Agricultural Purchase of Development Rights program discussion and ordinance introduction, including proposed changes to WCC 3.25A and the Program Guidelines.

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.)

Proposed amendments are included from the Purchase of Development Rights Oversight Committee, including changes to WCC 3.25A and the PDR Program Guidelines.
MEMORANDUM

TO: Honorable Whatcom County Council Members
CC: The Honorable Jack Louws, County Executive
FROM: Samya Lutz, Planner
THROUGH: Mark Personius, Long Range Planning Manager
RE: Agricultural Purchase of Development Rights Program Changes
DATE: March 12, 2013

In June of 2012, at Council’s request, the Agricultural Purchase of Development Rights (PDR) staff and Oversight Committee discussed the PDR program with the Council Natural Resources Committee. That discussion included contextual and historic information about the program, program funding, and accomplishments and challenges over time. The PDR Oversight Committee also described a number of priorities for program changes. Staff is now coming to you on behalf of the committee to bring forward some of those developed changes.

Context for PDR Program Changes

Past discussions have made it clear that there is a strong interest in refocusing the PDR efforts on core agricultural areas, instead of the past focus on the “edge” of the agricultural areas. This refocusing presents a challenge, as the current Program Guidelines were written to prioritize the edge areas. In addition, the typical appraisal methodology of looking at “before” and “after” values to determine the cost of a conservation easement also can stimulate PDR interest in the edge areas, as the differential between agricultural value and development value can be higher in those areas.

The proposed modifications to the PDR Program Guidelines and WCC 3.25A will enable the Oversight Committee to further develop a strategy for targeting the core agricultural areas, as requested by both the Executive and Council. Elements of this core agricultural strategy slated for further development could include:

- Analysis of small lots within the agricultural zone created through previous exempt land divisions,
- Creation of a ‘reverse auction’ procedure that targets these lots, sets clear priorities and parameters for eligible property, and creates a process for property owners to voluntarily offer their own price for selling development rights, and
- Pursuit of consultant assistance to ready this concept for implementation.

1 Reverse auctions are buyer-initiated, and work when there are many sellers who offer similar goods and services
In addition, council approval of additional PDR funding last fall is enabling added staff capacity beginning later this spring. Benchmarks are being developed to ensure new staff are set up for success, focusing on this core agricultural strategy and increased outreach.

**PDR Program Changes Proposed**

WCC 3.25A.040 contains the following definition:

> The “PDR program guidelines” shall be adopted by county council and contain the rules and regulations under which the PDR program operates. They include eligibility criteria, site selection criteria, a standard conservation easement and other procedures and information necessary to ensure fair and consistent administration of the PDR program.

The PDR Oversight Committee has reviewed the guidelines and recommends the changes as tracked in Attachment B of the draft ordinance. The changes can be summarized as follows:

- Language to reflect the interest in a focus on the core agricultural areas as opposed to the ‘edge;’
- Various modifications to the site selection criteria to reflect the ‘core’ focus and simplify the process;
- A desire to have the flexibility of a rolling application process rather than an annual ‘round’ due to changes in granting agency deadlines and desire to be responsive to opportunities as they arise;
- Proposal of a minimum cutoff score of 40 points to focus on priority properties and be consistent with the rolling application process;
- Language that updates the guidelines to reflect the ongoing nature of the program;
- Language that changes the valuation process so that
  1. Estimations of value can be done prior to a full appraisal so that time and funding is used most efficiently, and
  2. Allowance is made for development of an alternative valuation approach that *upon specific authorization of the Executive and Council* could be used in lieu of a federal USPAP or Yellow Book appraisal if transactions were chosen to move forward without match funding;
- Clean-up of language and references; and
- The addition of two appendices for reference: the soils list as referenced in the Site Selection Criteria, and the sample conservation easement deed as references in WCC 3.25A.040.

We would like to move these changes forward and believe they will clarify and improve the administration of the program. Modifications are also proposed to WCC 3.25A consistent with the Program Guidelines modifications.

Thank you for your consideration of these changes. For additional information, see the website [http://www.whatcomcounty.us/pds/plan/lr/projects/agprogram/pdr.jsp](http://www.whatcomcounty.us/pds/plan/lr/projects/agprogram/pdr.jsp). Please contact Samya Lutz at extension 51072, if you have any questions or concerns.
ORDINANCE NO. ________

AMENDING THE AGRICULTURAL PURCHASE OF DEVELOPMENT RIGHTS PROGRAM
APPLICATION PROCEDURE AND GUIDELINES

WHEREAS, The Growth Management Act and the County Comprehensive Plan
support the retention of agricultural lands and encourage the use of innovative techniques
to do so; and

WHEREAS, ORD2002-054 established the Agricultural Purchase of Development
Rights Program (PDR Program), applicable to all qualifying lands as identified in the PDR
Program Guidelines, and governed by an Oversight Committee that is to advise and make
recommendations to the County Council; and

WHEREAS, The PDR Oversight Committee has developed priorities for program
improvements; and

WHEREAS, The PDR Oversight Committee met on March 1, 2013 and voted to
recommend changes to the PDR Program; and

WHEREAS, The Whatcom County Council held a public hearing to take comments on
the proposed code amendment on April 9, 2013.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that:

Section 1. The Whatcom County Code, Section 3.25A.070 is amended as shown in
Exhibit A.

Section 2. The PDR Program Guidelines changes are amended consistent with this
code amendment, and as shown in Exhibit B.

ADOPTED this _______ day of ________________, 2013.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Clerk of the Council
Kathy Kershner, Council Chair

APPROVED AS TO FORM:

WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON

Civil Deputy Prosecutor
Jack Louws, County Executive

( ) Approved     ( ) Denied
Date Signed: ____________________
EXHIBIT A

Whatcom County Code, Chapter 3.25A
AGRICULTURAL PURCHASE OF DEVELOPMENT RIGHTS PROGRAM
Only amended sections are shown below

3.25A.010 Short title.

This chapter shall be known and may be cited as the "Agricultural Purchase of Development Rights Program." For the purpose of this chapter this program shall be known as the "PDR" program.

3.25A.100 Application and evaluation procedure.

Beginning in the first year following the adoption of the ordinance codified in this chapter and continuing at least once a year until funding has been expended thereafter, the county shall conduct a voluntary property selection process ("selection round") generally as follows and pursuant to the PDR program guidelines.

A. Application. During each application round, owners of qualifying lands will be invited to make application for purchase of development rights by the county by giving notice in one newspaper of general circulation. Application materials will be provided by the administrator and will include, at a minimum, a standard implication form and information about the PDR program. Applications shall be submitted to the administrator and reviewed for completeness.

B. Evaluation. Upon closing of the application period, the administrator shall review and determine eligibility and priority classification of applications. The applications ranked by the administrator shall be forwarded to the PDR oversight committee. The committee shall review the applications and establish an initial pool of parcels for easement purchase based on selection criteria contained in PDR program guidelines. The committee shall then forward the initial pool of parcels to the county council which shall review and prioritize parcels on which it will seek to purchase conservation easements.

C. Appraisal. For those applications that meet the requirements of subsection B of this section, the committee shall cause an appraisal of the applicant’s development rights to be made in accordance with PDR program guidelines. The appraisal shall determine the difference between the fair market value of full ownership of the land (excluding buildings thereon) and the fair market value of the agricultural right to the land.

D. Requirements and Deadlines May Be Waived. Any requirement or deadline set forth in this chapter or the PDR program guidelines may be waived by the county council if, for good cause, it is shown that urgent
circumstances exist that warrant consideration of an application. Under such circumstances the council may purchase a conservation easement at any time and through any process it deems necessary.

E. Reapplication. An owner of a parcel not selected by the county council for purchase of a conservation easement may reapply in any future open application period.

3.25A.120 Restriction on buy-back – Extinguishment and exchange of easements.

If circumstances arise that render the purpose of this easement impossible to accomplish, the easement can be extinguished only by judicial proceedings. In the event of such an extinguishment or the taking of the property by the exercise of the power of eminent domain, grantors shall pay to Whatcom County an amount determined by subtracting the fair market value of the property subject to this easement from the fair market value of the property unrestricted by this easement, at the time of extinguishment or condemnation if Whatcom County is not compensated for its property interests at the time of the extinguishment or condemnation. Other details regarding restrictions on buy-back or extinguishment as may be deemed necessary shall be contained in the PDR program guidelines, and/or the easement deed.
EXHIBIT B

Whatcom County Agricultural Purchase of Development Rights PROGRAM GUIDELINES

The sidebars in this document explain the edits where necessary, and would be removed in a final version. Tracked changes are shown for added or changed text. The formatting of the entire document is updated from the original.
# TABLE OF CONTENTS

I. INTRODUCTION .................................................................................................................... 1

II. PDR PROGRAM OBJECTIVE AND PRINCIPLES.................................................................. 2

III. ELIGIBILITY CRITERIA....................................................................................................... 3

IV. SITE SELECTION CRITERIA ............................................................................................... 4

V. OVERVIEW OF PDR PROGRAM PROCEDURES.................................................................... 9

VI. CONSERVATION EASEMENTS ........................................................................................... 12

VII. OPERATIONAL PROCEDURES FOR ACQUIRING PDR EASEMENTS ............................... 14

VIII. CONSERVATION FUTURES FUND .................................................................................. 20

APPENDIX A: PDR TARGET AREAS ..................................................................................... 22

APPENDIX B: RURAL STUDY AREAS ..................................................................................... 23

APPENDIX C: SOILS LIST ..................................................................................................... 24

APPENDIX D: MODEL CONSERVATION EASEMENT DEED .................................................. 29
I. INTRODUCTION

These Program Guidelines are authorized under WCC Title 3.25A and serve as rules and procedures for administering the Whatcom County Agricultural Purchase of Development Rights (PDR) Program.

The Guidelines serve two functions:

A. To provide an overview of the farmland preservation process for the property owner. Specifically, this information can be found in Section V.

B. To establish the rules and operational procedures that the PDR Oversight Committee and the Administrator must follow when operating a Purchase of Development Rights program.
II. PDR PROGRAM OBJECTIVE AND PRINCIPLES

Responding to the loss of County farmland, Whatcom County Executive initiated the development of a Purchase of Development Rights (PDR) program in September of 2001. A PDR Advisory Committee comprised of farmers, citizens and conservation organizations was instructed to assist County staff in developing a proposal for County Council consideration.

A. Objective

In conjunction with other tools for protecting farmland, the Whatcom County Purchase of Development Rights Program will contribute to sustaining the farming enterprise in Whatcom County.

B. Principles

The PDR Program is to provide a strategic tool to protect critically located County farmland.

1. Contribute to the Preservation of the County's Agricultural Land Base

   Encourage the retention of a critical mass of agricultural land to sustain the farm-related businesses and activities that are necessary to support the agricultural industry in Whatcom County. The PDR Program emphasis will be:
   a. Provide a buffer to encroachment of the agricultural core;
   b. Reduce development potential within the agricultural core;
   c. Consolidate and protect large areas of agricultural land; and
   d.e. Address unique and regionally important farming activities outside the agricultural core that are under pressure of development.

2. Develop Effective Program Design

   Create a voluntary tool for the preservation of productive agricultural land in the County that will:
   a. Provide farmers with the market based economic value for agricultural land without selling the land;
   b. Support and promote ongoing agricultural activity by offering an attractive option for farmers and landowners; and
   c. Provide for ongoing monitoring and enforcement.

3. Leverage Program Impact and Efficiency

   Enhance and support a coordinated approach to the preservation of the agricultural land that will:
   a. Create community support for agricultural preservation initiatives;
   b. Complement and foster other County programs and policies to preserve farming and agricultural lands; and
   c. Leverage other public and private fund sources and provide or increase property owner incentives.
III. ELIGIBILITY CRITERIA

A. Priority Consideration

Areas around the county have been identified to receive priority consideration for PDR Program participation.

Twelve PDR Target Areas (shown in Appendix A) are priority farmlands that are located within designated areas of Everson, Beard Road, Ten Mile Road, east Hemmi Road, Laurel, south Custer, north Custer, Stein Road, west Lynden, north Lynden and northeast Lynden. Preservation of these areas can establish a perimeter of PDR farmlands against development encroachment into large blocks of agricultural lands.

Nine Rural Study Areas (shown in Appendix B) are priority farmlands that are located in Rural-zoned areas of Guide/Aldrich, Grandview, Ten Mile, Loomis Trail, Custer, Harksell, East Badger, Minaker, Lawrence, and South Fork. These lands, due to their soils, land use, and proximity to core agricultural areas, are also deemed priority farmlands for program participation.

In addition, the lands zoned Agricultural in Whatcom County are also priority farmlands for program participation. Lands immediately adjacent to Ag lands or Rural Study Area lands will also be given priority through the selection process.

B. PDR Program Eligibility

Applications for PDR acquisition will be limited to the twelve PDR target areas during the first two selection rounds (over a period of 1 year to 18 months). Following the completion of two rounds, the eligibility criteria will be reviewed to determine whether to purchase land outside the target areas. Two factors will be important in determining eligibility: 1. Availability of funding to expand the program and 2. Advancement of PDR Program objectives. PDR target areas Priority farmlands will continue to receive preference over other farmland through weighted selection criteria.

All applicants for PDR Program participation must be within an Agriculture or Rural zoning designation. Properties located in Urban Growth Areas are ineligible to participate in the program.
IV. SITE SELECTION CRITERIA

All valid applications will be reviewed to determine if the acquisition of development rights will promote the PDR program’s goals and priorities. Selection criteria have been developed to guide, but not control, the review and assessment of eligible properties during each selection round.

In all selection rounds, valid and accepted offers on eligible properties of greater points shall be considered for purchase with available funds before properties receiving lower scores. The criteria, which will be used to evaluate the applications, are outlined below.

Rating instructions: The selection criteria allow for a score of up to 100, with all five criteria sections assessed. Each criteria section is rated and assigned a point value. Then each section is assigned a weight factor. The five weight factors add up to 1.0. When total point values for a section are multiplied by the weight factor, a score will be reached for that section. The total of the 5 section scores result in the final applicant score. Staff performs the ranking, with review and adjustment by the PDR Oversight Committee.

I. Land Evaluation

Productive farming and associated activities depend on soil capability (the suitability of soils for most types of field crops). Therefore, emphasis should be placed on the property’s soil characteristics. The scoring system uses the NRCS Prime Farmland classifications, LESA classifications and APO soils classifications, as well as classification of soils of statewide importance. Higher points are assigned to better soils and lower points to poorer soils. Points are also assigned based on the productivity and/or characteristics of the soil (profile, texture, slope, other). A soils chart is included as Appendix C.

In addition, five points are added to the total soils score for each soil if the property has drainage tiles, flood protection or soil improvement infrastructure. If water rights are available on the property five more points are added.

Below is a table detailing the soil point system:

<table>
<thead>
<tr>
<th>LESA Rating</th>
<th>APO or Non-APO Prime 1</th>
<th>Non-APO Prime 2-6</th>
<th>Soils of Statewide Importance</th>
<th>None</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>99 100</td>
<td>89 0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>2</td>
<td>89 5</td>
<td>78 5</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>3</td>
<td>88 0</td>
<td>78 0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>4</td>
<td>78 5</td>
<td>67 5</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>No Rating</td>
<td>78 0</td>
<td>67 0</td>
<td>50</td>
<td>0</td>
</tr>
</tbody>
</table>

Farm applications receive points for this section proportional to the percentage of each soil type that exists on the property. An example of how this would work follows: A farm under review is 40 acres, of which 29.79 acres (about 75%) is soil 179-Whatcom Silt Loam 4-9% slopes, which is classified as LESA 4, APO Prime 1; and 10.21 acres (about 25%) is soil 180-Whatcom Silt Loam 9-15% slopes, which is...
not classified as APO or Prime, but is a soil of Statewide Importance. This farm would score a total of 76.07 points for this Section, as shown below.

<table>
<thead>
<tr>
<th>Soil #</th>
<th>Area (in acres)</th>
<th>% (B/Total area)</th>
<th>APO Soil</th>
<th>Prime 1-6?</th>
<th>LESA Rating</th>
<th>Prime Rating</th>
<th>Statewide Soil</th>
<th>Points</th>
<th>score (I*C)</th>
</tr>
</thead>
<tbody>
<tr>
<td>179</td>
<td>29.79</td>
<td>74.48%</td>
<td>Y</td>
<td>Y</td>
<td>4</td>
<td>1</td>
<td>0</td>
<td>85</td>
<td>63.30</td>
</tr>
<tr>
<td>180</td>
<td>10.21</td>
<td>25.53%</td>
<td>N</td>
<td>N</td>
<td>0</td>
<td>0</td>
<td>yes</td>
<td>50</td>
<td>12.76</td>
</tr>
<tr>
<td><strong>Total area</strong></td>
<td><strong>40</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td><strong>76.07</strong></td>
</tr>
</tbody>
</table>

Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for Land Evaluation section has been 0.33, but is subject to ongoing review by the Committee).

2. **Site Evaluation**

The points for each criteria are based on a 100 point scale. Higher points are given to site characteristics that are more desirable, such as parcel size, characteristics that reflect a site’s threat of conversion, such as proximity to high traffic roads or UGA, and characteristics that make a site more desirable to farming, such as available water rights.

