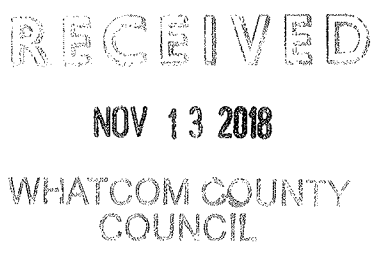
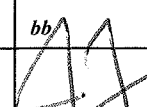


CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
Originator:	DSJ	10/24/18		11/20/2018	Finance/FCZD/Council
Division Head:					
Dept. Head:	ht	11/7/18			
Prosecutor:	CDQ	10/25/2018			
Purchasing/Budget:	bb	10/25/18			
Executive:		11/9/18			

TITLE OF DOCUMENT:

Interlocal Agreement (ILA) between Whatcom County FCZD and WDFW for Maintenance and Repair of the Marine Drive Levee

ATTACHMENTS:

- 1. Interlocal Agreement**

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

Should Clerk schedule a hearing? () Yes (X) 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 purpose of the Interlocal Agreement (ILA) is to establish and define the obligations and responsibilities of the FCZD and WDFW related to ongoing maintenance and repair of the Marine Drive Levee. The Marine Drive Levee is defined as the left (east) bank levee of the Nooksack River located between Slater Road and Marine Drive. WDFW is the landowner. The ILA also secures a cost share of \$30,000 from WDFW for the Marine Drive Levee Repair Project that was constructed in summer 2018 and funded by the FCZD.

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.



RECEIVED

NOV 8 - 2018

JACK LOUWS
COUNTY EXECUTIVE

MEMORANDUM

TO: Whatcom County Flood Control Zone District Board of Supervisors

THROUGH: Jon Hutchings, Public Works Director *JH*

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

RE: Interlocal Agreement between WCFCZD and WDFW for Ongoing Maintenance and Repair of the Marine Drive Levee

DATE: October 24, 2018

Enclosed for your review and signature is an Interlocal Agreement (ILA) between the State of Washington Department of Fish and Wildlife (WDFW) and the Whatcom County Flood Control Zone District (FCZD) for ongoing maintenance and repair of the Marine Drive Levee.

Requested Action

Public Works respectfully requests that the County Council, acting as the Flood Control Zone District Board of Supervisors (FCZD), authorize the County Executive to approve the Interlocal Agreement between WDFW and FCZD for ongoing maintenance and repair of the Marine Drive Levee.

Background and Purpose

The purpose of the Interlocal Agreement (ILA) is to establish and define the obligations and responsibilities of the FCZD and WDFW related to ongoing maintenance and repair of the Marine Drive Levee. The Marine Drive Levee is defined as the left (east) bank levee of the Nooksack River located between Slater Road and Marine Drive. WDFW is the landowner. The ILA also secures a cost share of \$30,000 from WDFW for the Marine Drive Levee Repair Project that was constructed in summer 2018 and funded by the FCZD.

Funding Amount and Source

WDFW is contributing \$30,000 towards the 2018 Marine Drive Levee Repair Project.

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

Encl.

**WHATCOM COUNTY CONTRACT
INFORMATION SHEET**

Whatcom County Contract No.

201811005

Originating Department:	Public Works
Division/Program: (i.e. Dept. Division and Program)	River & Flood(9075)/Flood Control Maint (907545)
Contract or Grant Administrator:	Paula Harris
Contractor's / Agency Name:	WDFW WA Dept. of Fish and Wildlife

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: 716006

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):
 \$ 30,000
 This Amendment Amount:
 \$ _____
 Total Amended Amount:
 \$ 30,000

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 the Interlocal Agreement (ILA) is to establish and define the obligations and responsibilities of the FCZD and WDFW related to ongoing maintenance and repair of the Marine Drive Levee. The ILA also secures a cost share of \$30,000 from WDFW for the Marine Drive Levee Repair Project that was constructed in summer 2018 and funded by the FCZD.

