



City Council Agenda Bill

20099

Bill Number

Subject: Interagency Agreement with the Washington State Department of Ecology for funding marine shoreline habitat enhancements and assessment of juvenile salmon use of the marine nearshore.

Summary Statement: The Public Works Department has been awarded funding from the Washington State Department of Ecology for: 1) design of habitat enhancement alternatives for Whatcom Creek Estuary between Roeder Avenue and Holly Street; 2) construction of Padden Creek Estuary habitat enhancements; and 3) an assessment of juvenile chinook use of the marine shoreline. These projects are identified as priorities in various plans and assessments, including the Final Habitat Restoration Report for the Bellingham Bay Demonstration Pilot, and are recommended by the Bellingham Bay Action Team.

Previous Council Action: None.

Fiscal Impact: The work will be paid for by the Street Fund and then reimbursed from the Department of Ecology in the amount of \$610,000.

Funding Source: Washington State Department of Ecology via the Bellingham Bay Demonstration Pilot

Attachments: Interagency Agreement with the Department of Ecology

Meeting Activity	Meeting Date	Staff Recommendation	Presented By	Time
Committee Briefing Council Vote Requested	16-Sep-2013	Authorize Contract	Ted Carlson, PW Director	5 min.

Council Committee:

Lake Whatcom Reservoir & Natural Resources

Cathy Lehman, Chair
Michael Lilliquist; Stan Snapp

Committee Actions:

Council Action:

Agenda Bill Contact:

Renee LaCroix, Ecology and Restoration Manager
778-7966

Reviewed By	Initials	Date
Ted Carlson, Public Works Director	TJC	8/30/13
Brian Henshaw, Interim Finance Dir.	BHA	8/30/13
Legal	Carl.	9/6/13
Mayor	KL	8-31-13



DEPARTMENT OF
ECOLOGY
State of Washington
IAA No. C1400056

INTERAGENCY AGREEMENT (IAA)

BETWEEN

THE STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY

AND

THE CITY OF BELLINGHAM

THIS INTERAGENCY AGREEMENT is made and entered into by and between the STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY, hereinafter referred to as "**ECOLOGY**," and the THE CITY OF BELLINGHAM hereinafter referred to as the "**CITY**" pursuant to the authority granted by Chapter 39.34 RCW.

IT IS THE PURPOSE OF THIS AGREEMENT is to provide funding to the CITY to perform habitat restoration activities in Bellingham Bay, in accordance with the priorities established by the Bellingham Bay Pilot Team and set forth in the Bellingham Bay Comprehensive Strategy Final EIS dated October 2000.

THEREFORE, IT IS MUTUALLY AGREED THAT:

1) STATEMENT OF WORK

The **CITY** shall furnish the necessary personnel, equipment, material and/or service(s) and otherwise do all things necessary for or incidental to the performance of the work set forth in Appendix A, attached hereto and incorporated herein.

2) PERIOD OF PERFORMANCE

Subject to its other provisions, the period of performance of this IAA shall commence on July 1, 2013, and be completed by June 30, 2015, unless terminated sooner as provided herein.

3) PAYMENT

Compensation for the work provided in accordance with this IAA has been established under the terms of RCW 39.34.130 and in accordance with Governor's Executive Order 10-07. This is a performance-based contract, in which payment is based on the successful completion of expected deliverables. The parties have determined that the cost of accomplishing the work herein will not exceed \$610,000. Payment for satisfactory performance of the work shall not exceed this amount unless the parties mutually agree to a higher amount. Compensation for services shall be based on the terms set forth in accordance with the tasks listed in Appendix A, Statement of Work and Budget, which is attached hereto and incorporated herein. **ECOLOGY** will not make payment until it has reviewed and accepted the completed work.

4) BILLING PROCEDURE

The **CITY** shall submit invoices with supporting Progress Reports to **ECOLOGY** for payment using Form A19-1A on a quarterly basis. All invoices are to be delivered to attention of Katherine Scott at the following address:

Toxics Cleanup Program
Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

Phone: 360-407-7213
E-mail: ksco461@ecy.wa.gov
Fax: 425-407-7154

Both a paper copy and an electronic copy of these documents shall be delivered to Katherine Scott. An electronic copy shall also be submitted to Lucille T. McInerney at lucv.mcinerney@ecv.wa.gov.

Each invoice shall reference the Agreement (IAA) number and clearly identify the items related to performance under this agreement. All expenses invoiced shall be supported with copies of invoices paid. 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. Payment will be within 30 days of receipt of properly completed invoice.

Payment for approved and completed work will be issued through Washington State's Department of Enterprise Services Statewide Payee Desk. To receive payment you must register as a state-wide vendor by submitting a state-wide vendor registration form and an IRS W-9 form at website, <http://www.des.wa.gov/services/ContractingPurchasing/Business/VendorPay/Pages/default.aspx>. If you have questions about the vendor registration process you can contact DES at the Payee Help Desk at (360) 407-8180 or email payeehelpdesk@des.wa.gov.

5) 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.

6) SUBCONTRACTORS

The **CITY** agrees to take complete responsibility for all actions of any Subcontractor used for the performances under this agreement.

Prior to performance, the **CITY** shall identify subcontractor(s) who will perform services in fulfillment of agreement requirements, including their name, the nature of services to be performed, address, telephone, WA State Department of Revenue Registration Tax number (UBI), federal tax identification number (TIN), and anticipated dollar value of each subcontract:

7) 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.