**A.** —1. Total size of parcel(s) (nominal acres)

- a. <10   0 pts
- b. 10-29  20 pts
- ca. 320-49.9  430 pts
- db. 50-79.9  670 pts
- ec. >80-100  8100 pts
- f. >100   100 pts

**B.** —2. Number of existing development rights offered under current zoning

- a. 1-2   20 pts
- b. 3     40 pts
- c. 4     60 pts
- d. 5     80 pts
- e. >/=6  100 pts

**C.** —3. Adjacent land is conserved by easement or other means (Whatcom Land Trust or NRCS CREP Program)

- a. >1 mile   0 pts
- b. ½ to 1 mile  25 pts
- c. ¼ to ½ mile  50 pts
- d. <¼ mile  75 pts
- e. Adjacent  100 pts

**D.** —4. Percent of parcel actively farmed
<table>
<thead>
<tr>
<th>5. Proximity to high traffic roads</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. &gt;1 mile</td>
</tr>
<tr>
<td>b. ½ to 1 mile</td>
</tr>
<tr>
<td>c. ¼ to ½ mile</td>
</tr>
<tr>
<td>d. &lt;¼ mile</td>
</tr>
<tr>
<td>e. Adjacent</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>6. Proximity to UGA or city limits</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. &gt;1 mile</td>
</tr>
<tr>
<td>b. ½ to 1 mile</td>
</tr>
<tr>
<td>c. ¼ to ½ mile</td>
</tr>
<tr>
<td>d. &lt;¼ mile</td>
</tr>
<tr>
<td>e. Adjacent</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>7. Percent of parcel surrounded within ½ mile by more intensive uses</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. &gt;75</td>
</tr>
<tr>
<td>b. 51-75</td>
</tr>
<tr>
<td>c. 26-50</td>
</tr>
<tr>
<td>d. &lt;25</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>8. Number of platted legal lots of record</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. 0-2</td>
</tr>
<tr>
<td>b. 3</td>
</tr>
<tr>
<td>c. 4</td>
</tr>
<tr>
<td>d. 5</td>
</tr>
<tr>
<td>e. &gt;/= 6</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>9. Water Rights documentation available</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. Yes</td>
</tr>
<tr>
<td>b. No</td>
</tr>
</tbody>
</table>

Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for Site Evaluation section has been 0.33, but is subject to ongoing review by the Committee).
3. Special Considerations

G. 1. Site contains heritage/historical significance
   a. Yes  50 pts
   b. No  0 pts

H. 2. Site contains conservation values (viewsheds, wetlands, wildlife habitat, other)
   a. Yes  50 pts
   b. No  0 pts

Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for Special Considerations section has been 0.03, but is subject to ongoing review by the Committee).

4. Bargain Sale Opportunity

I. 1. Sale below market value
   a. 89%-Full Value  0 pts
   b. 65%-89%  33 pts
   c. 50%-64%  66 pts
   d. < 50% Full Value  100 pts

Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for Bargain Sale Opportunity section has been 0.09, but is subject to ongoing review by the Committee).

5. Bonus Points

J. 1. Increases the amount of preserved farmland in target or rural study area to:
   a. Not in target area  0 pts
   b. <25%  25 pts
   c. 25-50%  50 pts
   d. 51-75%  75 pts
   e. >75%  100 pts

Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for Bonus Points section has been 0.22, but is subject to ongoing review by the Committee).

6. Final Score

The points for each section are added up and multiplied by a weight factor, which indicates the importance that is placed on a particular characteristic. The weighted scores are then added to provide an overall score (0-100). The higher the score, the more closely the property meets the goals of the program and hence is a higher priority for purchase and preservation. Properties which score less than 40 (forty) points will not be recommended for program participation.
List of High Traffic Roads* State Highway or Major Collector-Rural (as defined by Whatcom County Engineering).

State Highway:
Guides Meridian Road
East Badger Road
East Pole Road
Grandview Road
Blaine Road

Major Collector-Rural:
East Axton Road
West Axton Road
Birch-Bay Lynden Road
Hannegan Road
East Smith Road
West Smith Road
West Badger Road
Portal Way
Enterprise Road
North Enterprise Road
West Pole Road
Haynie Road
Sunrise Road
Northwest Drive
Vista Drive
Hovander Road
Mountain View Road
Rainbow Road
Kickerville Road (part)
Lake Terrell Road
Everson Goshen Road
Hampton Road
Van Buren Road
H Street Road
Sweet Road

* This is not a complete list. However, it includes most roads that apply to the PDR Program.

This list of roads is no longer needed when the 'proximity to high traffic roads’ criteria from 2. “Site Evaluation” is removed.
V. OVERVIEW OF PDR PROGRAM PROCEDURES

A. Selection Round Announcement Outreach and Publicity

Step 1: The County shall begin each selection round by annually giving notice in one newspaper of general circulation in each area where eligible lands are located which may be acquired. The notice shall include the properties eligible to participate in that selection round, the application process and applicable timeframes and extensions.

The Administrator may identify each property with potential development rights within the twelve target priority consideration areas and provide written notification to the property owners.

B. Application and Ranking

Step 2: Voluntary pre-application screening. Interested property owners may meet with the County PDR Program Administrator (Administrator) to review their eligibility and special circumstances, if any.

Step 3: Application. An owner of land eligible for PDR Program participation submits an application for County acquisition of property or development rights. The application must be submitted on the form provided by the County, on or before the closing of the selection round.

Step 4: The Administrator reviews each application for completeness, determines if the subject property meets minimum eligibility criteria and assigns a preliminary score based upon the PDR site selection criteria.

Step 5: Upon closing of the selection round, the PDR Oversight Committee reviews PDR Program applications and application for County acquisition of property or development rights. The application must be submitted on the form provided by the County, on or before the closing of the selection round.

Step 6: County Council confirms, denies or modifies the ordered list of parcels for PDR acquisition and forwards the list to the Administrator for action.

Step 7: The Administrator estimates the number of appraisals that can be initiated based on available funds and chooses the top ranked parcels from the County Council’s list of parcels. The property owner is notified in writing of eligibility status.

Step 8: Property owners disputing their ranking may request a reconsideration of their ranking to the PDR Oversight Committee within 14 days after receiving written notification.
notice. The Committee shall review the reconsideration request at the next regularly scheduled meeting. Special consideration will be given if applicant modifies the original offer to include a bargain sale. The PDR Oversight Committee may, at its discretion, change the site's rank, recommend the site for subsequent selection rounds consideration, or deny the request.

C. Title

Step 28: The Administrator initiates a title search. Closing is conditioned on the resolution of all unapproved title exceptions, within the County’s sole discretion, which may require the receipt of subordination agreements or payoff letter.

D. Negotiation Pricing Estimate and Appraisal

Step 109: The Administrator or designee initiates the pricing estimation process using the formula developed by a consulting appraiser and periodically updated OR a preliminary estimate of value, and notifies the property owner of an estimated range of value within which the appraisal will likely fall. The Administrator or designee sends the applicant a letter of intent, including range of expected value. The letter calls for the signature of property owner(s), and spells out conditions under which costs for further due diligence and the appraisal must be reimbursed to the county if the property owner chooses to withdraw from the program within a specified period of time. Informal negotiation process with the property owner. At this time, the property owner may indicate a minimum expected value. However, the application may be denied if the administrator and the Oversight Committee determine the minimum value to be unsupportable.

Step 10: The Administrator or designee proceeds to verify assumptions through official county processes, such as a formal Lot of Record and density determination, and conduct other due diligence as necessary (such as water rights research and Title research and clearing).

Step 11: Unless Council and the Executive specifically authorize an alternate approach to determine value, the Administrator commissions a full appraisal by a County authorized appraiser to appraise the development rights value of the land proposed for development rights sale. The development rights value is the difference between the market value of full ownership of the land excluding buildings, and the agricultural value.

Step 12: The appraiser submits the completed appraisal (or the alternate determination of value is conducted and submitted) to the Administrator and the Oversight Committee for their review.

Step 13: The Administrator or designee meets with the property owner to review the appraisal (or alternate determination of value), state the offer, review the conservation easement provisions, agreement terms and conditions, and to answer the property owner’s questions.
Step 14: If the property owner believes that the farmland has not been adequately appraised or valued, the owner may, within the time allowed in the selection round schedule, commission an appraisal at the owner's expense.

E. Offer to Purchase Easement and Agreement

Step 15: A written offer to purchase development rights based on appraised or determined value is made to the property owner following budget approval authorization by the County Council, and approval by the County Executive.

Step 16: Within 30 days, the property owner accepts, rejects or makes a counter offer. Counter offers will be reviewed and evaluated by the Oversight Committee and the County's authorized appraiser.

Step 17: Property owners desiring to sell their development rights sign a Purchase and Sale Agreement.

F. Adjacent Property Owner Notification

Step 18: Neighboring property owners are notified that adjacent land is in the process of being preserved.

G. Approval

Step 19: Review materials are presented to the County Council Executive for their review and approval, rejection, or recommendation for modification.

Step 20: Review materials are sent to other participating entities for partially or wholly funded conservation easements several days prior to any deadline.

I. Settlement

Step 21: Settlement will occur following County Executive approval of transaction terms and is contingent upon a title search and any other evidence, such as a land survey, that may be necessary to establish clear title.

Step 22: Payment will be in full at time of settlement unless the County and property owner agree to an installment sale.

Step 23: Checks are requested from the Finance Manager and settlement is scheduled within a week or two of approval. Federal or state money is dispersed according to federal or state regulation.

J. Recording

Step 24: The conservation easement will be recorded at the County Auditor's office. The County or its designee will monitor the properties under easement at least annually to ensure compliance with the easement.
VI. CONSERVATION EASEMENTS

A. Description

A conservation easement deed is a legally binding document, which is recorded by the County Auditor, forever restricting the property to agricultural and directly associated uses, and for which compensation may be paid. As an easement in gross in perpetuity, restrictions are binding upon the owner and future owners, and run with the land.

B. PDR Program Conservation Easements

At the time of acquisition of development rights from a participating property, a conservation easement is placed on the property permanently restricting development of the site and protecting/preserving the agricultural values associated with the site. The conservation easement must be signed by both the property owner(s) and the County Executive or his/her designee and recorded with the property records for the property. A model conservation easement deed is included in these guidelines as attachment D.

1. Conservation Easement Requirements

Conservation easements shall be on a form approved by the Whatcom County Prosecuting Attorney and shall meet the following basic requirements:

a. The deed shall be in recordable form and contain an accurate legal description setting forth the metes and bounds of the farmland area subject to the easement;

b. Restriction is granted in favor of Whatcom County, or if designated by the organizations as defined in RCW64.04.130;

c. Restriction is granted in perpetuity, and shall bind existing and future property owners; and

d. Unless specifically provided for, nothing in the restrictions shall be construed to convey to the public a right of access or use of the property, and the owner of the property, his/her heirs, successors and assigns shall retain exclusive right to such access or use subject to the terms of the easement.

2. Filing

After the conservation easement is signed and notarized, it must be recorded with the Whatcom County Auditor's Office.

C. Conservation Easement Conveyance

Conservation easements may be either donated or sold, or a combination of both.

1. Conservation Easement Donation
a. A donation of a total parcel will not be subject to eligibility except as below in section c. Partial parcel donation shall be considered under the same rule as for development rights sales. Notwithstanding the eligibility of the property, acceptance of a fee interest or partial donation is within the discretion of the County Council.

b. Whatcom County will accept voluntary donations or bequests of agricultural development rights as perpetual easements in gross if meeting eligibility criteria (except priority area criteria) and within the discretion of the County Council.

c. All properties offered for development rights donation must meet the following minimum eligibility criteria:
1. The PDR Oversight Committee will consider each offer on a case by-case basis, considering the property’s consistency with current and future land uses, and
2. The farm property must be at least 10.4 acres in size, and
3. Be in agricultural use or has not been irrevocably devoted to a use inconsistent with agricultural uses, and that has a high potential for returning to commercial agriculture, and
4. Consist primarily of productive agricultural soils (APO soils) and,
5. Cannot be located within an Urban Growth Area.

2. Conservation Easement Sale
a. Whatcom County will purchase perpetual conservation easements on qualified properties in accordance with the policies and procedures of the Whatcom County Agricultural Purchase of Development Rights Program, with Federal, State, County, and/or private funds and any combination thereof.

b. All properties offered for conservation easement sale must meet minimum eligibility criteria as contained in Section III.
A. Selection Schedule

In the first and second selection rounds, eligible farmland within the twelve target areas shall be eligible for purchase. Following the first two selection rounds, the County Council will determine whether other County farmland will be eligible to participate in the PDR Program. (See Section III A&B).

BA. Selection Round Announcement Outreach and Publicity

Each selection round shall begin by providing annually, notice shall be published in one newspaper of general circulation. Application opening and closing dates, if any, will be determined by the PDR Oversight Committee. The Committee shall have the discretion to consider applications in rounds, or individually on a rolling basis. If selection extend selection round deadlines are extended, the committee and will provide public notice of the extension.

CB. Application and Ranking

1. Property owner(s) voluntarily submits an application(s) to the County during a publicized open selection round. The application must be submitted to the County on the form provided by the PDR Program, on or before the closing date stated in and according to the relevant selection round public notice. Applicants are to include at a minimum:
   a. Name(s) and address(es) of the property owner(s) of the site;
   b. Legal description and parcel number(s);
   c. Copy of the property deed and title;
   d. Total acreage of farmland to be included in the PDR Program;
   e. Current land use and APO soils;
   f. Number of dwelling units;
   g. Description of the farming operation;
   h. Other information necessary to evaluate property eligibility; and
   i. Acknowledgement of intent to grant to Whatcom County a conservation easement in a form provided by the County.

2. The Administrator shall review each application to determine completeness and eligibility.

3. Upon closing of the application period, applications meeting all minimum eligibility criteria shall be evaluated and scored by the administrator and Oversight Committee according to the site selection criteria. (See Section IV)

4. The PDR Oversight Committee shall provide the County Council with a recommended list, ranking all eligible
applications for conservation easement acquisition by the committee during the selection round. County Council shall make the final prioritization, approve or deny pursuit of conservation easement acquisitions on of the parcels.

5. The Administrator shall then arrange appraisals (or alternate determination of value) of eligible farmland applicant properties in the priority order as determined by the County Council.

6. The PDR Oversight Committee and Administrator shall provide an annual update to the County Council discussing recommended purchases, possible program changes, and anticipated budget needs.

DC. Appraisal

1. Appraisals for eligible properties shall be conducted to determine the value of development rights of parcels in the order of its acquisition priority until acquisition funds are expended in the selection round.

1.a. The appraisals are to be made by an independent appraiser qualified to appraise agricultural land for development rights purchases. An appraiser is deemed qualified if he or she possesses a State of Washington certification as a State Certified General Real appraiser, MAI designation by the Appraisal Institute (or equivalent), and at least five years agricultural lands appraisal experience. Appraisers shall supply a narrative or UAAR form report, which contains information as required by the Uniform Standards of Professional Appraisal Practice (USPAP) and as specified in any contract with the County.

2.b. An appraisal report is an objective report of market facts. The appraisal report must estimate both the unrestricted fee market value of the land only, excluding the value of buildings, and the agricultural value of the land only, of which the difference is the development rights value.

3.c. Both values shall be based primarily on an analysis of comparable sales. If comparable sales data is not available for agricultural lands, the appraiser may use local farmland rental values or capitalized production values to determine the agricultural values of the land.

4.d. A description of the buildings or other improvements shall appear in the appraisal report; however, the buildings will not be valued and therefore will not be considered in determining the development rights value.

5.e. The appraiser shall report whether the subject property has any land use restrictions, public or private and/or physical attributes, which limit the developmental capability of the land.

6.f. The appraiser shall be advised that conservation easements are perpetual. The perpetual nature of the easement shall take precedent over any agricultural zoning status.
7.g. The appraisal shall be in writing and may be discussed with the owners prior to the submission of written offers.

8.h. If the property owner believes the property has not been adequately appraised, the owner may, within the time allotted in the selection round schedule, request that a review appraisal be made at the owner's expense. This appraisal must be completed in accordance with the guidelines set forth herein. If the review (owner's) appraisal is not completed within the allotted time, the application will be delayed to the following selection round for future committee consideration. If a review appraisal is completed, the appraisals will be reviewed by the County’s Appraiser. The County’s Appraiser in consultation with the Program Administrator and the PDR Oversight Committee will accept, modify or reject the review appraisal. The determination of the County’s Appraiser is final.

i. The maximum value of development rights purchased by the County shall be no more than the easement value contained in an appraisal report. The easement value is the difference between the farmland’s market value before and after the voluntary conservation easement's agricultural value.

9.2. Council and the Executive may specifically authorize an alternate approach to determine value in accordance with state and local laws, in which case the conditions of that approach would substitute for the appraisal guidelines as set forth in C.1., above.

ED. Title and Survey Issues

1. The Administrator shall request a title report confirming that applicant is the owner of the property and has unrestricted legal right to transfer the development rights (i.e. there must be clear title to transfer the property). The title report will be provided to the County Attorney for review.

2. All encumbrances (including but not limited to: liens, mortgages and judgments) against the property must be subordinated, satisfied or removed prior to development rights acquisition. Mortgage and/or lien holder subordination and releases may be required acknowledging that a conservation easement will be placed on the property and subordinating their interest in the property to the deed restriction.

3. At settlement for a County or joint development rights purchase, the PDR Oversight Committee or applicant shall provide a title insurance policy issued by a title insurance company authorized to conduct business in Washington State by the Washington State Office of Insurance Commissioner. The cost of such title insurance shall be a shared cost, with the county's portion considered a cost incident to the development rights purchase and is a reimbursable expense from the County's Conservation Futures Fund.

4. It is the property owner’s responsibility to survey (or provide a legal description that meets specific standards) any exceptions from the easement and any
graveyards or cellular towers that may be located on the property. It is the property owner's responsibility to provide a legal description for any commercial operation on the farm that is not incidental to the overall farming operation, in order to exclude it from the easement. Surveys shall be conducted by a licensed surveyor in accordance with state and federal regulations.

**FE. Development Rights Value and Purchase Price**

1. The maximum value of development rights purchased by the County shall be no more than the easement value contained in an appraisal report. The easement value is the difference between the farmland’s market value before and after the voluntary conservation easement's agricultural value.

2. Development rights may only be purchased in perpetuity.

**GF. Recommendation of Development Rights Purchases by the PDR Oversight Committee**

1. The PDR Oversight Committee, in making recommendations concerning applications and purchase offers, shall consider the following:
   a. Evaluation according to the site selection criteria.
   b. Consistency with County Comprehensive Plan (and Rural and Agriculture zoning designations).
   c. Cost relative to total allocations and appropriations.
   d. Proximity to other land subject to agricultural protection easements.

2. Upon receiving the recommendations of the PDR Oversight Committee and the Administrator, the County Council-Executive shall review the recommendations and shall take final action to authorize or deny proposed purchase terms and offers, consistent with authorization by the County Council.

3. If a farm is approved for development rights purchase, the Administrator will meet with the property owner and review the terms, conditions and amount of the County’s offer. A written offer will be provided to the property owner. Written notice shall also be provided to farmland not approved for development rights purchase during the current application round.