Term of Contract: N/A Expiration Date: N/A

Contract Routing:	1. Prepared by: <u>Deb Stewart Johnson</u>	Date: <u>10/24/18</u>
	2. Attorney signoff: <u>Christopher Quinn</u>	Date: <u>10/25/18</u>
	3. AS Finance reviewed: <u>bbennett</u>	Date: <u>10/25/18</u>
	4. IT reviewed (if IT related): _____	Date: _____
	5. Contractor signed: <u>by State: ✓</u>	Date: <u>11-1-18</u>
	6. Submitted to Exec.: _____	Date: <u>11-8-18</u>
	7. Council approved (if necessary): _____	Date: _____
	8. Executive signed: _____	Date: _____
	9. Original to Council: _____	Date: _____

INTERLOCAL AGREEMENT
Between
WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT
And
THE STATE OF WASHINGTON, THE DEPARTMENT OF FISH AND WILDLIFE
For
Maintenance and Repair of the Marine Drive Levee

This Interlocal Agreement (ILA) is made and entered into by and between The State of Washington, the Department of Fish and Wildlife (hereinafter referred to as "WDFW"), and the Whatcom County Flood Control Zone District (hereinafter referred to as the "District"), this ____ day of August, 2018.

WHEREAS, a parcel of property approximately 170 acres in size (Parcel Number 3802082102110000), described more fully and accurately in Exhibit A attached hereto, was purchased by WDFW in 2001 to protect critical and salmonid habitat; and

WHEREAS, the property has a levee along the Nooksack River that protects adjacent lands east of the river from frequent flooding and overtops in larger flood events; and

WHEREAS, the levee also reduces frequency and magnitude of flooding of Slater Road and the unincorporated area of Marietta; and

WHEREAS, the District worked collaboratively with the previous owners (Local Sponsors) of the property to maintain and repair the levee when damaged; and

WHEREAS, a 1997 Flood Control Works Agreement between the District and the prior owner of the WDFW property was recorded as an encumbrance on title to the property in 1997 prior to the purchase of the property by WDFW, which encumbrance runs with the land; and

WHEREAS, the 1997 Flood Works Agreement created an obligation on all subsequent landowners (now WDFW) to maintain a repair to a 350-foot segment of the levee; and

WHEREAS, WDFW's primary purpose for owning the property is habitat restoration and not maintaining flood prevention infrastructure; and

WHEREAS, the District plans to repair a larger portion of the levee in 2018 (approximately 1,075 lineal feet) and is requesting WDFW's assistance; and

WHEREAS, WDFW is willing to contribute \$30,000 to the District's 2018 Marine Drive Levee repair project in consideration for the District's release of WDFW from all obligations, responsibilities, and encumbrances contained in the 1997 Flood Works Agreement; and

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

PARTIES

This Interlocal Agreement (“ILA”) is made by and between the Whatcom County Flood Control Zone District (“District”) and The State of Washington, the Washington Department of Fish and Wildlife (“WDFW”) under authority of the Interlocal Cooperation Act, Chapter 39.34 RCW.

PURPOSE OF THE AGREEMENT

- (i) To establish and define the obligations and responsibilities of the District and WDFW related to the ongoing maintenance and repair of the Marine Drive Levee;
- (ii) To formalize the release of WDFW from all obligations and encumbrances outlined in the following Marine Drive Levee Flood Control Works Agreements identified by Audit File Number: 910411119, 970129006, 970129007, and 1970601387 in exchange for a one-time payment in the amount of \$30,000 to the District.

PROPERTY

The parcel identified (see attached map) is located at:

WDFW Property – 1940 Marine Drive, Bellingham, WA – T38, R2E, Sec 8 and 41, described more fully in Exhibit A.

DEFINITIONS

Marine Drive Levee:

- East bank levee of the Nooksack River from Slater Road south (downstream) to Marine Drive.

Ongoing Levee Maintenance:

- Importing levee select fill material that meets the specifications in the 2018 bid documents (Bid No. 18-18 and Project No. 716006) to fill scour holes smaller than 50 cubic yards prior to the next flood season.
- Sandbagging of scour holes as deemed necessary by the District to minimize additional damage during the flood season until levee maintenance or a levee repair project can be implemented by WDFW or the District, respectively.
- Adding rebar anchor staples if fabric is not secured.
- Periodic mowing of the levee crest and back slope, and preventing invasive plant species from establishing and spreading.

Levee Repair:

- Filling of scour holes larger than 50 cubic yards is defined as levee repair, and
- Placing new erosion control geotextile fabric to replace damaged or degraded fabric or placing fabric in new erosional areas.

