant to Chap	Conservation Corps (WCC) members to oter 43.220 of the Revised Code of Washington.
THEREFORE, IT IS MUTUALLY AGREED THAT:	
STATEMENT OF WORK	
Both parties agree to do all things necessary for or incidental to the per attached hereto and incorporated herein.	formance of the work set forth in Appendix "A"
PERIOD OF PERFORMANCE	
Subject to its other provisions, the period of performance of this Agreer and be completed on <u>9/17/2017</u> , unless terminated sooner as pro Individual Placement corps member specified in this agreement will be on the calendar in Appendix "B" attached hereto and incorporated here	ovided herein. The WCC Crew and/or WCC available to SPONSOR on the dates set forth
COMPENSATION	
The parties have determined that the cost of accomplishing the work he Payment for satisfactory performance of the work shall not exceed this higher amount. Compensation for service(s) shall be based on the follow	amount unless the parties mutually agree to a
Provided by ECOLOGY	Reimbursed to ECOLOGY by SPONSOR
6 months WCC cost-share crew	\$60,000
Total SPONSOR COST	\$60,000
	Above cost Not to be Exceeded

The costs reimbursed to ECOLOGY by SPONSOR are a cost-share rate. ECOLOGY will provide the remainder of the funding for the projected total costs of \$195,000 dollars annually per WCC Crew consisting of five WCC/AmeriCorps Members and one Supervisor. Indirect costs are included in SPONSOR share at a standard rate of 5% of direct costs.

#### **BILLING PROCEDURE**

ECOLOGY shall submit invoices monthly to the SPONSOR's designated contact person listed under the "Contract Management" section. Payment to ECOLOGY for approved and completed work will be made by warrant or account transfer by SPONSOR within 30 days of receipt of the invoice. Upon expiration of the Agreement, any claim for payment not already made shall be submitted within 30 days after the expiration date or the end of the fiscal year, whichever is earlier.

#### **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.

#### **ASSIGNMENT**

The work to be provided under this Agreement, and any claim arising thereunder, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

#### **ASSURANCES**

Parties to this Agreement agree that all activity pursuant to this contract will be in accordance with all the applicable current federal, state and local laws, rules, and regulations.

#### **CONFORMANCE**

If any provision of this Agreement violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

#### **DISPUTES**

In the event that a dispute arises under this Agreement, it shall be determined by a Dispute Board in the following manner: Each party to this Agreement shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall review the facts, agreement 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. As an alternative to this process, either of the parties may request intervention by the Governor, as provided by RCW 43.17.330, in which event the Governor's process will control.

#### **FUNDING AVAILABILITY**

The obligation of the SPONSOR to provide reimbursements is contingent upon appropriation of funds by the SPONSOR's governing body for the specific purpose of funding the project, which is the subject of this Agreement. Upon the failure of such appropriation, the SPONSOR may terminate this Agreement.

ECOLOGY's ability to provide cost-share is contingent on availability of funding. In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date and prior to completion or expiration date of this Agreement, ECOLOGY, at its sole discretion, may elect to terminate the agreement, in whole or part, for convenience or to renegotiate the agreement subject to new funding limitations and conditions. ECOLOGY may also elect to suspend performance of the agreement until ECOLOGY determines the funding insufficiency is resolved. ECOLOGY may exercise any of these options with no notification restrictions.

#### **GOVERNING LAW AND VENUE**

This Agreement is entered into pursuant to and under the authority granted by the laws of the state of Washington and any applicable federal laws. The provisions of this Agreement shall be construed to conform to those laws. This Agreement shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

This Agreement is entered into pursuant to and under the authority granted by the laws of the state of Washington and any applicable federal laws. The provisions of this Agreement shall be construed to conform to those laws.

#### INDEPENDENT CAPACITY

The employees or agents of each party who are engaged in the performance of this Agreement shall continue to be employees or agents of that party and shall not be considered for any purpose to be employees or agents of the other party.

#### ORDER OF PRECEDENCE

In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable federal and state of Washington statutes, regulations, and rules.
   Mutually agreed written amendments to this Agreement
- 3. This Agreement
- 4. Statement of Work and Budget.
- 5. Any other provisions of this Agreement, including materials incorporated by reference.

#### **RECORDS MAINTENANCE**

The parties to this Agreement shall each maintain books, records, documents and other evidence that sufficiently and properly reflect all direct and indirect costs expended by either party in the performance of the service(s) described herein. These records shall be subject to inspection, review or audit by personnel of both parties, other personnel duly authorized by either party, the Office of the State Auditor, and federal officials so authorized by law. All books, records, documents, and other material relevant to this Agreement will be retained for six years after expiration of this Agreement and the Office of the State Auditor, federal auditors, and any persons duly authorized by the parties shall have full access and the right to examine any of these materials during this period.