4. Within 30 days of receipt of a written offer from the County an applicant must indicate in writing which of the following actions they intend to pursue:
   a. Accept the offer.
   b. Reject the offer.
      1. Reject offer outright
         a. no further action
         b. participate in next round future review
      2. Submit a counter offer within 90 days of written notice of offer by the County.
   c. Failure to notify the County within 30 days shall constitute rejection of the offer.
5. If the offer is accepted, the Administrator shall prepare a Purchase and Sale agreement. USDA or State Funds must be paid as lump sum. The method of payment shall be specified from the options listed below:
   a. Lump Sum
   b. Installment Purchase Agreement (IPA)
   c. Like-Kind Exchange
   d. Or a combination of the above

6. For development rights purchase utilizing the Installment Purchase Agreement (IPA) program, the County Council at settlement shall provide an opinion of legal counsel that the County's obligations to make installment payments of principal and tax-exempt interest over time are legal, valid, and binding. And that such payments are a general obligation of the County for which its full faith, credit, and taxing power are pledged. Interest paid by the County is exempt from federal income taxes.

7. All Agreements of Sale and Conservation Easements require the County Council's approval.

**HG. Grant of the Agricultural Protection Conservation Easement**

Before the purchase of development rights can be finalized, a conservation easement in a form approved by the County Attorney and consistent with the policies of the PDR Program Guidelines, must be placed on the property permanently restricting development of the site and preserving its agricultural values.

The principal interest of the County is to ensure that agricultural lands are preserved and subsequently stewarded in a manner that maintains and enhances their farmland values. There may be some instances where there is a public interest in another public entity or non-profit organization to hold the conservation easement, for continued stewardship and protection of the land. The County will consider:

1. The preferences of the donor or seller;
2. Administrative, monitoring, and enforcement issues associated with the conservation easement and the resources available to address these issues;
3. Requirement of Federal, State or County funding sources utilized to purchase development rights.

**IH. Development Rights Purchase Recommendations/Submission Requirements**

1. County Council: Each recommendation for development rights purchases with County funds, State funds, Federal funds or a combination of funds shall be presented to the County Council at a regularly scheduled public meeting.

2. Letters of Notification: Letters of notification for development rights purchases will be sent to adjoining property owners by the Administrator.
3. All eligible applications not selected for PDR Program participation may choose to be reviewed during the next application round-period or withdrawn. Within 30 days following receipt of written notice from the county, the property owner must notify the administrator in writing requesting review in the next selection round-period.
VIII. CONSERVATION FUTURES FUND

A. Intent

This fund was established in 1992 to be used solely to acquire right and interests in open space land, farm and agricultural land, and timber land, so as to protect, preserve, maintain, improve, restore, limit the future use of, or otherwise conserve the property for public use and enjoyment.

B. Fund Sources

This Conservation Futures Fund is funded by a real property tax applied to all real property within Whatcom County at a rate of six and one-quarter cents per $1,000 of assessed valuation determined by the county administration and county council.

C. Fund Source Accounts

Council shall annually consider an allocation of Conservation Futures Fund to be placed in a Purchase of Development Rights Account.

D. Installment Payment Fund

1. The intent of installment payment funds, which are established by the County, is to encumber and invest committed funds for which recipient property owners have elected annual installment payments for a period, which may vary according to the wishes of the property owner.

2. The full consideration of any transaction for which installment payments of five years or less have been elected shall be placed in the fund, less the amount of any first installment to be paid at settlement. This amount shall be invested and annual installment payments shall include the interest accrued.

3. Annual installment payments shall be made on or before January 20\(^{th}\) of each year.

4. A property owner may enter into an Installment Purchase Agreement for fifteen (15) to thirty (30) years at an interest rate to be negotiated between the property owner and the County. The property owner will receive semi-annual interest payments that are tax exempt. Principal will be paid in one lump sum at the end of term. The property owner will also receive a security representing the Installment Purchase Agreement. The property owner may sell or assign this Agreement.

E. Public Expenditures

1. All public expenditures from the Conservation Futures Fund are subject to approval by Whatcom County Council and will be made in accordance with approved disbursement procedures.
2. Expenditures from the PDR Program Account shall be limited to interests in qualified agricultural land participating in Whatcom County's Agricultural Purchase of Development Rights Program, and other expenses necessary to the acquisition of agricultural conservation easements authorized under RCW 84.34.200-240.

3. The annual appropriation to the PDR Program by the County Council shall be available for the calendar year in which the appropriation was made and or the subsequent calendar year.
APPENDIX A

Purchase of Development Rights Target Areas

Figure 1
APPENDIX B

Rural Study Areas

Whatcom County
-Rural Study Areas and Agricultural Zone

Figure 2
# APPENDIX C

## Soils List

<table>
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<th>Soil #</th>
<th>Soil Name</th>
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<th>STATEWIDE IMPORTANCE</th>
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<td>48</td>
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<td>49</td>
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<tr>
<td>56</td>
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<td>98</td>
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<td>108</td>
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<td>148</td>
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<td>153</td>
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<td>156</td>
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<td>161</td>
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<td>174</td>
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<td>186</td>
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<td>WINSTON LOAM - 15 TO 40% SLOPES</td>
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<td>191</td>
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<td>YELM-URBAN LAND COMPLEX - 0 TO 3% SLOPES</td>
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APPENDIX D

Model Conservation Easement Deed

A sample Conservation Easement Deed based on the assumption of matching funds from the USDA-NRCS Farm and Ranch Lands Protection Program, is included in the following pages.
DOCUMENT TITLE: WHATCOM COUNTY CONSERVATION EASEMENT

GRANTOR: ________________________________

GRANTEES: WHATCOM LAND TRUST AND WHATCOM COUNTY

ABBR. LEGAL DESCRIPTION: P# __________ and P# __________, except rds.

AGRICULTURAL CONSERVATION EASEMENT DEED

This Conservation Easement Deed (“Deed”) is made and entered into this ___ day of __________, 20__, by __________________ ("Grantor"), the WHATCOM LAND TRUST ("Trust"), and WHATCOM COUNTY, WASHINGTON ("County") ("Grantees"); and the United States Department of Agriculture, Natural Resources Conservation Service ("NRCS") acting on behalf of the Commodity Credit Corporation as its interest appears herein.

I. RECITALS.

The following recitals are a material part of this Easement.

A. Grantor is fee simple owner of real property (the “Protected Property”) in Whatcom County, Washington, that is the subject of this Easement. Exhibit A is the legal description and Exhibit B is a site plan for that Protected Property, both of which are attached and incorporated herein by reference.

B. The Federal Farm and Ranch Lands Protection Program's purpose is to partially fund the purchase of conservation easements on land with prime, unique, or other productive soil for the purpose of protecting topsoil from conversion to nonagricultural uses (16 USC 3838h - 3838i). That Grantor acknowledges that $______ was provided by the United States Department of Agriculture (United States), through the Farm and Ranch Lands Protection Program, and thus entitles the United States to the rights identified herein.
C. While “Grantees” include the Whatcom Land Trust and Whatcom County, use of the term “Grantees” does not imply that joint approval is required to exercise Grantees’ rights and responsibilities under this Easement. Those rights and responsibilities may be independently exercised by any Grantee.

D. The Protected Property is approximately ______ acres and is currently farmed.

E. The Protected Property has significant agricultural value to Grantees and to the people of Whatcom County and the State of Washington. The agricultural values include productive soil types and agricultural infrastructure as described in Exhibit D.

F. Grantor and Grantees agree that the conveyance of rights and imposition of restrictions described in this Easement furthers the intent of Whatcom County Ordinance No. 2002-054, provided in Exhibit C, to preserve land for agricultural purposes and has substantial public benefits.

G. As owner of the Protected Property, Grantor has the right to convey the rights and restrictions contained in this Easement in perpetuity.

II. CONVEYANCE AND CONSIDERATION.

A. For the reasons stated above, in consideration of mutual covenants, terms, conditions, and restrictions contained in this Easement, and in consideration of payment of $_______ by Whatcom County and the United States to Grantor, Grantor hereby grants, conveys and warrants to Grantees a Conservation Easement in perpetuity over the Protected Property, consisting of certain rights and restrictions as defined in this Easement Deed.

B. This Easement Deed is a conveyance of an interest in real property under the provisions of RCW 64.04.130.

C. Grantor and Grantees intend that this Easement run with the land and that it shall be binding upon Grantor’s, successors and assigns in perpetuity.

III. PURPOSE.

The purpose of this Easement is to: (1) protect the present and future ability to use the Protected Property for agricultural purposes; (2) preserve the soil as a valuable resource and prevent activities that will impair the ability, now or in the future, to use the soil to produce food and fiber; (3) enable the Protected Property to remain in agricultural use for the production of food and fiber by preserving and protecting in perpetuity its agricultural values, character, use and
utility, and to prevent any use or condition of the Protected Property that would significantly impair or interfere with its agricultural values, character, use or utility. This statement of purpose is intended as a substantive provision of the Easement. Any ambiguity or uncertainty regarding the application of the provisions of this Easement will be resolved so as to further this purpose. The grant of this Easement will also serve the "conservation purpose" of farmland protection as identified in Section 170(h)(4)(A) of the Internal Revenue Code.

IV. RELATIONSHIP OF PARTIES.

A. Unless noted otherwise, Whatcom County and the Whatcom Land Trust share all rights and responsibilities of Grantees under this Easement. For purposes of administering, monitoring and enforcing the terms of the Easement, the Whatcom Land Trust is the lead Grantee, unless Grantor is notified otherwise. As the lead Grantee, the Whatcom Land Trust has authority to act alone and at its sole discretion in exercising all rights and responsibilities of Grantees under this Easement. Grantor shall treat the Whatcom Land Trust as its contact for all matters regarding this Easement. Whatcom County and the Whatcom Land Trust may jointly take enforcement action, or if the Whatcom Land Trust fails to enforce the terms of this Easement, Whatcom County may do so alone.

B. The Trust will consult the County regarding any violation of the Easement that threatens the purpose of this Easement as described in Section III. If a less serious violation is determined to have occurred, the Trust will report to the County the nature of the violation and the response to that violation by the Trust.

C. The above Section IV.A. does not pertain to monitoring and enforcement of a conservation plan, the responsibility for which rests with the Natural Resource Conservation Service and Whatcom County as described in Section VIII A below.

V. RIGHT OF ENFORCEMENT.

Under this Conservation Easement, the United States, in conjunction with Whatcom Land Trust and Whatcom County, is granted the right of enforcement in order to protect the public investment. The Secretary of the United States Department of Agriculture (the Secretary) or his or her assigns, on behalf of the United States, may exercise this right of enforcement under any authority available under State or Federal law if the Grantees fail to enforce any of the terms of this Conservation Easement, as determined in the sole discretion of the Secretary.

VI. PERMITTED USES AND ACTIVITIES.
Grantor may:

A. Engage in the production of food and fiber and other uses and activities consistent with the purpose of this Easement so long as those uses or activities are not expressly prohibited in Section VII below.

B. Continue any use or activity not permitted by this easement at the time this Easement is signed provided it is not contrary to the purposes of this Easement and provided that such use or activity is described in this section.

C. Existing agricultural structures may be removed, maintained, expanded or replaced and new agricultural structures, and improvements used primarily for agricultural enterprises may be constructed by the Grantor on the Protected Property within the “Farmstead”, as defined in Section XII of this Easement, and shown on Exhibit B, so long as expansion or new construction does not exceed the area of impervious surfaces allowed in Section VII D. Agricultural structures may include, without limitation, offices, warehouses, temporary farm worker housing, livestock housing and related structures, equipment storage and maintenance facilities, facilities related to the processing and sale of farm products predominately grown on the Protected Property, so long as the structures' primary use is to support the agricultural activities on the Protected Property or agricultural activities on other property under the control of the Grantor.

D. New agricultural buildings, structures or improvements proposed for locations outside of “Farmstead Area” may be built or placed only with the written permission of the Grantee. Permission shall be granted only if the agricultural productive capacity and open space character of the Protected Property are not significantly impaired by the construction and use of such structures, disturbance to prime, unique and important soils is minimized and all structures individually and combined are consistent with the terms of this Easement. For the purposes of this section, temporary hoop-houses and temporary greenhouses with no foundation are not considered agricultural buildings, structures or improvements that require Grantee permission.

E. On the “Homesite”, as defined in Section XII of this Easement, and shown on Exhibit B, remove, maintain, remodel, and replace a single family residence and engage in any uses or activities that do not impair the ability to farm the remainder of the Protected Property in the present or future and that are not prohibited by Section VII below.

F. Plant trees on the Agricultural Land, as defined in Section XII of this Easement only as follows:
1. Maintain a woodlot not to exceed 2 acres for the production of firewood to be used on the Protected Property;

2. Plant Christmas trees and short rotation hardwoods not subject to the excise tax imposed by RCW 84.33, provided that adequate provision is made for the removal of trees, including stumps and roots, at the termination of the Christmas tree or short rotation hardwood farming operation.

3. [May add allowance for installation/maintenance of trees on riparian portion if applicable; according to CREP lease or BMPs.]

G. Install a small-scale wind power generator for the primary purpose of generating electric power for use on the Protected Property, provided however that incidentally generated excess power may be sold through the electric grid and further provided that Grantee must approve the scale and location of any such small-scale wind power generator prior to installation.

VII. PROHIBITED USES AND ACTIVITIES.

Unless specifically permitted by Section VI above, and as may be necessary to carry out those reserved rights, Grantor shall not engage in or permit any of the following activities on the Protected Property:

A. Use or activities inconsistent with the purpose of this Easement.

B. Legal or “de facto” division, subdivision, or partitioning of the land or the separate sale of any portion of the Protected Property, even if that portion of the Protected Property constitutes a separate legal parcel. This restriction does not prohibit minor boundary line adjustments with adjoining agricultural land, provided there is no net loss in total acreage and no net loss of quantity or quality of Agricultural Land to the Protected Property, provided that no new parcel may be created by such boundary line adjustments, and provided Grantor has obtained prior approval of the Trust Grantee. Any new land gained through a boundary line adjustment is subject to the terms of this Easement Deed.

C. Place or construct any residential building, structures, or other residential improvements of any kind except those utilized to house farm workers, and except that an existing single family structure within the “Homesite” may be improved, repaired or replaced and may be expanded only to the extent that it does not exceed 3,000 square feet total dwelling space.

D. Cover more than two percent (2%) of the area (approximately ______ square feet) of the Protected Property with impervious surfaces, including, without limitation, asphalt, concrete, gravel, buildings, or ponds, except animal waste holding ponds.
E. Construct or expand non-agricultural structures or facilities beyond the boundaries of the “Homesite” as identified in the Baseline Data (Exhibit D) at the time of the signing of this Easement Deed.

F. Conduct any non-farm related commercial activity using over one percent (1%) or one acre of the Protected Property, whichever is less, unless that non-farm related commercial activity utilizes buildings existing at the time the Conservation Easement is signed and does not involve installation of facilities or expenditure of capital that would hinder the future use of buildings for agricultural purposes.

G. Conduct any use or activity that removes or degrades the soil or impairs the ability to farm the Protected Property except for conservation or best management practices as specified in the NRCS Field Office Technical Guide for Whatcom County.

H. Transfer, encumber, sell, relinquish, forfeit or otherwise separate water rights from title to the Protected Property, except that, with the consent of the County, water rights may be either leased for a period not to exceed ten years for beneficial use for agricultural activities only on land other than the Protected Property, or temporarily enrolled in the state Trust Water Right Program for a period not to exceed ten years, or conveyed to the County as provided in Section VIII below.

I. Mine or extract soil, sand, gravel, oil or other mineral, except that Grantor may extract soil, sand, and gravel solely for a permitted use on the Protected Property in a manner consistent with the conservation purposes of this easement. Such alteration shall not exceed two acres. Land subject to such alteration shall be returned to pre-activity conditions in accordance with baseline data set forth in Exhibit D.

J. Use off-road motor vehicles on the Protected Property or grant permission for such use except as necessary in the accomplishment of the agriculture, forestry, habitat management, law enforcement and public safety, or conservation uses of the Protected Property, provided that no use of motorized vehicles shall create impacts that are detrimental to the productivity of the soils on the Protected Property and the Purposes of this Easement Deed.

K. Grant easements or rights-of-way for power lines, gas lines, sewer lines, water lines, telecommunications towers, and wind farms.

L. Expand or intensify any use or activity existing at the time this Easement Deed is signed that is contrary to the purpose of this Easement or prohibited in this section.

VIII. WATER RIGHTS.

-6-
A. The Parties agree that the Water Rights must be maintained on the Protected Property to ensure the protection of the Agricultural Values.

B. Grantee Trust will include in Baseline Data a copy of the documentation and any information available from Grantor regarding the history of the claimed water rights. In its monitoring visits, Grantee Trust will inquire regarding the status and protection of water rights and will include in its Annual Monitoring Report any new information about water rights on the Protected Property and concerns, if any, about whether water rights are being protected. If at any time Grantee Trust believes that Grantor is not sufficiently informed about protecting Grantor’s water rights, Grantee Trust will refer Grantor to Whatcom County and will urge Grantor to take the Water Rights protection actions in Section VII. H.

C. Under this Easement, Grantor is obligated to take appropriate action to protect water rights on the Protected Property. Section IV. RELATIONSHIP OF PARTIES notwithstanding, Whatcom County, not the Trust, has responsibility for enforcing this Grantor obligation. If Grantor fails to take appropriate action to protect water rights on the Protected Property, Whatcom County may pursue remedies in accordance with Sections XIII and XIV of this Easement or may itself take appropriate action to protect the water rights.

D. If Grantor is unable or unwilling to take the Water Rights protection action cited in Section VII. H., and the Water Rights are under threat of abandonment, relinquishment, loss or forfeiture, Grantor shall convey ownership of said Water Rights to County for use on this property. Excess water not used on this Protected Property may be leased for agricultural activity elsewhere in Whatcom County.

IX. CONSERVATION PLAN.

A. As required by section 1238I of the Food Security Act of 1985, as amended, the Grantor, its successors, or assigns, shall conduct all agricultural operations on the Protected Property in a manner consistent with a Conservation Plan prepared in consultation with NRCS and approved by the Conservation District. This conservation plan shall be developed using standards and specifications of the NRCS Field Office Technical Guide and 7 CFR Part 12 that are in effect on the date this Easement Deed is executed. However, the Grantor may develop and implement a Conservation Plan that proposes a higher level of conservation and is consistent with NRCS Field Office Technical Guide standards and specifications. The Conservation Plan is incorporated into this Conservation Easement Deed by reference. NRCS shall have the right to enter upon the Protected Property, with advanced notice to the Grantor, in order to monitor compliance with the Conservation Plan.
In the event of noncompliance with the Conservation Plan, NRCS shall work with the Grantor to explore methods of compliance and give the Grantor a reasonable amount of time, not to exceed twelve months, to take corrective action. If the Grantor does not comply with the conservation plan, NRCS will inform the County of the Grantor’s noncompliance. The County shall take all reasonable steps (including efforts at securing voluntary compliance and, if necessary, appropriate legal action) to secure compliance with the conservation plan following written notification from NRCS that (a) there is a substantial, ongoing event or circumstance of noncompliance with the conservation plan, (b) NRCS has worked with the Grantor to correct such noncompliance, and (c) Grantor has exhausted its appeal rights under applicable NRCS regulations.