Mitigation and Restoration Measures:

- Mitigation planting for levee repair projects including site preparation, site planting, regular maintenance, and monitoring.

TERM OF AGREEMENT

This ILA shall begin on December 1, 2018, and shall remain in effect until terminated or amended as provided herein.

OBLIGATIONS AND RESPONSIBILITIES OF THE PARTIES:

A. Whatcom County Flood Control Zone District (“District”):

1. Shall implement the 2018 Marine Drive Levee Repair Project (Project No. 716006);
2. Shall implement the 2018 Marine Drive Levee Repair and Maintenance Mitigation and Restoration Plan for mitigation planting (Project No. 716006). Related site preparation, site planning, regular maintenance, and monitoring shall occur between 2018 and 2024;
3. Shall inspect the levee with WDFW at least one time each year, and following any flood events that overtop the levee, to identify maintenance or repair needs;
4. Shall determine for the 2018 levee repair project and for all future levee repair projects when vegetation planting has sufficiently established on the Marine Drive Levee to reopen the levee for public access;
5. Shall perform levee repairs deemed appropriate and necessary to protect life, property and infrastructure;
6. Shall release WDFW from all obligations and encumbrances under the 1997 Flood Works Agreement upon receipt of payment from WDFW in the amount of \$30,000 as a contribution to the 2018 Marine Drive Levee Repair Project. Said release shall be recorded with the Whatcom County Assessor’s Office.
7. If WDFW abandons their ongoing levee maintenance and inspection responsibilities on the Marine Drive Levee, the District may elect to undertake these responsibilities and charge WDFW for the cost of these services.

B. Washington Department of Fish and Wildlife (“WDFW”):

1. Shall make a one-time payment to the District in the amount of \$30,000 in consideration for the release of WDFW from all obligations and encumbrances

outlined in the following Marine Drive Levee Flood Control Works Agreements identified by Audit File Number: 910411119, 970129006, 970129007, and 1970601387. Releases shall be recorded with the Whatcom County Assessor's Office;

2. Shall perform ongoing levee maintenance on the Marine Drive Levee;
3. Shall inspect the levee with the District at least one time each year, and following any flood events that overtop the levee, to identify maintenance or repair needs;
4. Shall limit public access to the Marine Drive Levee located between the dates of June 1, 2018 and May 31, 2019, or until such time that the District determines the project vegetation planting is sufficiently established;
5. Shall limit public access following future levee repairs for such period of time as necessary to establish repair-related vegetation;
6. Shall grant the District the right to enter upon Parcel Number 380208 210211 to undertake levee repairs, perform ongoing maintenance of mitigation and restoration measures, and monitoring of the levee. Those activities shall be coordinated with the on-site WDFW property manager.
7. If ongoing levee maintenance and inspection responsibilities on the Marine Drive Levee are abandoned, WDFW will pay for the cost of these services that the District elects to undertake.

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.

DISPUTES

In the event that a dispute arises under this Agreement, a dispute board shall resolve the dispute in the following manner. 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.

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.

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.

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.

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.

CONTRACT MANAGEMENT

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 WDFW is:

Cynthia Wilkerson
Lands Division Manager
Washington Department of Fish and Wildlife
cynthia.wilkerson@dfw.wa.gov
Office: 360-902-2508
Cell: 206-618-3137
USPS – PO Box 43141, Olympia, WA 98504-3200
FED EX/UPS – 1111 Washington St SE, Olympia, WA 98501

The Contract Administrator for the District is:

Paula J. Harris
Whatcom County Public Works
322 N. Commercial
Bellingham, WA 98225
Phone: 360.778-6285
Fax: 360.778-6231
Email: pharris@co.whatcom.wa.us

IN WITNESS WHEREOF, the parties have executed this Agreement.