8) 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.

9) GOVERNANCE AND PRECEDENCE

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.

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:

- a. Applicable Federal and State of Washington statutes, regulations and rules.
- b. Mutually agreed written amendments to this Contract.
- c. Statement of Work and Budget.
- d. Any other provisions of the Agreement, including materials incorporated by reference.

10) 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.

11) 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 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.

12) 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 jointly owned by **ECOLOGY and The City of Bellingham**.

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.

13) 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.

14) TERMINATION

Either party may terminate this Agreement upon thirty (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.

15) 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.

16) 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.

17) AGREEMENT MANAGEMENT

The representative 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 ECOLOGY Representative is:	The CITY Representative is:
Name: Lucille T. McInerney Address: Toxics Cleanup Program Department of Ecology Northwest Regional Office 3190 160 th Avenue SE Bellevue, WA 98008-5452 Phone: 425-649-7272 Email: lucy.mcinerney@ecy.wa.gov Fax: 425-649-7161	Name: Renee LaCroix Address: City of Bellingham Department of Public Works 210 Lottie Street Bellingham, WA 98225-4009 Phone: 360-778-7966 Email: RLaCroix@cob.org Fax: 360-778-7701

18) 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.

The signatories to this Agreement represent that they have the authority to bind their respective organizations to this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement.

State of Washington
Department of Ecology

Polly Zehm Date
Deputy Director

Approved as to form:
Attorney General's Office

EXECUTED, the _____ day of _____, 2013, for the CITY OF
BELLINGHAM:

Departmental Approval:

Kelli Linville Date
Mayor

Ted Carlson Date
Department Head

Attest:

Approved as to Form:

Finance Director Date

Office of the City Attorney Date

APPENDIX A STATEMENT OF WORK AND BUDGET

STATEMENT OF WORK

Task 1 Whatcom Creek Estuary Enhancement Between Roeder Ave. and Holly St.

Under this task the City will evaluate and summarize opportunities and constraints for the design of estuarine/nearshore enhancement in the study area and create sustainable conceptual nearshore habitat enhancement concepts. Upon mutual agreement by the City and Ecology, one of the conceptual alternatives may be carried forward for final design and permitting.

Task 1.1 – Finalize Feasibility Analysis Report

This task will finalize an existing draft Feasibility Analysis Report. The report will include the results of the sampling and testing of sediments in support of the enhancement alternatives and will be submitted for Ecology and Bellingham Bay Action Team (BBAT) review and comment. Ecology, the City and the BBAT may elect to move the project forward for final design or may elect to end the work.

Schedule and Deliverables:

- October 2013 - a draft of the final Feasibility Analysis Report shall be submitted to Ecology and the BBAT for review in Word and PDF formats.
- December 2013 - a Final Feasibility Analysis Report addressing Ecology and BBAT comments shall be submitted in PDF format, with one printed copy.

Task 1.2 – Design Plans, Specifications and Permits

Based on consultation with the BBAT, should Ecology and the City elect to move the project forward for final design, this task shall include the preparation of design plans, specifications and permit applications.

Schedule and Deliverables:

- May 2014 - 60% design plans and specifications shall be submitted to Ecology for review in Microsoft Word and PDF formats. Completed permit applications shall be submitted to Ecology in PDF format.
- October 2014 - 100% design plans and specifications shall be submitted to Ecology in PDF format, with one printed copy.

Task 2 Padden Creek Estuary Enhancement- Construction

Under this task the City will finalize construction documents of the Padden Creek Estuary Enhancements.

Task 2.1 – Finalize Design Plans, Specifications and Permits

This task shall include finalizing existing design documents.

Schedule and Deliverables:

- December 2013 - Draft final plans and bid specifications shall be submitted to Ecology for review in Microsoft Word and PDF formats, with one printed copy. Completed permit applications shall be submitted to Ecology in PDF format.
May 2014 - 100% design plans and final specifications shall be submitted to Ecology in PDF format, with one printed copy.

Task 2.2 –Construction

Under this task the City will construct the estuary enhancements in accordance with the final plans and specifications and permit requirements.

Schedule and Deliverables:

- Construction is estimated to begin in September 2014.
- Within 30-days of completing construction, submit as-built drawings to Ecology in PDF format.

Task 3 Juvenile Chinook Nearshore Study

Under this task the City will conduct a study of juvenile salmonid use of Bellingham Bay estuarine and marine nearshore areas.

Schedule and Deliverables:

Task 3.1 Data review and Sampling Plan Development

January 2014 - The City will develop a sampling plan with project partners. Sampling plan will include review of existing data. The City will submit the draft sampling plan to Ecology and BBAT for review and comment.

Task 3.2 Conduct sampling

February 2014- February 2016 conduct sampling in compliance with approved sampling plan. Any sampling work after June 30, 2015, is not included in this IAA.

Budget

TASKS		BUDGET
Task 1	Whatcom Creek Estuary: Roeder to Holly 1.1 Finalize Feasibility Analysis 1.2 Design Plans, Specifications and Permits	\$85,000
Task 2	Padden Creek Estuary Enhancement - Construction 2.1 Design Plans, Specifications and Permits 2.2 Construction Management	\$400,000
Task 3	Juvenile Chinook Nearshore Assessment 3.1 Data Review and Sampling Plan Development 3.2 Sampling	\$125,000
TOTAL BUDGET		\$610,000

DRAFT