If the NRCS standards and specifications for highly erodible land are revised after the date of this Deed based on an Act of Congress, NRCS will work cooperatively with the Grantor to develop and implement a revised Conservation Plan. The provisions of this section apply to the highly erodible land conservation requirements of the Farm and Ranch Lands Protection Program and are not intended to affect other natural resources conservation requirements to which the Grantor may be or become subject.

B. For the purpose of this Conservation Easement, references and requirements relating to highly erodible lands do not apply to land over which this Conservation Easement is granted. There are no highly erodible lands on the Protected Property and none have been designated in Whatcom County.

X. RIGHTS CONVEYED TO GRANTEES.

To accomplish the purpose of this Easement, the following rights are conveyed to Grantees:

A. To accomplish the purpose of this Easement and to enforce specific rights and restrictions contained in the Easement Deed.

B. (1) To enter the land at least once a year, at a mutually agreeable time and upon notice to the Grantor, for the purpose of inspection and monitoring compliance with this Easement;

(2) To enter the land at such other times as necessary if the Trust has reason to believe that a violation of the Easement is occurring or has occurred, for the purpose of mitigating or terminating the violation and otherwise enforcing the provisions of the Easement. Such entry will be with prior notice as is reasonable under the circumstances.
C. In the event of uses or activities inconsistent with the purpose and provisions of this Easement, The Trust may obtain damages, an injunction, abatement, rescission, restoration and any other remedies available in law or equity.

D. Forbearance by The Trust to exercise any rights under this Easement in the event of a breach shall not be deemed to be a waiver of Grantees’ rights under the Easement.

XI. NO PUBLIC ACCESS.

This Easement provides no right of access to the general public.

XII. BASELINE DATA.

To establish the present condition of the Protected Property so that Grantees are able to monitor future uses and assure compliance with the terms of this Easement, Grantees will, at their expense, by the date of this Easement prepare baseline data sufficient to establish the condition of the Protected Property as of the signing of this Easement Deed. The baseline data may consist of reports, maps, photographs, and other documentation. Grantor and Grantee will execute a statement verifying that the baseline data accurately represents the condition of the Protected Property as of this time. Baseline data is contained in Exhibit D. The baseline data will delineate the Homesite, Farmstead and Agricultural Land as defined below.

The baseline data will specifically identify the extent of the Homesite, which includes that portion of the Protected Property used for residential buildings and buildings and uses accessory to residential buildings. The Homesite as delineated in the baseline data shall not exceed one acre, or the area actually used for residential purposes at the time this Easement is signed, whichever is greater.

The baseline data will specifically establish the extent of the Farmstead, which includes that portion of the Protected Property used for agricultural buildings, structures and improvements and those adjacent areas where future expansion of buildings, structures and improvements are contemplated.

The area not included in either the Homesite or Farmstead will be depicted under the category of Agricultural Land. Agricultural Land may include nonfarm areas such as critical areas and woodlands as well as cropland or grazing land.

XIII. INFORMAL DISPUTE RESOLUTION.

Grantor agrees to notify the Trust of any intended action that a reasonable person might believe would violate the terms of this Easement. Should a dispute arise concerning compliance with this Easement, Grantor and the Trust will meet within 15 days to discuss the matter in dispute. By
mutual agreement, the Grantor and the Trust may agree to refer the matter in dispute to mediation or arbitration under such rules as the parties may agree. If arbitration is pursued, the prevailing party will be entitled to such relief as may be granted, to a reasonable sum for its costs and expenses related to the arbitration, including fees and expenses of the arbitrator and attorneys. The Trust may, at its discretion, forgo these informal dispute resolution alternatives if continuation of the use or activity in dispute threatens the purpose of this Easement.

XIV. GRANTEES’ REMEDIES.

A. If Grantees determine that the Grantor is in violation of the terms of this Easement or that a violation is threatened, Grantees shall give written notice to the Grantor of such violation and request corrective action sufficient to cure the violation and to restore the Protected Property to its prior condition.

B. If Grantor does not take immediate action to cure the violation and restore the Protected Property, Grantees may institute legal proceedings for injunctive relief, abatement, restoration, or damages, including costs and attorneys’ fees reasonably incurred in prosecuting the action, and any other remedies available in law or equity.

C. In the event Grantees take legal action to enforce the terms of this Easement, the cost of restoring the Protected Property and Grantees’ reasonable enforcement expenses, including attorneys’ and consultants’ fees, shall be borne by the Grantor. In the event Grantees secure redress for an Easement violation without initiating or completing judicial proceedings, the cost of such restoration and reasonable expenses shall be borne by the Grantor. If Grantor ultimately prevails in any judicial proceedings initiated by Grantees to enforce the terms of this Easement, each party shall bear its own costs.

D. If Grantees, in their sole discretion, determine that circumstances require immediate action to prevent or mitigate significant damage in violation of this Easement, Grantees may immediately pursue their legal remedies without prior notice to Grantor as set forth in paragraph A.

E. Grantees may not recover damages or require restoration for damage to the Protected Property resulting from causes beyond Grantor’s control, such as fire, flood, storm, or earth movement that Grantor could not reasonably have anticipated or prevented.

XV. RESPONSIBILITY FOR COST AND LIABILITIES.

Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Protected Property, including maintenance
of adequate liability insurance and payment of all taxes. Grantees assume no affirmative obligations for the management, supervision or control of the Protected Property or any of the activities occurring on the Protected Property. Grantor shall indemnify Grantees and the United States, and hold Grantees and the United States harmless from all damages, costs (including, but not limited to, attorneys’ fees and other costs of defense incurred by Grantees), and other expenses of every kind arising from or incident to any claim or action for damages including but not limited to, the release, use or deposit of any hazardous material (as defined in Section XIX. L. below) on the Protected Property, injury or loss suffered or alleged to have been suffered on or with respect to the Protected Property.

XVI. EXTINGUISHMENT AND TRANSFER.

A. If circumstances arise that render the purpose of this Easement impossible to accomplish, the Easement can be extinguished only by judicial proceedings and upon approval of the United States. In the event of such an extinguishment or the taking of the Protected Property by the exercise of the power of eminent domain, Grantor shall pay to Whatcom County and the United States in proportion to their contribution to the purchase price. At the time this Deed was recorded the United States contribution was 50 percent and Whatcom County's contribution was 50 percent. The amount owed to the United States and Whatcom County shall be determined by subtracting the fair market value of the Protected Property subject to this Easement from the fair market value of the Property unrestricted by this Easement, at the time of extinguishment or condemnation.

B. Grantor agrees to:

1. Incorporate the terms of this Easement by reference in any deed, lease, executory contract or other legal instrument by which it divest itself, or intends to divest itself, of any permanent or temporary interest in the Protected Property.

2. Give written notice to the Grantees of the transfer of any interest in the Protected Property no later than 45 days prior to the date of such transfer. Such notice shall include the name, address, and telephone number of the prospective recipient. Failure to provide such notice to the Grantees shall not limit the legal obligations imposed by this Easement on any recipient of an interest in the Protected Property.

C. Whatcom Land Trust’s rights and interest in this Easement are assignable only to an agency or organization that is approved by United States and Whatcom County and authorized to hold conservation easements under RCW 64.04.130 or RCW 84.34.250, or otherwise qualified at the time of transfer under Section 170(h) of the Internal
Revenue Code of 1986, as amended. As a condition of such transfer, Grantees shall require that the transferee exercise its rights under the assignment consistent with the purpose of this Easement. Grantees shall notify Grantor in writing in advance of such an assignment. The failure of Grantees to give such notice shall not affect the validity of such assignment, nor shall it impair the validity of this Easement or limit its enforceability.

XVII. AMENDMENT.

Upon approval of the United States, Grantor and all Grantees may agree to amend this Easement provided that such an amendment does not diminish the effectiveness of this Easement in carrying out its purpose and that the result of the amendment is to strengthen the effectiveness of the Easement.

XVIII. SUBORDINATION.

Any mortgage or lien arising after the date of this conservation easement Deed shall be subordinated to the terms of this easement, substantially in the form of the instrument attached hereto as Exhibit F.

XIX. GENERAL PROVISIONS

A. Notices. Any notice under this Conservation Easement Deed must be in writing and be personally delivered, delivered by recognized overnight courier service, given by mail or via facsimile. E-mail transmission of notice shall not be effective. All notices must be addressed to the parties at the following addresses, or at such other addresses as the parties may from time to time direct in writing:

Grantor:

Grantee, Trust: Whatcom Land Trust
PO Box 6131
100 Central Ave
Bellingham, WA 98225
Grantee, County: Whatcom County  
Attn: Agricultural PDR Administrator  
5280 Northwest Drive  
Bellingham, WA 98226

USDA-NRCS: USDA-NRCS  
316 West Boone Avenue  
Spokane, WA 99201

Any notice will be deemed to have been given, when personally delivered, and if delivered by courier service, one business day after deposit with the courier service, and if mailed, two business days after deposit in the U.S. mail, and if delivered by facsimile, the same day as verified.

B. Controlling Law.  
The interpretation or performance of this Easement shall be governed by the laws of the State of Washington. Any legal proceeding regarding this Easement shall be initiated in Whatcom County Superior Court.

C. Liberal Construction.  
Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purpose of RCW 64.04.130 and Chapter 84.34 RCW and Whatcom County Ordinance 2002-054. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render that provision valid shall be favored over an interpretation that would render it invalid.

D. Severability.  
If any provision of this Easement, or its application to any person or circumstance, is found to be invalid, the remainder of the Easement, or its application of such provision to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected.

E. Entire Agreement.  
This instrument sets forth the entire agreement of the parties with respect to the Protected Property and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Property, all of which are merged into this Easement.

F. No Forfeiture.  
Nothing contained in this Easement will result in a forfeiture or revision of Grantor’s title in any respect.

G. Warranty of Good Title.
Grantor warrants that Grantor has good title to the Protected Property; that the Grantor has the right to convey this conservation easement; and that the Protected Property is free and clear of any encumbrances other than those listed below.

H. Grantor-Grantees.
The terms “Grantors” and “Grantees,” wherever used in this Easement, and any pronouns used in their place, shall be held to mean and include respectively the above named Grantor, its, successors, and assigns, and the above-named Grantees, their successors and assigns.

I. Successors and Assigns.
The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties to this Easement and their respective, successors, and assigns, and shall continue as a servitude running in perpetuity with the Protected Property.

J. Federal Enforcement.
In the event that the Grantees fail to enforce the terms of this Easement as determined in the sole discretion of the Secretary of the United States Department of Agriculture ("Secretary"), the Secretary, his or her successors and assigns shall have the right to enforce the terms of the Easement through any and all authorities available under Federal or State law. In the event that Grantees attempt to terminate, transfer or otherwise divest themselves of rights, title or interest in the Easement or extinguish the Easement without prior consent of the Secretary, all right, title, or interest in this Easement shall become vested in the United States of America.

K. General Indemnification
Grantor shall indemnify and hold harmless Grantees, their employees, agents and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorney’s fees and attorney’s fees on appeal) to which Grantees may be subject or incur relating to the Protected Property, which may arise from, but is not limited to, Grantor’s negligent acts or omissions or Grantor’s breach of any representation, warranty, covenant, agreements contained in this Conservation Easement Deed, or violations of any Federal, State, or local laws, including all Environmental Laws.

L. Environmental Warranty
Grantor warrants that it is in compliance with, and shall remain in compliance with, all applicable Environmental Laws. Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, non-compliance or alleged non-compliance with or any liability under any Environmental Law relating to the

-14-
operations or conditions of the Protected Property. Grantor further warrants that it has no actual knowledge of a release or threatened release of Hazardous Materials, as such substances and wastes are defined by applicable federal and state law.

Moreover, Grantor hereby promises to hold harmless and indemnify the Grantees against all litigation, claims, demands, penalties and damages, including reasonable attorneys’ fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath or from the Protected Property, or arising from or connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Protected Property. Grantor’s indemnification obligation shall not be affected by any authorizations provided by the Trust, the County, or the United States to Grantor with respect to the Protected Property or any restoration activities carried out by the Trust or the County at the Protected Property; provided, however, that Grantee shall be responsible for any Hazardous Materials contributed after this date to the Protected Property by Trust or the County.

“Environmental Law” or “Environmental Laws” means any and all Federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar environmental health, safety, building and land use as may now or at any time hereafter be in effect.

“Hazardous Materials” means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment.

XX. SCHEDULE OF EXHIBITS.

A. Legal Description of Property Subject to Easement
B. Site Map
C. Ordinance # 2002-054
D. Baseline Data
E. Water Rights
F. Subordination Agreement example
TO HAVE AND TO HOLD unto Grantees and the United States of American, and their successors, and assigns forever.
**WHATCOM COUNTY COUNCIL AGENDA BILL**

<table>
<thead>
<tr>
<th>CLEARANCES</th>
<th>Initial</th>
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<tr>
<td>B. Bennett</td>
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<tr>
<td>J. Louws</td>
<td></td>
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**TITLE OF DOCUMENT:**


**ATTACHMENTS:**

1. Memo

**SEPA review required?** ( ) Yes ( x ) NO

**SEPA review completed?** ( ) Yes ( x ) 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.)

Washington State Department of Ecology will present to the Council the draft plan entitled “Lake Whatcom Watershed Total Phosphorus and Bacteria Total Maximum Daily Load”.

**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.
MEMORANDUM

TO: The Honorable Jack Louws, Whatcom County Executive
    Honorable Members of the Whatcom County Council

THROUGH: Frank M. Abart, Public Works Director

FROM: Chris Brueske, P.E., Assistant Director
       Kirk N. Christensen, P.E., Stormwater Manager

RE: Request from Washington State Department of Ecology (DOE) to Include Item in
    Agenda for Natural Resources Committee and Evening Council Meetings for
    Lake Whatcom Total Maximum Daily Load (TMDL) Presentation

DATE: March 12, 2013

- Requested Action
  Washington State Department of Ecology (DOE) requests an item be placed on both the
  Whatcom County Council Natural Resources Committee meeting as well as the Whatcom
  County Council’s evening meeting on Tuesday, March 26, for their presentation on the Total
  Maximum Daily Load (TMDL) report on Lake Whatcom.

- Background and Purpose
  DOE has been working on a new water cleanup plan to update a 2008 report to include
  guidance and strategy to limit pollutants entering Lake Whatcom. Steve Hood from DOE’s
  Bellingham Field Office requested some time to present to the Council the draft plan entitled,
  “Lake Whatcom Watershed Total Phosphorus and Bacteria Total Maximum Daily Load”. This
  plan has been released for review and public comment and is tied to existing municipal
  stormwater permits currently in place for the City of Bellingham and Whatcom County. To view

  For more information regarding the TMDL, please contact Steve Hood at (360) 715-5211.
Discussion with Dave McEachran regarding HIDA grants

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.)

Discussion with Dave McEachran regarding HIDA grants

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.
**WHATCOM COUNTY COUNCIL AGENDA BILL**

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<th>Agenda Date</th>
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<td>Executive:</td>
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**TITLE OF DOCUMENT:** Mt. Baker Chamber of Commerce – Baker Birch Bay Promotion

**ATTACHMENTS:**
- Memo
- Contract
- Project White Paper

**SEPA review required?**

<table>
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<tr>
<th></th>
<th>( ) Yes</th>
<th>( ) NO</th>
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**SEPA review completed?**

<table>
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<tr>
<th></th>
<th>( ) Yes</th>
<th>( ) NO</th>
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</table>

**Should Clerk schedule a hearing?**

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<tr>
<th></th>
<th>( ) Yes</th>
<th>( ) NO</th>
</tr>
</thead>
</table>

**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.)

Request authorization for the County Executive to enter into a contract amendment between Mt. Baker Foothills Chamber of Commerce and Whatcom County to authorize funding for the Baker Birch Bay tourism promotion project, in the amount of $247,000, over the next four years for a total contract amount of $400,000, as originally recommended by the Lodging Tax Advisory Committee.

**COMMITTEE ACTION:**
1/29/2013: Held in Committee
2/12/2013: Withdrawn and rescheduled for the next meeting.
2/26/2013: Discussed. May be rescheduled on March 26, 2013 or a later date.

**COUNCIL ACTION:**
1/29/2013: Held in Committee
2/12/2013: Withdrawn and rescheduled to February 26.
2/26/2013: Withdrawn. May be rescheduled on March 26, 2013 or a later date.

**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](http://www.co.whatcom.wa.us/council).
Lodging Tax Advisory Committee Review of:
Mount Baker Foothills Chamber of Commerce
Tourism Marketing and Promotion Project

BACKGROUND:
In November, 2011 Mount Baker Foothills Chamber of Commerce submitted a funding application to the Lodging Tax Advisory Committee (LTAC) resulting from several conversations between them, LTAC members, Bellingham - Whatcom Tourism and local businesses in the Mount Baker and Birch Bay areas of Whatcom County. The application proposed a tourism promotion project that would benefit two uniquely different areas of unincorporated Whatcom County. These two areas include the Birch Bay and Mount Baker corridors. The intention was to capitalize on their opposing peak seasons by advertising each other’s assets and natural resources thereby growing tourism. The LTAC recommended approval for a 3 year promotion contract. Council later approved the three year contract which included funding for the first year upon receipt of a project business plan. Funding for years two and three were to be contingent upon review of the first year deliverables.

In November, 2012, funding for year two of the Baker - Birch Bay promotion was submitted to the LTAC. The application was submitted in advance of the final year-end report. The LTAC met November 2, 2012 to review all 2013 funding applications and recommended approval for the 2nd year funding contingent upon their review of the annual report. The LTAC recommendations were included in the 2013 Budget.

December, 2013, Mount Baker Foothills Chamber of Commerce submitted an amendment to their 2013 funding application essentially changing the scope of their promotion to include other marketing areas such as Point Roberts and Lummi Island. This amended request (no change in compensation) was distributed to the LTAC for review along with the year-end report. At the same time the contract amendment was changed to include Point Roberts and Lummi Island as additional service points.