Records and other documents, in any medium, furnished by one party to this Agreement to the other party, will remain the property of the furnishing party, unless otherwise agreed. The receiving party will not disclose or make available this material to any third parties without first giving notice to the furnishing party and giving it a reasonable opportunity to respond. Each party will utilize reasonable security procedures and protections to assure that records and documents provided by the other party are not erroneously disclosed to third parties subject to state public disclosure laws

#### RESPONSIBILITIES OF THE PARTIES

Each party of this Agreement hereby assumes responsibility for claims and/or damages to persons and/or property resulting from any act or omissions on the part of itself, its employees, its officers, and its agents. Neither party will be considered the agent of the other party to this Agreement.

#### **RIGHTS IN DATA**

Unless otherwise provided, data, which originates from this Agreement shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by ECOLOGY. Data shall include, but not be limited to, reports, documents, pamphlets, advertisements, books magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register, and the ability to transfer these rights.

#### **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.

#### **TERMINATION FOR CAUSE**

If for any cause, either party does not fulfill in a timely and proper manner its obligations under this Agreement, or if either party violates any of these terms and conditions, the aggrieved party will give the other party written notice of such failure or violation. The responsible party will be given the opportunity to correct the violation or failure within 15 working days. If failure or violation is not corrected, this Agreement may be terminated immediately by written notice of the aggrieved party to the other.

#### TERMINATION FOR CONVENIENCE

Either party may terminate this Agreement upon 30 days' prior written notification to the other party. 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.

#### **WAIVER**

A failure by either party 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.

#### **ALL WRITINGS CONTAINED HEREIN**

This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

#### AGREEMENT MANAGEMENT

The program manager for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Agreement.

The Contract/Program Manager for ECOLOGY is:

Peter Nevin

PO Box 47600

Olympia, WA 98504

(206) 940-3615

Printed Name, Title

peter.nevin@ecy.wa.gov

The Contract/Program Manager for SPONSOR is:

John N. Thompson

322 N. Commercial Street Suite 110

Bellingham WA 98225

Printed Name, Title

(360) 778-6230

jnthomps@co.whatcom.wa.us

State of Washington Department of ECOLOGY		SPONSOR Whatcom County Flood Control Zone Distric (See attached WCFCZD signature page					
Signature	Date	Signature	Date				

WHATCOM COUNTY: Recommended for Approval:
Jon Hutchings Date Public Works Director
Approved as to form:
Daniel L. Hibson 09/15/16 Daniel L. Gibson Date Chief Civil Deputy Prosecutor
Approved: Accepted for Whatcom County Flood Control Zone District:
Зу:
lack Louws, Whatcom County Executive/ Signatory for Flood Control Zone District Board of Supervisors
STATE OF WASHINGTON ) ) ss COUNTY OF WHATCOM )
On this day of, 20, before me personally appeared Jack Louws, to me known to be the Executive of Whatcom County, who xecuted 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

### STATEMENT OF WORK Appendix A

#### Work summary:

Restoration Activities: Under direction of Sponsor organization, crew(s) will perform restoration, in-stream, and habitat maintenance projects. Specific tasks include invasive control, native species installation, and fence work.

#### Special terms and conditions:

- WCC members and staff will not be utilized to clear and/or clean up hazardous materials including hypodermic needles. If a significant amount of hazardous or unidentifiable material is discovered on a project site, activity will cease until SPONSOR either mitigates potential hazards or finds an alternate project site. WCC resources (includes members, supervisors, tools and trucks) will not be utilized for clearing active or abandoned homeless encampments.
- 2. Vehicle is not to be used for heavy hauling. The primary use of the crew vehicle is for transportation of crew, tools, and safety equipment. In the event that WCC vehicles are requested to tow SPONSOR equipment, SPONSOR is solely responsible for accidental damages, unless damages are caused by WCC negligence.
- 3. WCC is not responsible for normal wear and tear when project requires the use of SPONSOR-provided tools, equipment or safety gear.
- 4. The assignment of corps members shall not result in the displacement of currently employed workers, including partial displacement such as reduction in hours of non-overtime work, wages, or other employment benefits. Agencies that participate in the program may not terminate, lay-off, or reduce the working hours of any employee for the purpose of using a corps member with available funds. In circumstances where substantial efficiencies or a public purpose may result, participating agencies may use corps members to carry out essential agency work or contractual functions without displacing current employees.
- 5. All state holidays and 3 planning days are non-working days for members. Planning days are to be used by WCC staff/supervisors for planning purposes.
- 6. The WCC standard 40-hour schedule is Monday through Thursday from 7:00am to 5:30pm. An alternate work schedule may be arranged with prior approval from the WCC.