WA DEPT OF FISH & WILDLIFE

By: 
Cynthia Willerson

Title: Lands Division Manager

Date: 11/1/13

WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT

By: _____

Title: _____

Date: _____

Approved as to Form for District:


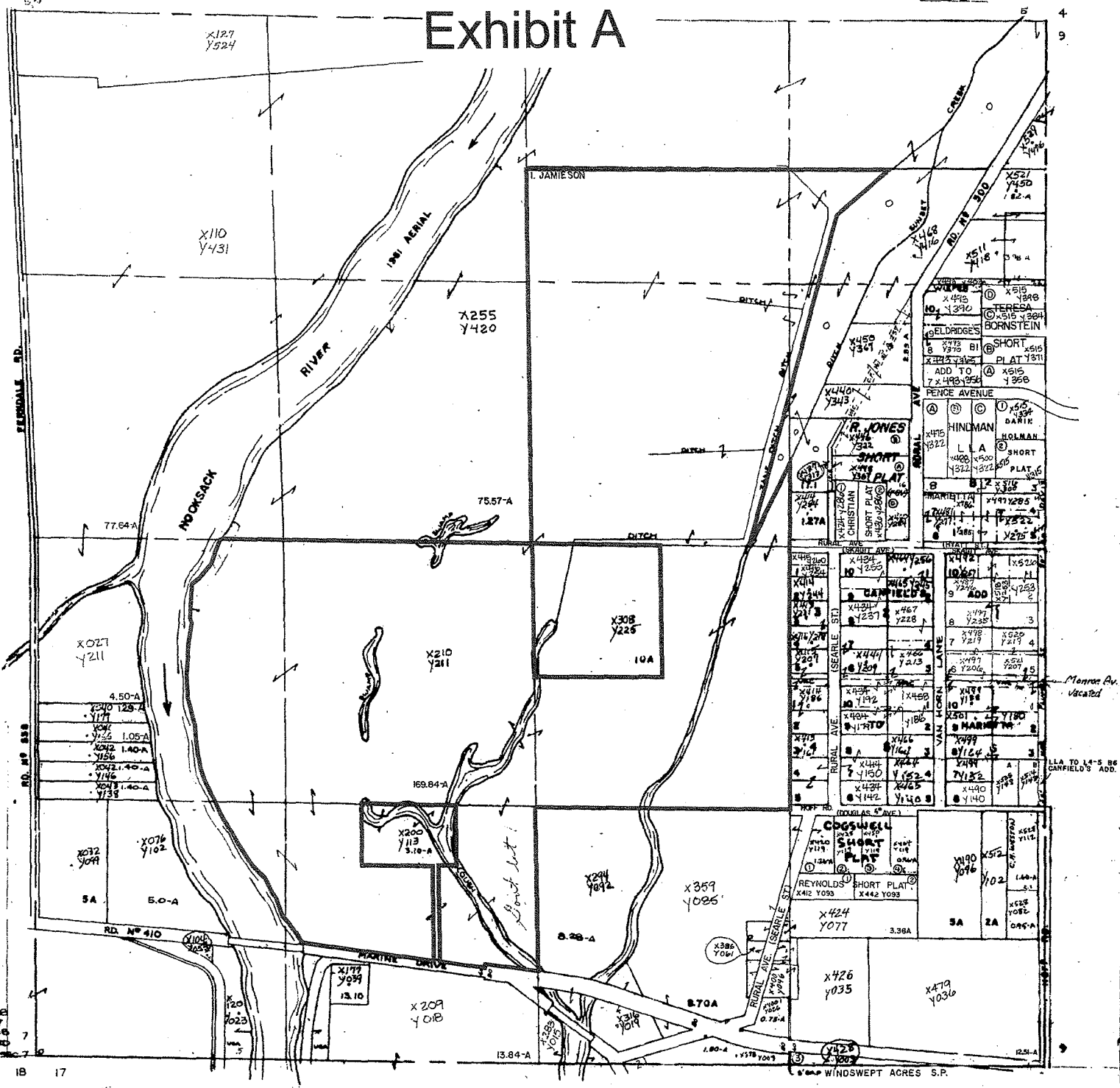
 11/8/13
Senior Deputy Prosecuting Attorney – Civil Division for
Whatcom County

Exhibit A
Property Description

Exhibit A



TOWNSHIP

38

RANGE

2E

SECTION

08

MAP NO.

01

SCALE

1" = 400'

DATE

3/31/67

REVISED
11 May 2016
Assessor's Dept.
Whatcom Co.

THIS MAP IS FOR
ASSISTANCE IN
PROPERTY LOCATION
AND NOT GUARANTEED
FOR ACCURATE
MEASUREMENTS

TAX 14 SEC. 2
TAX 1 SEC. 17
TAX 11 SEC. 16
ALL CARRIED
WITH TAX 12 SEC. 7