On January 15, 2013 the contract amendment, year-end report and business plan were discussed at the council finance committee. Rebecca Boonstra, project manager presented the results of the first year Baker - Birch Bay tourism promotion. A multi-pronged promotion was funded in 2012 that included bus advertising in metropolitan areas such as Seattle and Vancouver, BC, the launch of a website http://bakerbirchbay.com/ promoting attractions in both corridors and the
development of a commercial hosted by Comcast. After a series of questions and considerations, the Council voted to hold the contract in committee until a joint presentation could be made to Council by Mount Baker Foothills Chamber of Commerce and Bellingham - Whatcom Tourism. A joint presentation is scheduled for March 26, 2013. Primary concerns from Council related to the addition of two more promotion areas. Specifically, does inclusion of Point Roberts and Lummi Island:

- Dilute the original intent of the promotion?
- Create a redundant marketing campaign due to Bellingham – Whatcom Tourism’s separate promotion?

After hearing the concerns from Council and LTAC, the Mount Baker Foothills Chamber rescinded their request to include the two additional promotion areas. Once again, the contract amendment was changed as was the funding request and updated business plan.

**On March 14, 2013** the LTAC met formally to review the Baker – Birch Bay Promotion annual report. Echoing the concerns expressed by Council they were pleased to know that Point Roberts and Lummi Island were no longer included in the 2nd year promotion. They also proposed another approach for funding the project to address the concerns regarding the cost of the deliverables.

After further review of the proposed business plan, annual report and contract amendment, the LTAC made a recommendation to reduce the funding in year two and extend the promotion beyond the 3 years allowed in the contract. Officially, the LTAC made a new revised recommendation for second year funding at $72,000. This provides continued funding for marketing. It is expected that tracking methods will be used to quantify the impact of this promotion as requested by the LTAC. It was recognized by the LTAC that, while difficult the first year of the promotion, it is critical for future funding opportunities to develop a tracking system that clearly demonstrates the impact of the promotion.

**March 14, 2013 LTAC Revises 2nd Year Funding Recommendation**

Funding is recommended as follows:

Yr. 2/2013: $72,000.
Yr. 3/2014: $58,333.
Yr. 4/2015: $58,333.
Yr. 5/2016: $58,333.

If Council concurs with the above recommendation an amended contract reflecting the adjusted amount is included in the council packet.
**WHATCOM COUNTY CONTRACT INFORMATION SHEET**

<table>
<thead>
<tr>
<th>Originating Department:</th>
<th>Executive Office</th>
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</thead>
<tbody>
<tr>
<td>Contract Administrator:</td>
<td>Tawni Helms</td>
</tr>
<tr>
<td>Contractor's / Agency Name:</td>
<td>Mount Baker Foothills Chamber of Commerce</td>
</tr>
</tbody>
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Is this a New Contract?  If not, is this an Amendment or Renewal to an Existing Contract?  
Yes ___ No __X__ Yes __X__ No ___  If yes, previous number(s): 201111054

Is this a grant agreement?  
Yes ___ No __X__  If yes, grantor agency contract number(s)

Is this contract grant funded?  
Yes ___ No __X__  If yes, associated Whatcom County grant contract number(s)

Is this contract the result of a RFP or Bid process?  
Yes ___ No __X__  If yes, RFP and Bid number(s)  cost center:14100.6610.907

Is this contract excluded from E-Verify?  No __X__ Yes ___  If no, include Attachment D Contractor Declaration Form

If yes, indicate qualified exclusion(s) below:
- Contract less than $100,000.
- Work is for less than 120 days.
- Interlocal Agreement (between Govt.)

**Contract Amount:**

<table>
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<th>Sum of orig contract amnt and any prior amendments</th>
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<td>$153,000.</td>
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<th>This Amendment Amount:</th>
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| $72,000. (2013)  
58,333. (2014)  
58,333. (2016) |

**Total Amended Amount:**  
$400,000.

<table>
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<th>Scope of Services:</th>
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<tbody>
<tr>
<td>This Amendment increases the maximum consideration by $72,000. for 2013. Subsequent years will be reimbursed up to $58,333, for a total consideration of $400,000 [$153,000 + $72,000 + $58,333(3)]. This Amendment defines the project deliverables for a five year project, and replaces the existing scope of work with the revised scope of work, attached hereto in Exhibit A.</td>
</tr>
</tbody>
</table>

**Term of Contract:** 5 years  
**Expiration Date:** December 31, 2016

**Contract Routing Steps & Signoff: [sign or initial] [indicate date transmitted] [summary via electronic; hardcopies]**

1. Prepared by: twh  
2. Attorney reviewed:  
3. AS Finance reviewed:  
4. IT reviewed if IT related  
5. Corrections made:  
6. Attorney signoff:  
7. Contractor signed:  
8. Submitted to Exec Office  
9. Council approved (if necessary)  
10. Executive signed:  
11. Contractor Original Returned to dept:  
12. County Original to Council  

Date 2/26/13 [electronic]  
Date 3/20/13 [electronic]  
Date 3/19/13 [electronic]  
Date [electronic] hard copy printed  
Date  
Date  
Date [summary via electronic; hardcopies]  
Date  
Date this form may need to expand to more than one page
Amendment No. 2
Whatcom County Contract No. 201111054
CONTRACT BETWEEN WHATCOM COUNTY AND
Mount Baker Foothills Chamber of Commerce

THIS AMENDMENT is to the Contract between Whatcom County and Mount Baker Foothills Chamber, dated December 13, 2011, and designated "Whatcom County Contract No. 201111054. In consideration of the mutual benefits to be derived, the parties agree to the following:

This Amendment extends the term of this Agreement through December 31, 2016 and increases the maximum consideration by $247,000. to a total consideration of $400,000.

This Amendment defines the second year deliverables for a five year project, and replaces the existing scope of work with the revised scope of work, attached hereto in Exhibit A. This Amendment also defines the budget and replaces the existing compensation with the revised compensation, attached hereto in Exhibit B.

Unless specifically amended by this agreement, all other terms and conditions of the original contract shall remain in full force and effect.

This Amendment takes effect: April 1, 2013, regardless of the date of signature.

IN WITNESS WHEREOF, Whatcom County and Mount Baker Foothills Chamber have executed this Amendment on the date and year below written.

DATED this __________ day of ________________, 2013.

CONTRACTOR:

Mount Baker Foothills Chamber of Commerce

__________________________
Bret VanLant, President

STATE OF WASHINGTON )
) ss.
COUNTY OF WHATCOM )

On this __ day of __________, 20___, before me personally appeared Bret VanLant to me known to be the President of the Mount Baker Foothills Chamber of Commerce and who executed 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 ___________.

Mount Baker Foothills Chamber of Commerce – Promotion (Baker – Birch Bay)
WHATCOM COUNTY:

Approved as to form:

__________________________________________
Prosecuting Attorney Date

Approved:
Accepted for Whatcom County:

By: ____________________________
    Jack Louws, Whatcom County Executive

STATE OF WASHINGTON
    )
COUNTY OF WHATCOM ) ss

On this _____ day of _________________, 20___, before me personally appeared Jack Louws, to me known to be the Executive of Whatcom County, who executed 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 ___________________.

CONTRACTOR INFORMATION:

Mount Baker Foothills Chamber of Commerce

Bret VanLant, President

ADDRESS
P.O. Box 866
Maple Falls, WA 98266

Contact Name: Rebecca Boonstra
Contact Phone: 360-599-1518
Contact Email: info@mbakerchamber.org
EXHIBIT "A"
(SCOPE OF WORK)

Mount Baker Chamber provides tourism promotion and visitor information to thousands of clients each year. In 2012, a promotional team comprised of members representing diverse sections of Unincorporated Whatcom County was formed to develop a marketing and business plan. A marketing plan was implemented to highlight the Mt. Baker Corridor and Birch Bay areas of the County. 2013 is the second year of the promotional campaign and will focus on expanding marketing and promotion efforts throughout areas of unincorporated Whatcom County through on air advertisement, website and print media. The marketing and promotional strategies are designed to increase tourism in unincorporated Whatcom County during the off season as well as throughout the year. Results in increased tourism are measured through narrative and data driven reporting produced by the Contractor and associated businesses. This report is provided to the Executive and County Council on an annual basis.

2013 Marketing strategies will include:

Host a central website to market tourism activities, services and businesses in Unincorporated Whatcom County. Areas of focus include the Mt. Baker corridor and Birch Bay areas.

On-Air Advertisements

Print Media

Consultant Services

Funding for subsequent years 2014, 2015, and 2016 will be contingent upon authorization by the LTAC and County Council after receipt and review of the Baker Birch Bay annual report, business plan, and budget for each preceding year. The Chamber will submit these documents by November 15 of each year.

Pursuant to RCW 67.28.210, all funding will be used for costs associated with the administration of the Baker Birch Bay Tourism Promotion for the promotion of tourism in Whatcom County.

As a recipient of the Lodging Tax Fund and pursuant to RCW 67.28.1816, Mt. Baker Foothills Chamber of Commerce will provide the following information:

The estimated number of tourists, persons traveling over fifty miles to the destination, persons remaining at the destination overnight, and lodging stays generated per festival, special event or tourism-related facility owned or sponsored by a nonprofit organization or local jurisdiction.

In addition the following shall be submitted to Whatcom County:

1. A monthly report specifically detailing the numbers and types of businesses participating in the promotion plan.
2. A report describing the services and programs provided.
3. Periodic email updates.
4. An annual report consistent with the Lodging Tax Advisory Committee (LTAC) specifications.
5. Project representatives will be available to present progress reports in person the County staff, LTAC and council.
EXHIBIT "B"
(COMPENSATION)

The Contract Number, set forth above, shall be included on all billings.

Whatcom County will provide support to Mt. Baker Foothills Chamber of Commerce for expenses incurred for the Baker Birch Bay marketing promotion efforts. Invoices shall be sent to the Whatcom County Executive's Office. The Mt. Baker Foothills Chamber will provide Whatcom County with an invoice detailing expenses as allowed in Exhibit A (including receipts). Payment will be made as reimbursement only. Mileage will be reimbursed using current federal guidelines.

Allowable expenses for 2013 include:

- Personnel and Salaried Benefits: $10,000.
- Travel: $500.
- Office Supplies: $500.
- Marketing/Promotions: $50,000.
- Professional Services: $11,000.
- Total: $72,000.

Subsequent funding years will be authorized upon receipt and review of the Baker Birch Bay annual report, business plan and proposed budget by the LTAC and County Council, as also described in Exhibit A, above. Preliminary budget for years 2014 through 2016 is $58,333.00 per year.

Subsequent funding years will be authorized upon receipt and review of the Baker Birch Bay annual report, business plan and proposed budget by the LTAC and County Council. Preliminary budget for years 2014 through 2016 is $58,333. per year.

Maximum consideration for this five year contract shall be $400,000.
<table>
<thead>
<tr>
<th>CLEARANCES</th>
<th>Initial</th>
<th>Date</th>
<th>Date Received in Council Office</th>
<th>Agenda Date</th>
<th>Assigned to:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Originator:</td>
<td>WC</td>
<td>2/26/13</td>
<td>3/12/13</td>
<td>3/26/13</td>
<td>Intro</td>
</tr>
<tr>
<td>Division Head:</td>
<td></td>
<td></td>
<td></td>
<td>Finance</td>
<td>Committee; Council</td>
</tr>
<tr>
<td>Dept. Head:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prosecutor:</td>
<td>MC</td>
<td>2/27/13</td>
<td></td>
<td>3/6/13</td>
<td></td>
</tr>
<tr>
<td>Purchasing/Budget:</td>
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<td>2/26/13</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Executive:</td>
<td></td>
<td>3/5/13</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**TITLE OF DOCUMENT:** 2013 Supplemental Budget Request #4

**ATTACHMENTS:** Ordinance, Memoranda & Budget Modification Requests

<table>
<thead>
<tr>
<th>SEPA review required?</th>
<th></th>
<th>Yes</th>
<th>( X ) NO</th>
<th>Should Clerk schedule a hearing?</th>
<th>( ) Yes</th>
<th>( X ) NO</th>
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</thead>
<tbody>
<tr>
<td>SEPA review completed?</td>
<td></td>
<td>Yes</td>
<td>( X ) NO</td>
<td>Requested Date:</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**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.)

**Supplemental #4 requests funding from the General Fund:**

1. To appropriate $4,392 in the Sheriff’s Office to fund traffic safety equipment from grant proceeds.
2. To appropriate $5,000 in the Sheriff’s Office to fund vehicle tow charges from reimbursements.
3. To appropriate $14,940 in Non Departmental to fund additional transfer to Emergency Management fund. **Real Estate Excise Tax II**
4. To re-appropriate $27,078 in Parks to fund Samish Docks replacement.

---

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

3/12/2013: Introduced

Related County Contract #: Related File Numbers: Ordinance or Resolution Number:
AMENDMENT NO. 4 OF THE 2013 BUDGET

WHEREAS, the 2013-2014 budget was adopted November 20, 2012; and,
WHEREAS, changing circumstances require modifications to the approved 2013-2014 budget; and,
WHEREAS, the modifications to the budget have been assembled here for deliberation by the Whatcom County Council.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that the 2013-2014 Whatcom County Budget Ordinance #2012-048 is hereby amended by adding the following additional amounts to the 2013 budget included therein:

<table>
<thead>
<tr>
<th></th>
<th>Expenditures</th>
<th>Revenues</th>
<th>Net Effect</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Fund</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sheriff</td>
<td>9,392</td>
<td>(9,392)</td>
<td>-</td>
</tr>
<tr>
<td>Non Departmental</td>
<td>14,940</td>
<td>-</td>
<td>14,940</td>
</tr>
<tr>
<td>Total General Fund</td>
<td>24,332</td>
<td>(9,392)</td>
<td>14,940</td>
</tr>
<tr>
<td>Real Estate Excise Tax II</td>
<td>27,078</td>
<td>-</td>
<td>27,078</td>
</tr>
<tr>
<td>Total Supplemental</td>
<td>51,410</td>
<td>(9,392)</td>
<td>42,018</td>
</tr>
</tbody>
</table>

ADOPTED this ___ day of ________________, 2013.

ATTEST:

Dana Brown-Davis, Council Clerk

Kathy Kershner, Chair of the Council

APPROVED AS TO FORM:

Jack Louws, County Executive

Date: ______________________

I:\BUDGET\SUPPLS\2013_Suppl\Supplemental #4-2013.doc
## WHATCOM COUNTY
### Summary of the 2013 Supplemental Budget Ordinance No. 4

<table>
<thead>
<tr>
<th>Department/Fund</th>
<th>Description</th>
<th>Increased Expenditure (Decrease)</th>
<th>(Increased) Revenue</th>
<th>Net Effect to Fund Balance (Increase) Decrease</th>
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</thead>
<tbody>
<tr>
<td>Sheriff</td>
<td>To fund traffic safety equipment from grant proceeds</td>
<td>4,392</td>
<td>(4,392)</td>
<td>-</td>
</tr>
<tr>
<td>Sheriff</td>
<td>To fund vehicle tow charges from reimbursements</td>
<td>5,000</td>
<td>(5,000)</td>
<td>-</td>
</tr>
<tr>
<td>Non Departmental</td>
<td>To fund additional transfer to Emergency Management fund</td>
<td>14,940</td>
<td>-</td>
<td>14,940</td>
</tr>
<tr>
<td>Total General Fund</td>
<td></td>
<td>24,332</td>
<td>(9,392)</td>
<td>14,940</td>
</tr>
<tr>
<td>Real Estate Excise Tax II</td>
<td>To re-appropriate funding for Samish Docks replacement</td>
<td>27,078</td>
<td>-</td>
<td>27,078</td>
</tr>
<tr>
<td>Total Supplemental</td>
<td></td>
<td>51,410</td>
<td>(9,392)</td>
<td>42,018</td>
</tr>
</tbody>
</table>
Memorandum

TO: Jack Louws, County Executive
FROM: Sheriff Bill Elfo
DATE: February 25, 2013
SUBJECT: Supplemental Budget ID# 1479
WASPC Traffic Safety Equipment Grant - 2013

The attached Supplemental Budget requests budget authority to purchase 3 Radars and 3 FST Intoximeters (portable breath test units) with Washington Association of Sheriffs & Police Chiefs Traffic Safety Equipment Grant funds.

Background and Purpose
The Washington Association of Sheriffs & Police Chiefs (WASPC) approved a Traffic Safety Equipment Grant of $4,392.45 to purchase traffic safety equipment: $3,000.00 for 3 Radars and $1,392.45 for 3 FST Intoximeters.

Equipment purchased will be used to support statewide traffic safety initiatives and will allow patrol units to increase their ability to enforce traffic violations.

Funding Amount and Source
Federal Funds of $4,392.45 will be provided by WASPC Traffic Safety Equipment Grant CFDA# 20,600

Please contact Undersheriff Jeff Parks at extension 50418 if you have any questions.
Thank you.
Supplemental Budget Request

Sheriff Administration

<table>
<thead>
<tr>
<th>Supp't ID #</th>
<th>Fund 1</th>
<th>Cost Center 1003512001</th>
<th>Originator: Dawn Pierce</th>
</tr>
</thead>
</table>

Expenditure Type: One-Time Year 1 2013 Add'l FTE Add'l Space Priority 1

Name of Request: WASPC Equipment Grant 2013

Department Head Signature (Required on Hard Copy Submission)

Date

2/25/13

Costs:

<table>
<thead>
<tr>
<th>Object</th>
<th>Object Description</th>
<th>Amount Requested</th>
</tr>
</thead>
<tbody>
<tr>
<td>4333.2062</td>
<td>Traffic Safety</td>
<td>($4,392)</td>
</tr>
<tr>
<td>6510</td>
<td>Tools &amp; Equip</td>
<td>$4,392</td>
</tr>
<tr>
<td>Request Total</td>
<td></td>
<td>$0</td>
</tr>
</tbody>
</table>

1a. Description of request:
The Washington Association of Sheriffs & Police Chiefs (WASPC) approved a Traffic Safety Equipment Grant of $4,392.45 to purchase traffic safety equipment: $3,000.00 for 3 Radars and $1,392.45 for 3 FST Intoximeters (portable breath test units).

1b. Primary customers:
The Sheriff's Office and citizens of Whatcom County

2. Problem to be solved:
Budget authority is needed to purchase traffic safety equipment authorized by WASPC and funded by a Traffic Safety Equipment Grant.