#### ECOLOGY shall:

- 1. Provide WCC members for the number of weeks specified in this agreement. Full-time crews and Individual Placements are available to SPONSOR for a maximum of 41 weeks during the Federal AmeriCorps program service year (October-September).
- In the event of a disaster response deployment, the WCC Program will make every effort to fulfill sponsor
  program needs, including sending additional members, whenever possible. Invoices will include all activities
  during the program year including training, community service events, and other activities required by WCC,
  excluding Emergency Response, if needed.
- 3. Provide training and development specified in Appendix "B": eight (8) days of formal WCC member training, a four (4) day Orientation Training, and one (1) day dedicated to MLK Community Service. An eight-day spike will be scheduled on dates to be determined in coordination with the SPONSOR. These dates, along with up to three (3) additional days reserved for meetings, trainings or other events, are dates in which WCC members and supervisors are logging hours, but are unavailable to sponsor to perform project work.
- 4. Provide a 4-day Assistant Supervisor training to the designated Assistant Supervisor.
- 5. For crew(s), ECOLOGY agrees to provide a crew of 5 members, a crew supervisor, vehicle, and basic hand tools.
- 6. Cost-share rates are not based on actual attendance, however, invoices will be reduced for member or supervisor vacancies lasting 20 days or more.

#### SPONSOR shall:

- Guide completion of appropriate projects for the number of weeks specified in this agreement by providing the logistical, technical and safety-related support necessary for project completion. Provide site orientation for WCC members, specific on-the job task training, and any materials beyond basic hand tools to complete tasks assigned under this Agreement. Obtain applicable permits as set by local, state, tribal or federal laws and regulations.
- 2. Help to promote the AmeriCorps and WCC brands, logo, slogans and phrases. The WCC will provide cameraready logo. AmeriCorps is a registered service mark of the Corporation for National and Community Service.

#### AmeriCorps Prohibited Activities:

While charging time to the AmeriCorps program, accumulating service or training hours, or otherwise performing activities supported by the AmeriCorps program or CNCS, staff and members may not engage in the following activities (see 45 CFR § 2520.65):

- A. Attempting to influence legislation;
- B. Organizing or engaging in protests, petitions, boycotts, or strikes;
- C. Assisting, promoting, or deterring union organizing;
- D. Impairing existing contracts for services or collective bargaining agreements;
- E. Engaging in partisan political activities, or other activities designed to influence the outcome of an election to any public office;
- F. Participating in, or endorsing, events or activities that are likely to include advocacy for or against political parties, political platforms, political candidates, proposed legislation, or elected officials;
- G. Engaging in religious instruction, conducting worship services, providing instruction as part of a program that includes mandatory religious instruction or worship, constructing or operating facilities devoted to religious instruction or worship, maintaining facilities primarily or inherently devoted to religious instruction or worship, or engaging in any form of religious proselytization;
- H. Providing a direct benefit to-
  - I. A business organized for profit;
  - II. A labor union;
  - III. A partisan political organization;
  - IV. A nonprofit organization that fails to comply with the restrictions contained insection 501(c)(3) of the Internal Revenue Code of 1986 related to engaging in political activities or substantial amount of lobbying except that nothing in these provisions shall be construed to prevent participants from engaging in advocacy activities undertaken at their own initiative; and
  - V. An organization engaged in the religious activities described in paragraph 3.g. above, unless CNCS assistance is not used to support those religious activities;
- I. Conducting a voter registration drive or using CNCS funds to conduct a voter registration drive;
- J. Providing abortion services or referrals for receipt of such services; and
- K. Such other activities as CNCS may prohibit.

AmeriCorps members may not engage in the above activities directly or indirectly by recruiting, training, or managing others for the primary purpose of engaging in one of the activities listed above. Individuals may exercise their rights as private citizens and may participate in the activities listed above on their initiative, on non-AmeriCorps time, and using non-CNCS funds. Individuals should not wear the AmeriCorps logo while doing so.

#### 2016-2017 WCC Events Calendar

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January	170]
May	180
September	70
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QT: 450-br mm, \$152	27 45 Ed Award

Members with excessive absences will not receive ed award; even if minimum hours are met.

Oct 3-Mar 30: 960

<sup>\*6-</sup>month Paperwork must be received March 22

# ATTACHMENT C Whatcom County Flood Control Zone District PROPOSED PROJECT TYPES AND GEOGRAPHIC FOCUS

#### Water Quality & Habitat Monitoring and Improvement Projects

- · Birch Bay Watershed
- Drayton Harbor Watershed
- Portage Bay Shellfish District
- Lake Whatcom
- South Fork Nooksack River
- Canyon Creek, North Fork Nooksack River

#### **New Restoration Projects**

- Birch Bay
- Drayton Harbor
- Mainstem tributaries
- South Fork and tributaries
- Middle Fork
- · North Fork and tributaries

#### **Maintain Existing Projects**

- Birch Bay
- Canyon Creek
- Drayton Harbor
- Friday Creek
- Lake Whatcom Count
- Mainstem tributaries
- North Fork tributaries (e.g. High Creek)
- South Fork & tributaries