3a. Options / Advantages:
Grant funds were awarded to purchase radars and FST Intoximeters, equipment that would otherwise have to be purchased with local monies.

3b. Cost savings:
Cost savings of $4,392.45.

4a. Outcomes:
Equipment received as a result of this grant will be used as part of the traffic safety program and will be distributed as part of the agency's commitment to traffic safety and active traffic enforcement. Purchase of this equipment will allow patrol units to increase their ability to enforce traffic violations.

4b. Measures:
Reports describing the use of the equipment and related enforcement activities will be submitted to WASPC by October 15, 2013.

5a. Other Departments/Agencies:
n/a

5b. Name the person in charge of implementation and what they are responsible for:
n/a

6. Funding Source:
Federal funds of $4,392.45 will be provided by Washington Association of Sheriffs & Police Chiefs Traffic Safety Equipment Grant, CFDA# 20.600.
Memorandum

TO: Jack Louws, County Executive
FROM: Sheriff Bill Elfo
DATE: February 25, 2013
SUBJECT: Supplemental Budget ID# 1481
Vehicle Tow Charges and Registered Owner (RO) Reimbursements

The attached Supplemental Budget requests increases in revenue and expenditure line items to provide budget authority for an accounting change required by Administrative Services Finance.

**Background and Purpose**
The Sheriff’s Office routinely impounds vehicles for evidence and various enforcement actions. The Sheriff’s Office pays the tow companies for the tow charges and often requires reimbursement from the vehicle’s registered owner before releasing the vehicle.

Past practice has been to deposit the reimbursements from vehicle owners as refunds of expenditure, thereby reducing the same expenditure account used to pay the tow bill. These reimbursements no longer qualify as refunds of expenditure, and effective 01/01/2013, the reimbursements must be reported as revenue. An increase in both revenue and expenditure line items is needed to provide adequate budget authority for the required change.

The increase in expenditures will be directly off-set by an increase in revenue.

**Funding Amount and Source**
Approximately $5,000.00 is paid annually by the Sheriff’s Office for tow bills with corresponding reimbursements from vehicle owners.

Please contact Undersheriff Jeff Parks at extension 50418 if you have any questions.

Thank you.
Supplemental Budget Request

Sheriff

Status: Pending

Administration

Supp# 1481 Fund 1 Cost Center 2920 Originator: Dawn Pierce

Expenditure Type: Ongoing Year 1 2013 Add'l FTE □ Add'l Space □ Priority 1

Name of Request: Vehicle Tow Charges and Reimbursements

Department Head Signature (Required on Hard Copy Submission) Date 2/25/13

Costs:

<table>
<thead>
<tr>
<th>Object</th>
<th>Object Description</th>
<th>Amount Requested</th>
</tr>
</thead>
<tbody>
<tr>
<td>4369.9001</td>
<td>Miscellaneous Revenues</td>
<td>($5,000)</td>
</tr>
<tr>
<td>7060</td>
<td>Repairs &amp; Maintenance</td>
<td>$5,000</td>
</tr>
<tr>
<td>Request Total</td>
<td></td>
<td>$0</td>
</tr>
</tbody>
</table>

1a. Description of request:
An increase in revenue and expenditures is needed to provide budget authority for an accounting change required by Administrative Services Finance.

1b. Primary customers:

2. Problem to be solved:
The Sheriff's Office routinely impounds vehicles for evidence and various enforcement actions. The Sheriff's Office pays the tow companies for the tow charges and often requires reimbursement from the vehicle's registered owner before releasing the vehicle.

Past practice has been to deposit the reimbursements from vehicle owners as refunds of expenditures, thereby reducing the same expenditure account used to pay the tow bills. These reimbursements no longer qualify as refunds of expenditure, and effective 01/01/2013, the reimbursements must be reported as revenue. An increase in both revenue and expenditure line items is needed to provide adequate budget authority for the required change.

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:
Reimbursements from vehicle owners for tow charges will be reported as revenue beginning 01/01/2013.

4b. Measures:

5a. Other Departments/Agencies:
n/a

5b. Name the person in charge of implementation and what they are responsible for:
n/a

6. Funding Source:
Approximately $5,000.00 is received annually by the Sheriff's Office from vehicle owners for tow bill reimbursements.

Monday, February 25, 2013

Rpt: Rpt Suppl Regular
Supplemental Budget Request

Non-Departmental

<table>
<thead>
<tr>
<th>Supp ID #</th>
<th>Fund</th>
<th>Cost Center</th>
<th>Originator</th>
</tr>
</thead>
<tbody>
<tr>
<td>1477</td>
<td>1</td>
<td>4530</td>
<td>Marianne Caldwell</td>
</tr>
</tbody>
</table>

Expenditure Type: One-Time  Year 1  2013  Add'l FTE  Add'l Space  Priority 1

Name of Request: Additional transfer to Emergency Management Fund

X

Department Head Signature (Required on Hard Copy Submission)  3/26/13

Costs:

<table>
<thead>
<tr>
<th>Object</th>
<th>Object Description</th>
<th>Amount Requested</th>
</tr>
</thead>
<tbody>
<tr>
<td>2910.1000</td>
<td>Fund Balance</td>
<td>($14,940)</td>
</tr>
<tr>
<td>8351.16700</td>
<td>Operating Transfer Out</td>
<td>$14,940</td>
</tr>
</tbody>
</table>

Request Total  $0

1a. Description of request:
Transfer an additional $14,940 from the General Fund to the Emergency Management Fund in support of operations.

1b. Primary customers:
Beneficiaries of Emergency Management operations

2. Problem to be solved:
Interfund service amounts changed several times during the 2013-2014 biennial budget process as amounts for the Admin Service, Tort, Building Maintenance, Space Rental and ER&R allocation amounts changed. The amount of General Fund operating transfer needed to support these services did not keep up with all the changes and the transfer from the General Fund is now $14,940 under what is needed to balance the 2013 budget. The 2012 General Fund transfer was $223,833. This budget adjustment will bring the 2013 amount to a total of $202,229, which is $21,604 less than the prior year amount. Please note: There will be a similar request made during the mid-biennium review to balance the 2014 budget also.

3a. Options / Advantages:
DEM revenues must equal operating expenses, there are no other sources of income.

3b. Cost savings:
Total amount of General Fund transfer will be $14,940 more than current budget but $21,604 less than 2012 amount.

4a. Outcomes:
DEM budget will be fully funded.

4b. Measures:
Additional $14,940 transfer will be made.

5a. Other Departments/Agencies:
Emergency Management Division of the Sheriff's Office.

5b. Name the person in charge of implementation and what they are responsible for:
DEM staff will complete interfund transfer form to request the additional funding.

6. Funding Source:
General Fund fund balance

Monday, February 11, 2013
<table>
<thead>
<tr>
<th>Description</th>
<th>EMC Approved &amp; Submitted</th>
<th>per JD Edwards</th>
<th>Discrepancy</th>
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</tr>
<tr>
<td>6210 Retirement</td>
<td>11,232</td>
<td>11,232</td>
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</tr>
<tr>
<td>6230 Social Security</td>
<td>9,442</td>
<td>9,442</td>
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<td>6245 Medical</td>
<td>24,948</td>
<td>24,948</td>
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<tr>
<td>6255 Dental/Vision/Life/EAP</td>
<td>3,408</td>
<td>3,408</td>
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<tr>
<td>6259 Worker's Comp</td>
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<td>1,456</td>
<td>0</td>
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<tr>
<td>6269 Unemployment</td>
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<td>0</td>
</tr>
<tr>
<td><strong>Salaries &amp; Benefits Subtotal</strong></td>
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<td><strong>173,910</strong></td>
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<td>6320 Office Supplies</td>
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<td>0</td>
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<tr>
<td>6429 Fuel-Interfund</td>
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<td>3,600</td>
<td>3,600</td>
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<tr>
<td>6510 Small Tools &amp; Equipment</td>
<td>1,000</td>
<td>1,000</td>
<td>0</td>
</tr>
<tr>
<td>6520 Software</td>
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<td>200</td>
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<tr>
<td>6610 Contractual Services</td>
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<tr>
<td>6630 Professional Services</td>
<td>5,085</td>
<td>5,085</td>
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<td>6659 Building Maintenance</td>
<td>2,700</td>
<td>6,197</td>
<td>3,497</td>
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<td>6719 Postage Interfund</td>
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<td>6720 Telephone</td>
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<td>6780 Travel-Educ/Training</td>
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<tr>
<td>6790 Travel-Other</td>
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<tr>
<td>6800 Advertising</td>
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<tr>
<td>6860 Equipment Rental</td>
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<tr>
<td>6869.501 ER&amp;E</td>
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<td>(12,360)</td>
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<td>6870 Space Rental</td>
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<td>6879 Space Rental - Interfund</td>
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<td>6949 Insurance</td>
<td>6,814</td>
<td>4,154</td>
<td>(2,660)</td>
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<td>7060 Repairs &amp; Maintenance</td>
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<td>500</td>
<td>0</td>
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<tr>
<td>7110 Registration/Tuition</td>
<td>450</td>
<td>450</td>
<td>0</td>
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<tr>
<td>7115 Membership &amp; Assoc Dues</td>
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<td>445</td>
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<tr>
<td>7140 Meeting Refreshments</td>
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<td>100</td>
<td>0</td>
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<tr>
<td>7159.001 Admin Cost Allocation</td>
<td>8,611</td>
<td>3,709</td>
<td>(4,902)</td>
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<tr>
<td>7159.507 Admin Cost Allocation</td>
<td>60,183</td>
<td>44,914</td>
<td>(15,269)</td>
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<tr>
<td>7190 Other Miscellaneous</td>
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<tr>
<td>7410 Equipment-capital outlays</td>
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<td>7420 Computer Equipment</td>
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<td><strong>Sub-Total</strong></td>
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<td><strong>118,656</strong></td>
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<tr>
<td><strong>Total Expenditures</strong></td>
<td><strong>314,583</strong></td>
<td><strong>292,566</strong></td>
<td><strong>(22,017)</strong></td>
</tr>
</tbody>
</table>

**Revenue**

4338.2500 Emergency Services Support 81,362 81,362 0
Blaine $9,647
Everson $5,110
Ferndale $23,509
Lynden $24,613
Nooksack $2,756
Sumas $2,692
Port of Bellingham $13,035
4362.5010 DEM Lease (Bellingham) 8,975 8,975 0
8301.453 Op Transfer In 224,246 187,289 (36,957)
**Total Revenue** 314,583 277,626 (36,957)

**Budget Shortfall** - (14,940)
MEMORANDUM

TO: Jack Louws, Executive
FROM: Michael McFarlane, Director
DATE: February 21st, 2013
RE: Attached Supplemental Budget Request

Attached is a supplemental budget request in the amount of $27,078 to be taken from the REET II fund. This request is a reappropriation of the funding for the Samish Park Docks project which was approved in the 2011/12 budget cycle.

The delay in completing this project is due to permitting and bidding delays and the need to adhere to the watershed work window. If approved this project will be completed this summer.

Additional information is included in the supplemental budget request.
Supplemental Budget Request

Parks & Recreation

Supp'l ID # 1478  Fund 324  Cost Center 32434  Originator: Rod Lamb

Expenditure Type: One-Time  Year: 2013  Add'l FTE □  Add'l Space □  Priority 1

Name of Request: Samish Docks Replacement

Department Head Signature (Required on Hard Copy Submission)  Date  2-21-13

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1a. Description of request:

The boat dock and fishing platform at Samish Dock are scheduled to be replaced in the summer of 2013. We currently have a contract with HDB Marine to manufacture the new dock structures. These new structures require upland improvements in order to connect the new dock structures to the shore. Parks crew will construct the required improvements. The required improvements include reinforced concrete abutments, cable stabilizer ties, and concrete walkway repair.

This request is a reappropriation of funding that was requested in the 2011/2012 budget cycle. Parks completed permitting, and awarded a contract to HDB Marine for the manufacture of the new dock structures. Due to delays in permitting and bidding the project could not be completed in 2012 inside of the Samish watershed work window. This supplemental request will allow Parks to complete the necessary upland improvements to complete the project in the summer of 2013.

1b. Primary customers:

Boaters, fishers and others who use and enjoy the docks at Samish Park.

2. Problem to be solved:

The boat docks are badly deteriorated. If they are not replaced they will have to be closed to the public due to safety concerns. Fishing and boating are very popular activities at the park and this area of Lake Samish provides prime fishing and boating opportunities.

3a. Options / Advantages:

We could close off the docks, but this would be a great loss to the visiting public. In addition, Parks would lose boat rental revenue during the summer. We could also remove the docks, but that would be very short-sighted given the effort that was expended obtaining the necessary regulatory permits.

3b. Cost savings:

REET 2 funds are being requested.

4a. Outcomes:

New docks will be installed in the summer of 2013. The new docks will provide a safer boating and fishing opportunity for the visiting public. Additionally, the new boat dock will provide ADA access. Currently the existing boat dock is not wheelchair accessible due to the steep grade of the sidewalk near the existing gangways. The new gangways and sidewalk repair will correct this condition.

4b. Measures:

When the docks are completed and installed. Success will be measured by how well the docks meet the needs of the visiting public. Boat rental numbers and park attendance will provide a specific measure of project success.

Thursday, February 21, 2013
Supplemental Budget Request

Parks & Recreation

Supp1 ID # 1478  Fund 324  Cost Center 32434  Originator: Rod Lamb

5a. Other Departments/Agencies:

County Planning and Development Services and Washington Dept. of Fish & Wildlife have issued permit approvals required for the project. Both agencies may provide field inspection of the completed project.

5b. Name the person in charge of implementation and what they are responsible for:

Not aware of specific personnel at this time.

6. Funding Source:

REET 2
**CLEARANCES**

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**TITLE OF DOCUMENT:**

Ordinance establishing a Forestry Advisory Committee

**ATTACHMENTS:**

**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.)

Ordinance establishing a Forestry Advisory Committee for Whatcom County

**COMMITTEE ACTION:**

2/26/2013: Substitute amended and forwarded to Council for approval.

**COUNCIL ACTION:**

3/12/2013: Introduced

**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,
WHEREAS, the Whatcom County Council recognizes forestry as an important contributor to the local economy and quality of life for Whatcom County citizens; and

WHEREAS, the Whatcom County Comprehensive Plan, adopted on May 20, 1997, contains goals and policies that direct the county to maintain and enhance Whatcom County’s forest land base, maintain and enhance the forest products industry, reduce land use conflicts between forest and non-forest landowners, and ensure that forest practices avoid adverse impacts to the habitat of threatened and endangered fish and wildlife species; and

WHEREAS, designation and conservation of forest resource lands is required under the Growth Management Act; and

WHEREAS, the Whatcom County Council recognizes the importance of conserving productive forest lands and associated public resources through a balanced combination of regulatory protection as mandated by the Growth Management Act and the provision of incentives for maintaining lands in long-term land use predictability, for both productive forest lands and adjacent non-forest lands; and

WHEREAS, many decisions made by the County Council can have an affect on forestry production and viability; and

WHEREAS, the County Council desires the input of forestry landowners and others associated with forestry practices prior to making decisions on major land use proposals, land use policies, economic strategies, and other county, regional, state and/or federal programs that directly or indirectly affect forestry in Whatcom County; and

WHEREAS, the Council believes the most efficient way to get input from forestry landowners and others associated with forestry practices is to form an advisory committee comprised of forest land owners and other industry representatives.

WHEREAS, Whatcom County Code 2.03.020(D) requires that term lengths for those members first appointed to newly created boards, committees and commissions shall be staggered so that the terms of future members do not expire on the same date.
NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that Whatcom County Code Chapter 2.123, Forestry Advisory Committee, is hereby established as outlined in Exhibit A to this ordinance.

NOW, FINALLY, BE IT ORDAINED that the terms of the members first appointed will be staggered so that five members (one from each category with two appointees) shall be appointed until January 31, 2016, and the remaining five members shall be appointed until January 31, 2017.

ADOPTED this _____ day of __________, 2013.

ATTEST: WHATCOM COUNTY COUNCIL

WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Clerk of the Council

Kathy Kershner, Council Chair

APPROVED AS TO FORM: WHATCOM COUNTY EXECUTIVE

WHATCOM COUNTY, WASHINGTON

Jack Louws, County Executive

( ) Approved  ( ) Denied

Date Signed: ____________________
EXHIBIT A

Chapter 2.123 - FORESTRY ADVISORY COMMITTEE

Sections:
2.123.010 Established
2.123.020 Purpose
2.123.030 Function
2.123.040 Membership – Term of Office
2.123.050 Organization – Meetings
2.123.060 Committee Staffing

2.123.010 Established.

There is hereby established the Whatcom County Forestry Advisory Committee.

2.123.020 Purpose.

The Forestry Advisory Committee provides review and recommendations to the Whatcom County Council on issues that affect the forestry industry. The Forestry Advisory Committee also provides a forum for all sectors of the forestry community to contribute to discussions on the future of forestry in Whatcom County.

2.123.030 Function.

The Forestry Advisory Committee reports directly to the County Council or other appropriate advisory boards, commissions, and committees as necessary to carry out the following functions:

1. Review and provide recommendations on zoning issues, comprehensive plans, subarea plans, regulation and annexation issues, and other proposals which directly affect lands or forestry activities in or adjacent to forest land.

2. Establish, promote, and implement a comprehensive forestry protection and preservation program.

3. Analyze and develop recommendations that will assist the County in addressing issues which affect forestry at the county, regional, state, and federal levels.

4. Assist, upon request of the Director of Planning and Development Services, that department by providing review and comment on comprehensive planning and zoning related issues in or adjacent to forest land.

2.123.040 Membership – Term of Office

The committee shall consist of eleven voting members as follows: Two small forest landowners, two commercial forest landowners, two harvesters, two private citizens with forestry expertise, two forest product manufacturers, and one representative designated by the Department of Natural Resources.

Committee members shall be appointed by the county council. Member terms will be four years.
2.123.050 Organization – Meetings

Meetings of the committee shall be open and accessible to the public and shall be subject to the Open Public Meetings Act. The committee shall determine its own meeting schedule, but shall meet at least twice per year. At every meeting, the committee will schedule an open session to take public comment on forestry issues. Written records of meetings, resolutions, findings, and recommendations shall be kept and such records shall be public. The committee shall adopt its own rules and procedures for the conduct of business. The committee shall elect a chairperson from among its members who shall preside at its meetings. The committee shall comply with Whatcom County Charter section 4.20 – Qualifications and with Whatcom County Code 2.03 – Boards and Commissions.

2.123.060 Committee Staffing

Whatcom County Planning and Development Services Department shall provide staffing for the committee. The committee is authorized to request information from administrative departments through the County Executive’s Office.
### WHATCOM COUNTY COUNCIL AGENDA BILL

**NO. AB2013-116**

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**TITLE OF DOCUMENT:**

International Organization of Masters, Mates and Pilots (MMP) and Inlandboatmen's Union of the Pacific (IBU) Collective Bargaining Agreement and Memorandum of Understanding and Settlement

**ATTACHMENTS:**

Date of Adoption – December 31, 2013 MMP/IBU Collective Bargaining Agreement and Memorandum of Understanding and Settlement

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

Request approval of Date of Adoption – December 31, 2013 International Organization of Masters, Mates and Pilots (MMP) and Inlandboatmen's Union of the Pacific (IBU) Collective Bargaining Agreement and Memorandum of Understanding and Settlement.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

**Related County Contract #:** 200701035

**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.
**WHATCOM COUNTY CONTRACT INFORMATION SHEET**

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<tr>
<td>Contract Administrator:</td>
<td>Wendy Wefer-Clinton</td>
</tr>
<tr>
<td>Contractor's / Agency Name:</td>
<td>International Organization of Masters, Mates and Pilots (MMP) And Inlandboatmen's Union of the Pacific (IBU)</td>
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- **Is this a New Contract?** Yes [X] No [ ] Yes [ ] No [ ] If yes, previous number(s): __________________________
- **Is this a grant agreement?** Yes [ ] No [X] If yes, grantor agency contract number(s) ________________ CFDA # __________________
- **Is this contract grant funded?** Yes [ ] No [X] If yes, associated Whatcom County grant contract number(s) __________________________
- **Is this contract the result of a RFP or Bid process?** Yes [ ] No [X] If yes, RFP and Bid number(s) ________________ Cost Center: ________________
- **Is this contract excluded from E-Verify?** No [ ] Yes [X] If no, include Attachment D Contractor Declaration Form

If yes, indicate qualified exclusion(s) below:
- [ ] Contract less than $100,000.
- [ ] Professional services agreement for certified/licensed professional
- [X] Work is for less than 120 days
- [ ] Interlocal Agreement (between Govt.)
- [ ] Public Works Dept. - Local Agency/Federally Funded FHWA

**Contract Amount:** (sum of orig contract amt and any prior amendments)

$ ________________

**This Amendment Amount:** $ ________________

**Total Amended Amount:** $ ________________

- If a Professional Services Agreement is more than $15,000 or a Bid is more than $35,000, please submit an Agenda Bill for Council approval and a supporting memo. Any amendment that provides either a 10% increase in amount or more than $10,000, whichever is greater, must also go to Council and will need an agenda bill and supporting memo. If less than these thresholds, just submit to Executive with supporting memo for approval.

**Scope of Services:** [Insert language from contract (Exhibit A) or summarize; expand space as necessary]

Collective Bargaining Agreement

**Term of Contract:** 3/26/13 – 12/31/13

**Expiration Date:** December 31, 2013

---

**Contract Routing Steps & Signoff:** [sign or initial] [indicate date transmitted]

1. Prepared by Wendy Wefer-Clinton Date 3/4/13 [electronic]
2. Attorney reviewed Daniel L. Gibson Date 3/14/13 [electronic]
3. AS Finance reviewed [ ] Date [ ] [electronic]
4. IT reviewed if IT related [ ] Date [ ] [electronic]
5. Corrections made [ ] Date 3/14/13 [electronic] hard copy printed
6. Attorney signoff Daniel L. Gibson Date 3/14/13
7. Contractor signed [ ] Date [ ]
8. Submitted to Exec Office [ ] Date 3/4/13 [summary via electronic; hardcopies]
9. Council approved (if necessary) [ ] Date [ ]
10. Executive signed [ ] Date [ ]
11. Contractor Original Returned to dept. [ ] Date [ ]
12. County Original to Council [ ] Date [ ]

Last Revised 1/19/12
COLLECTIVE BARGAINING AGREEMENT

By and Between

WHATCOM COUNTY

AND

INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS
Pacific Maritime Region

AND

INLANDBOATMEN'S UNION OF THE PACIFIC

Date of Adoption – December 31, 2013
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Rule</th>
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</tr>
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</tr>
<tr>
<td>2.02</td>
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<td>6</td>
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<tr>
<td>3.02</td>
<td>Application of Seniority</td>
<td>6</td>
</tr>
<tr>
<td>3.03</td>
<td>Promotions</td>
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<td>Union Membership</td>
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<td>9</td>
</tr>
<tr>
<td>8.02</td>
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</tr>
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<td>8.03</td>
<td>Out-of-Classification Work</td>
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<td>9</td>
</tr>
<tr>
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<td>14.03</td>
<td>Normal Work Schedule</td>
</tr>
<tr>
<td></td>
<td>14.04</td>
<td>Call In Prior to Shift</td>
</tr>
<tr>
<td></td>
<td>14.05</td>
<td>Call Back After Shift</td>
</tr>
<tr>
<td></td>
<td>14.06</td>
<td>Mileage Reimbursement</td>
</tr>
<tr>
<td></td>
<td>14.07</td>
<td>Call Back on Days Off</td>
</tr>
<tr>
<td></td>
<td>14.08</td>
<td>Split Shifts</td>
</tr>
<tr>
<td></td>
<td>14.09</td>
<td>Operation Changes</td>
</tr>
<tr>
<td></td>
<td>14.10</td>
<td>Shift Trades</td>
</tr>
<tr>
<td>Rule</td>
<td>Page</td>
<td></td>
</tr>
<tr>
<td>------</td>
<td>------</td>
<td></td>
</tr>
<tr>
<td>15</td>
<td>VACATIONS</td>
<td></td>
</tr>
<tr>
<td></td>
<td>15.01 Accrual ................................................................. 14</td>
<td></td>
</tr>
<tr>
<td></td>
<td>15.02 Accrual Dates ........................................................... 14</td>
<td></td>
</tr>
<tr>
<td></td>
<td>15.03 Loss of Vacation ....................................................... 14</td>
<td></td>
</tr>
<tr>
<td></td>
<td>15.04 Termination Cashout .................................................... 14</td>
<td></td>
</tr>
<tr>
<td></td>
<td>15.05 Scheduling .................................................................. 14</td>
<td></td>
</tr>
<tr>
<td></td>
<td>15.06 Holidays During Vacation .............................................. 14</td>
<td></td>
</tr>
<tr>
<td></td>
<td>15.07 Maximum Accrual ........................................................... 14</td>
<td></td>
</tr>
<tr>
<td></td>
<td>15.07(a) Maximum If On Payroll on 8/17/97 ............................... 15</td>
<td></td>
</tr>
<tr>
<td></td>
<td>15.08 Computation .................................................................. 15</td>
<td></td>
</tr>
<tr>
<td>16</td>
<td>HEALTH AND WELFARE</td>
<td></td>
</tr>
<tr>
<td></td>
<td>16.01 Eligibility .................................................................. 15</td>
<td></td>
</tr>
<tr>
<td></td>
<td>16.02 IBU Health &amp; Welfare .................................................... 15</td>
<td></td>
</tr>
<tr>
<td></td>
<td>16.03 Life and Accidental Death and Dismemberment ..................... 15</td>
<td></td>
</tr>
<tr>
<td></td>
<td>16.04 Premium Payments ......................................................... 15</td>
<td></td>
</tr>
<tr>
<td></td>
<td>16.04(a) Medical ................................................................... 15</td>
<td></td>
</tr>
<tr>
<td></td>
<td>16.04(b) Dental, Vision and Life Insurance ............................... 15</td>
<td></td>
</tr>
<tr>
<td></td>
<td>16.05 Medical Schedule of Benefits .......................................... 15</td>
<td></td>
</tr>
<tr>
<td></td>
<td>16.06 MMP Health and Welfare ................................................ 16</td>
<td></td>
</tr>
<tr>
<td></td>
<td>16.06(a) MMP Plan Premiums .................................................... 16</td>
<td></td>
</tr>
<tr>
<td></td>
<td>16.06(b) MMP Liable For Plan .................................................. 16</td>
<td></td>
</tr>
<tr>
<td></td>
<td>16.06(c) COBRA .................................................................... 16</td>
<td></td>
</tr>
<tr>
<td></td>
<td>16.06(d) Return to EMPLOYER Health &amp; Welfare Plans .................. 16</td>
<td></td>
</tr>
<tr>
<td></td>
<td>16.07 Flex 125 Plan ................................................................ 16</td>
<td></td>
</tr>
<tr>
<td></td>
<td>16.08 Medical Coverage Disputes .............................................. 16</td>
<td></td>
</tr>
<tr>
<td></td>
<td>16.09 Medical Advisory Committee .......................................... 16</td>
<td></td>
</tr>
<tr>
<td>17</td>
<td>SICK LEAVE</td>
<td></td>
</tr>
<tr>
<td></td>
<td>17.01 Eligibility Criteria &amp; Accrual Rate .................................. 17</td>
<td></td>
</tr>
<tr>
<td></td>
<td>17.02 Proof of Illness ............................................................. 17</td>
<td></td>
</tr>
<tr>
<td></td>
<td>17.03 Accrual During Leave or Layoff ........................................ 17</td>
<td></td>
</tr>
<tr>
<td></td>
<td>17.04 Cashout ....................................................................... 17</td>
<td></td>
</tr>
<tr>
<td>18</td>
<td>BEREAVEMENT LEAVE</td>
<td></td>
</tr>
<tr>
<td></td>
<td>18.01 Bereavement Leave ......................................................... 17</td>
<td></td>
</tr>
<tr>
<td>19</td>
<td>HOLIDAYS</td>
<td></td>
</tr>
<tr>
<td></td>
<td>19.01 Holiday Schedule .......................................................... 17</td>
<td></td>
</tr>
<tr>
<td></td>
<td>19.02 Personal Holiday ........................................................... 18</td>
<td></td>
</tr>
<tr>
<td></td>
<td>19.03 Holiday Pay .................................................................. 18</td>
<td></td>
</tr>
<tr>
<td></td>
<td>19.03(a) Work on Holidays ...................................................... 18</td>
<td></td>
</tr>
<tr>
<td></td>
<td>19.03(b) Work Beyond Nine Hours on Holidays ............................. 18</td>
<td></td>
</tr>
<tr>
<td></td>
<td>19.03(c) Not Working on Holiday .............................................. 18</td>
<td></td>
</tr>
<tr>
<td></td>
<td>19.03(d) Regular Relief ............................................................ 18</td>
<td></td>
</tr>
<tr>
<td>20</td>
<td>MAINTENANCE AND CURE</td>
<td></td>
</tr>
<tr>
<td></td>
<td>20.01 Maintenance Rate ........................................................... 18</td>
<td></td>
</tr>
<tr>
<td></td>
<td>20.02 No Pay Withheld ............................................................. 18</td>
<td></td>
</tr>
<tr>
<td></td>
<td>20.03 Reimbursement for Lost Personal Items .............................. 18</td>
<td></td>
</tr>
<tr>
<td>Rule</td>
<td>Description</td>
<td>Page</td>
</tr>
<tr>
<td>------</td>
<td>--------------------------------------------</td>
<td>------</td>
</tr>
<tr>
<td>21</td>
<td>STANDARD DRESS</td>
<td></td>
</tr>
<tr>
<td></td>
<td>21.01 Ferry Dress Code</td>
<td>18</td>
</tr>
<tr>
<td>22</td>
<td>EXPENSE ALLOWANCE</td>
<td></td>
</tr>
<tr>
<td></td>
<td>22.01 Actual Expenses</td>
<td>19</td>
</tr>
<tr>
<td>23</td>
<td>FERRY PASSAGE</td>
<td></td>
</tr>
<tr>
<td></td>
<td>23.01 Employee Passage</td>
<td>19</td>
</tr>
<tr>
<td></td>
<td>23.02 Retiree Passage</td>
<td>19</td>
</tr>
<tr>
<td>24</td>
<td>JURY DUTY LEAVE</td>
<td></td>
</tr>
<tr>
<td></td>
<td>24.01 Jury Duty Leave</td>
<td>19</td>
</tr>
<tr>
<td>25</td>
<td>BENEFIT ELIGIBILITY</td>
<td></td>
</tr>
<tr>
<td></td>
<td>25.01 Paid Leave Eligibility</td>
<td>19</td>
</tr>
<tr>
<td>26</td>
<td>TERM OF AGREEMENT</td>
<td></td>
</tr>
<tr>
<td></td>
<td>26.01 Duration</td>
<td>20</td>
</tr>
<tr>
<td></td>
<td>26.02 Notice of Continuation &amp; Intent to Bargain</td>
<td>20</td>
</tr>
<tr>
<td></td>
<td>26.03 Effective Date for Revisions</td>
<td>20</td>
</tr>
<tr>
<td>27</td>
<td>SEPARABILITY AND SAVINGS</td>
<td></td>
</tr>
<tr>
<td></td>
<td>27.01 Separability &amp; Savings</td>
<td>20</td>
</tr>
<tr>
<td>28</td>
<td>MANAGEMENT RIGHTS</td>
<td></td>
</tr>
<tr>
<td></td>
<td>28.01 Management Rights</td>
<td>20</td>
</tr>
<tr>
<td></td>
<td>28.02 Change in Ferry Dock</td>
<td>20</td>
</tr>
<tr>
<td></td>
<td>LETTER OF UNDERSTANDING #1</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>22</td>
</tr>
</tbody>
</table>
AGREEMENT
BY AND BETWEEN
WHATCOM COUNTY
AND
INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS
Pacific Maritime Region
AND
INLANDBOATMEN'S UNION OF THE PACIFIC

The rules contained herein constitute an Agreement BETWEEN WHATCOM COUNTY, hereinafter referred to as the EMPLOYER, and the INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, Pacific Maritime Region, and the INLANDBOATMEN'S UNION OF THE PACIFIC, Puget Sound Region, hereinafter referred to as the UNIONS, governing wages, hours and other conditions of employment for employees as classified.

RULE 1 - RECOGNITION:

1.01 Recognition. The EMPLOYER recognizes the UNIONS as the representatives of all employees as classified herein and the sole collective bargaining agency for the purpose of acting for the employees in negotiating and interpreting agreements and adjusting disputes.

RULE 2 - PREFERENTIAL HIRING:

2.01 Industry Experience Preferred. In hiring employees for work in classifications covered by this Agreement, the EMPLOYER shall prefer applicants who have been previously employed in the industry; provided any such applicant is continuously available for employment.

2.02 Applicant Selection. In the filling of vacancies in entry level positions with applicants who are not then employees of the system, the EMPLOYER may reject any applicant who is deemed unsatisfactory. Employees hired into one of the nine (9) full-time positions shall be subject to a six (6) month probation period. Probationary periods can be extended for up to six (6) months with mutual agreement by the UNION and the EMPLOYER.

2.03 Notice of New Employees. The EMPLOYER agrees to furnish the UNIONS, in writing, the names, addresses, and telephone numbers of all new employees within twenty-one (21) days of commencement of work by such employees, exclusive of weekends and holidays.

RULE 3 - SENIORITY:

3.01 Establishing Seniority. Any employee who has completed six (6) consecutive months with 120 hours or more in a calendar month of employment shall have established seniority, and the EMPLOYER agrees to maintain and provide the UNIONS at their request with updated seniority rosters showing all employees, their classifications, and their seniority dates.

3.02 Application of Seniority. Except as hereinafter limited, seniority shall be strictly and absolutely applied in the filling of vacancies, lay-offs and rehiring, promotions and demotions, and mutually agreed leaves of absence.
3.03 Promotions. In all cases of promotions, except as provided in Rule 3.03a, whenever any vacancies exist, the EMPLOYER shall offer the available position to its most senior employee; provided that such employee possesses the appropriate coast guard certification for the position and meets or exceeds the qualifications and special requirements as outlined in the appropriate job description. In the event the senior employee declines the appointment, said position shall be offered to the next most senior employee who possesses the appropriate coast guard certification and meets or exceeds the qualifications and special requirements as outlined in the appropriate job description, and so on, until the position has been accepted by one (1) or rejected by all employees as outlined above. If no crew member possesses the required certificate and qualifications outlined herein or if all qualified members have rejected the position, the position may be open to the general public.

3.03(a) Senior Master Vacancy. When a vacancy occurs in the position of Senior Master, the EMPLOYER will first consider filling the position from within the bargaining unit, provided that such employee possesses the appropriate Coast Guard certification for the position and meets or exceeds the qualifications and special requirements as outlined in the appropriate job description. The EMPLOYER will fill the position with an outside candidate only after considering the qualifications of all interested persons from within the bargaining unit. However, the EMPLOYER retains discretion to determine an applicant’s qualification because of the unique nature of the position. If the position is not filled from within the bargaining unit, the EMPLOYER shall meet at the request of an affected employee to discuss the hiring decision.

3.03(b) Promotional Probation Period. The first six (6) calendar months that a newly promoted employee serves in a position to which he has been promoted shall constitute a probation period. At any time during such a probation period, the EMPLOYER shall have the right to rescind the promotion and return the newly promoted employee to the position that he held prior to the promotion. Probationary periods can be extended for up to six (6) months with mutual agreement by the UNION and the EMPLOYER.

3.03(c) Rescinded Promotion. In the event that the EMPLOYER rescinds a promotion, the position in question shall immediately be offered to the next most senior qualified employee in the employ of the EMPLOYER, who shall serve a similar six-month probationary period.

RULE 4 - MANNING:

4.01 Manning. In filling vacancies, the EMPLOYER may reject any employee who is unsatisfactory. If the UNIONS feel that any rejection has been unjust and has worked a hardship on the employee involved, the dispute shall be referred to and adjudicated under the provisions of RULE 11, of this Agreement.

RULE 5 - UNION SECURITY:

5.01 Union Membership. The employees covered by this Agreement shall be or become within thirty-one (31) days after the execution of this Agreement, members of the UNION and shall thereafter as a condition of employment, tender dues and initiation fees uniformly required as a condition of membership.
5.02 Conditions of Employment. It shall be a condition of employment that all employees of EMPLOYER covered by this Agreement who are members of the UNIONS in good standing on the effective date of this Agreement shall remain members in good standing in the UNIONS. It shall also be a condition of employment that all employees covered by this Agreement hired on or after its effective date shall on the thirty-first (31) day following the beginning of such employment become and remain members in good standing in the UNION, provided that if a public employee is a member of a church or religious body whose bona fide religious tenets or teaching forbid said employee to become a member of a labor union such public employee shall pay an amount of money equivalent to the regular union dues and initiation fee of the UNIONS to a non-religious charity or to another charitable organization mutually agreed upon by the employee and the UNIONS. The employee shall furnish written proof to the UNIONS that such payment has been made. If the employee and the UNIONS do not reach an agreement on the non-religious charity to whom the Union dues and initiation fee are to be paid, the Washington State Department of Labor and Industries shall designate the charitable organization.

5.03 Payroll Deductions. For individuals who certify in writing that they authorize such deductions, Union initiation fees and monthly dues shall be deducted from the employee's payroll and remitted to the UNIONS. Accompanying said monies shall be a list of employees and amounts to be credited to their account.

5.04 Union Dues. The UNIONS and each employee authorizing the assignment of wages for payment of union dues hereby agrees that the EMPLOYER shall not be a party in any dispute BETWEEN the UNIONS and an employee arising out of the EMPLOYER'S deduction of monies for union dues; provided that the EMPLOYER has forwarded said monies to the respective union. The UNIONS and the employees involved in any such dispute agree to indemnify and hold the EMPLOYER harmless from all claims, demands, suits, or other forms of liability that may arise against the EMPLOYER as a result of the EMPLOYER deducting and forwarding to the UNIONS the sums authorized to be deducted.

RULE 6 - DISCRIMINATION:

6.01 Non-Discrimination. No employee shall be discharged, suspended or discriminated against for upholding UNION principles and any employee working under instruction of the UNION or who serves on a committee may do so without losing their position for such activity. There shall be no discrimination against any individual employee of the EMPLOYER or member of the labor organization with whom the EMPLOYER has a bona fide collective bargaining agreement with respect to the hire, tenure, compensation or other terms and conditions of employment because of union membership or as required by state or federal law or regulations, except where such constitute a bona fide occupational qualification.

6.02 Gender Reference. Where the masculine or feminine gender has been used in any job classification or in any provision in this agreement, it is used solely for the purpose of illustration and shall not in any way be used to designate the sex of the employee, and all references herein to the male gender will also include the female gender.
RULE 7 - SCOPE:

7.01 Scope of Agreement. This Agreement shall apply to all vessels of the EMPLOYER engaged in the transportation of passengers and vehicles (including incidental freight) on Puget Sound and adjacent inland waters. This Agreement shall apply to the employees in the deck, engine room and stewards department on such vessels. In the event other Whatcom County employees not otherwise represented are required to sell or take fare tickets at the ferry docks, the parties hereto shall enter into negotiations for hours, wages and benefits for those employees.

7.02 Regular Employees. For purposes of this Agreement, a regular employee is defined as one (1) of nine (9) full-time employees presently employed on the Lummi Island ferry run. Regular relief employees over and above the nine (9) regular employee complement are considered part-time but are subject to all contract provisions with the exception of Rules 13.04 and 14.03. On-call employees are not covered by the provisions of this agreement with the exception of Rules 8.03, 13.01, 13.03, 13.06, 19.03a, 19.03b, 20, and 22.01.

RULE 8 - CREW REQUIREMENTS:

8.01 Staffing Requirements. Each and every vessel shall be manned according to the inspection certificate under which the vessel is licensed.

8.02 Adding or Changing Vessels. In the event vessels owned or chartered by the EMPLOYER are added to the existing fleet, or if the present vessel is re-engined, the EMPLOYER and the UNIONS shall immediately meet to negotiate minimum wages, a manning scale and working schedule for each such vessel.

8.03 Out-of-Classification Work. Any employee assigned to work out of classification for the standard work day shall be paid at the rate of the assigned position for all hours worked in that shift.

8.04 License Fees. The EMPLOYER shall reimburse employees for the cost of Coast Guard and Federal Communications Commission license fees required in the performance of their duties.

RULE 9 - VISITATION:

9.01 Union Visits. Authorized representatives of the UNIONS shall be allowed to go on the EMPLOYER’S property and on board vessels covered by this Agreement at reasonable times while at the dock or enroute. The UNIONS agree that the EMPLOYER is absolved from all claims resulting from any accident involving such representative while on the property or on board vessels of the EMPLOYER. UNION representatives are obligated to comply with Coast Guard safety rules.

RULE 10 - DISCHARGE OR SUSPENSION:

10.01 Discharge and Suspension. No regular employee will be discharged or suspended except for just cause, and prior to any action taken against such employee, except in emergency situations (such as drunkenness on the job, assault of another person while on the job and dishonesty or other gross misconduct), the EMPLOYER will first notify the UNIONS in writing, affording them an opportunity to resolve the issue. Notification of all discharge and/or suspensions shall be in writing with a copy sent to the UNION.
10.02 Disputes Over Discharge or Suspension. Any dispute arising out of a discharge or suspension case may be referred by either party to the arbitrator under the provisions of RULE 11.01.

RULE 11 - DISPUTES:

11.01 Grievances. Grievance as used herein shall mean any dispute or controversy which might arise as to the interpretation of application of this Agreement.

11.01 (a) Initial Filing. Employees must file a grievance as herein defined with the Public Works Director or designee within thirty (30) calendar days of knowledge of its occurrence or it shall be deemed null and void. Every effort shall be made to settle the complaint at this level. If it is not resolved within seven (7) working days after its submission, the matter may proceed to step b. If the UNION Representative or EMPLOYER wishes to file a grievance, either may do so at step b below.

11.01 (b) Grievance Written Down. Within the employee's next five (5) working days after the written responses from the EMPLOYER in step “a”, the employee shall reduce the grievance to writing and present it personally or through his or her UNION representative to the Human Resources Manager or designee. If not resolved at this level within the next ten (10) working days the matter may proceed to step c.

11.01 (c) Arbitration. Any grievance submitted and processed in accordance with the grievance procedure provided above may be taken to arbitration by the EMPLOYER or the UNIONS as herein provided. However, prior to arbitration, the County Executive shall be advised of the dispute.

Any party may, within seven (7) working days after failure to adjust the grievance in subsection “b”, serve upon the other party written demand for arbitration. The parties shall select an impartial arbitrator within ten (10) working days after service of demand for arbitration. If the parties fail to agree within this period upon an arbitrator who is able and willing to serve, either party may, within seven (7) working days thereafter, request the Federal Mediation and Conciliation Service to submit a list of eleven (11) disinterested persons living in the Northwest who are qualified and willing to act as an impartial arbitrator. From this list the EMPLOYER will strike two names, then the UNIONS two names until the single name remaining is appointed as the arbitrator.

11.01 (d) Hearing Commencement. The arbitrator shall commence the hearing within a reasonable time period after his selection and shall render his award in writing thirty (30) calendar days after the close of the arbitration hearing.

The award of the arbitrator shall be rendered in writing together with his findings and conclusions and shall be final and binding upon the parties to this Agreement and upon the complaining employee and employees, if any.

11.01 (e) Arbitrator's Fees. The arbitrator's fees and expenses, the cost of any hearing room and the cost of the shorthand reporter and of the original transcript, if requested by the arbitrator, shall be borne equally by the EMPLOYER and the UNIONS. All other expenses and costs shall be borne by the parties incurring them.

11.01 (f) Time Limitations. The EMPLOYER and the UNIONS agree to comply with the time limitations set forth above and either party shall have the right to insist
that the time limitations be complied with; provided, however, said time limitations may be
waived by mutual agreement but in no event shall failure to comply with the time limitation
set forth above deprive the arbitrator of authority to decide the grievance.

11.01 (g) No Work Stoppage, Slowdown, Boycott, or Lockout. All
grievances as herein defined shall be settled in accordance with the procedures outlined
above. There shall be no work stoppage, slow down, boycott, or lockout for any reason
regardless of whether the action of either party may be reasonably concluded as violation
of this Agreement or any state or federal law during the life of this Agreement.

11.01 (h) Arbitration Venue. Venue for all grievance arbitrations shall be
Whatcom County unless otherwise mutually agreed.

11.02 Union Stewards. The UNIONS may elect or designate Union Stewards,
who shall be recognized by the EMPLOYER. The Union Steward is recognized as an
authorized representative of the Union for settling grievances and disputes. Representatives of management with authority to settle such matters will meet the Union
Steward and work for the resolution of such matters. A Union Steward who has participated
in step “a” of this procedure will be allowed to attend grievance meetings, without loss of
wages and benefits, scheduled by the EMPLOYER.

11.03 Grievance Investigation. Union Stewards will be allowed to investigate
grievances during their normal working day provided no necessary and required work is
interrupted by the Steward’s absence and the Steward’s supervisor has given him prior
approval to engage in such activity.

RULE 12 - EMERGENCY SERVICE:
12.01 Emergency Service. Emergency service, including collision, breakdown,
stranding, rendering aid to another vessel, person or persons in distress, life saving and
delay due to terminal damage shall not be considered overtime. The additional hours shall
be paid for only at the straight time rate of pay. This provision shall relate only to the crew
on watch at the time of the emergency.

RULE 13 - WAGE AND OVERTIME RATES:
13.01 Wage Rates. The following rates shall apply for all employees on the payroll
at the time of ratification or upon hire:

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<td>Senior Master (MMP)</td>
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<td>Deckhand (IBU)</td>
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<td>Regular Relief Employee (IBU)</td>
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<td>First six months</td>
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<td>Second six months</td>
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<td>Thereafter</td>
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<td>On Call Employee (IBU)</td>
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13.01(a) Clothing Allowance. The above rates include clothing allowances for clothing required in Rule 21.

13.01(b) Purser Discontinuation. Effective upon the discontinuance of Purser duties, the Deckhand and Regular Relief Thereafter classifications shall be increased by 97¢ per hour.

13.02 Regular Relief Employees.
13.02(a) Applicable Terms. Regular relief employees as defined in RULE 7.02 are covered by the terms of this contract, with the exception of the rule(s) mentioned in that paragraph, provided that schedules for part-time workers must be reasonable.

13.02(b) Hourly Rate. On-call employees who are selected to fill a Regular Relief position shall be allowed credit for all hours worked under the collective bargaining agreement as an on-call employee in establishing their beginning Regular Relief Employee hourly rate, but not higher than the second six month rate.

13.03 Overtime Rate. The overtime rate shall be computed by multiplying the hourly rate by 1.5. Overtime must be approved in advance by the Master.

13.04 Longevity Pay. Beginning with the employee's seventh (7th) year of employment, the employee shall receive in addition to the regular rate of pay the sum of thirty-five dollars ($35.00) per month. Thereafter, on January 1st of each year, the employee shall receive five dollars ($5.00) per month for each year of service to a maximum of twenty-five (25) years or one hundred and twenty-five dollars ($125.00) per month. Only regular employees shall receive longevity pay.

13.05 Compensatory Time Maximum. By mutual agreement, employees may accumulate up to a maximum of one hundred twenty-six (126) hours of compensatory time in lieu of paid overtime. If it is mutually agreed that compensatory time is to be accrued in lieu of paid overtime, it is the employee's responsibility to indicate when submitting overtime claims that the time is to be accrued as compensatory time rather than to be paid at the overtime rate. An employee desiring to use accumulated compensatory time off must submit a written request to the EMPLOYER in advance indicating the number of compensatory days off requested. Requests for time off will be granted subject to approval by the Senior Master.

13.06 Stand-by for Emergency Call Out. The wage rates in Rule 13.01 include pay to compensate employees' stand-by for emergency call-out and pager pay.

13.07 Senior Master Pay. The Senior Master pay includes compensation for performing duties required over and above operating the vessel.

13.08 Fare-related Supplies and Ticket Books. The EMPLOYER will make a good faith effort to deliver ticket books, receipt books and other supplies to the work site of bargaining unit employees. However, employees who are authorized in advance to pick up ticket books at the Courthouse shall be compensated at the overtime rate of pay for the actual time spent in this activity.
13.09 **Electronic Funds Transfer.** All regular employees shall authorize paycheck deposit by electronic funds transfer (EFT) within thirty (30) days of employment. Institution changes require four (4) weeks notice. Employees providing documentation of their inability to open a checking and/or savings account may have this requirement waived. Employees may stop EFT in emergency situations with at least seven (7) days notice before a scheduled payday. Employees must restart the EFT within three (3) months.

**RULE 14 - HOURS OF WORK:**

14.01 **Month’s Work.** One hundred eighty (180) hours shall constitute a month’s work for full-time employees.

14.02 **Day’s Work.** All work performed in excess of ten (10) hours in any twenty-four (24) hour period shall be paid for at the overtime rate with a minimum of one half (1/2) hour and in periods of one half (1/2) hour thereafter.

14.02(a) **Hours Beyond Eight Comp Time Election.** Employees may elect to take the ninth and tenth hour of the shift as compensatory time per department policy. Employees working out-of-class electing compensatory time per this rule, shall receive eight hours of regular pay, two hours added to compensatory time bank and ten hours of out-of-class pay differential.

14.02(b) **Lunch.** The employee shall be entitled to a one-half (1/2) hour lunch period during the daily work schedule, to be taken on the boat or on the dock.

14.03 **Normal Work Schedule.** All employees shall have a minimum of three (3) consecutive days off per month. The normal work schedule for Masters shall be seven (7) day shifts, seven (7) night shifts, followed by seven (7) days off. The normal work schedule for Purser/Deckhands or designated Deckhands shall be six (6) day shifts, six (6) night shifts, followed by six (6) days off. The normal work schedule for Deckhands shall be five (5) day shifts, five (5) night shifts, followed by five (5) days off. Deckhand preference for a six (6) day rotation shall, when all else is equal, be by seniority for available billets. The EMPLOYER will notify the UNIONS and upon request will meet and discuss any revisions to these work schedules before such changes are implemented.

14.04 **Call In Prior to Shift.** Employees may be called up to two (2) hours prior to commencing their regular shift with a minimum of two (2) hours overtime. (The equivalent of three (3) hours straight time pay rate.)

14.05 **Call Back After Shift.** Employees called back after completing a regular shift shall receive three (3) hours overtime (the equivalent of 4.5 hours at straight time rate) and in periods of one (1) hour thereafter.

14.06 **Mileage Reimbursement.** Employees using their private cars in performance of required duties shall be paid mileage in accordance with EMPLOYER regulations.

14.07 **Call Back on Days Off.** Employees called back to work on their regular assigned days off shall receive a minimum of four (4) hours overtime (the equivalent of six (6) hours at straight time rate) and in periods of one (1) hour thereafter.

14.08 **Split Shifts.** There shall be no split shifts.
14.09 **Operation Changes.** In the event of an economic problem or fuel shortage which affects operations of the ferry, the parties agree to meet and consider alternatives to reduce costs to the EMPLOYER or schedule changes which could include reduced hours of operations, split shifts, or other measures necessary to insure continued operation commensurate with the existing conditions.

14.10 **Shift Trades.** Members of the UNIONS may arrange to trade shifts with other members, provided that the substitute member is qualified to perform the same duties required of the requesting member, under the following conditions: a shift trade does not occur on a regular basis; the Senior Master be notified at least one week in advance; such trading is in no way intended to compromise management’s right to set schedules as provided for in the agreement; the person who will be off work be responsible to insure that the shift is covered; and the shift change does not result in additional overtime or other such costs to the County.

**RULE 15 - VACATIONS:**

15.01 **Accrual.** Employees shall receive vacation leave on the following basis:

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<thead>
<tr>
<th>Months of Service</th>
<th>Monthly Accrual</th>
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<tbody>
<tr>
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<td>169+</td>
<td>18.75 hours</td>
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</table>

15.02 **Accrual Dates.** Each employee’s anniversary date shall be twelve (12) months after entering the service of the EMPLOYER. The regular relief employees shall receive vacation credits on a pro rata basis, based upon total hours worked monthly.

15.03 **Loss of Vacation.** No employee shall lose any vacation benefits by reason of illness or mutually agreed leave of absence, and if any of these occur, he shall be paid for his accumulated vacation benefits on a pro rata basis.

15.04 **Termination Cashout.** Each employee who has completed a minimum of twelve (12) months of service and who is discharged for cause, or who terminates his employment, shall receive his accumulated vacation benefits.

15.05 **Scheduling.** Each employee entitled to vacation leave shall take his vacation at a time mutually agreed to BETWEEN the EMPLOYER and employee unless he is discharged for cause, or terminates his employment, in which event he shall receive the cash equivalent of his accumulated vacation benefits.

15.06 **Holidays During Vacation.** One (1) additional day’s straight time shall be paid for each instance where a holiday falls during an employee’s vacation.

15.07 **Maximum Accrual.** The maximum vacation time an employee may carry forward is thirty (30) days (270 hours).
15.07(a) Maximum If On Payroll on 6/17/97. The new vacation accrual limit of 30 days (270 hours) is not applicable to current employees on the payroll on June 17, 1997 who remain subject to a maximum accrual of 40-days vacation (360 hours).

15.08 Computation. Vacation pay shall be computed on the basis of the straight time rate in effect at the time the vacation is taken.

RULE 16 - HEALTH AND WELFARE:

16.01 Eligibility. The EMPLOYER agrees to contribute to the cost of the Plans listed below which are offered to any employee who has completed one (1) month of employment and is compensated one hundred and twenty (120) hours or more in a calendar month, the purpose of which is to provide hospital, medical, dental, vision care, and life insurance benefits for employees of the EMPLOYER, and their dependents and beneficiaries. Employees must receive compensation for work performed, vacation, holiday, and/or paid leave, which must equal or exceed payment for one hundred and twenty (120) hours in a calendar month.

16.02 IBU Health & Welfare. The EMPLOYER agrees to make monthly contributions for employees, their spouses and dependents towards the following plans:
   a) Medical – Whatcom County Self-Insured Cap Plan or any successor plan.
   b) Dental – Washington Dental Service – Option 3, Plan D or any successor plan.
   c) Vision – VSP Standard Vision Plan or any successor plan.

16.03 Life and Accidental Death and Dismemberment. The EMPLOYER agrees to pay the entire premium for group life and accidental death and dismemberment insurance in an amount equivalent to one-year’s base salary to a maximum of $50,000 for eligible employees, through a carrier selected by the EMPLOYER.

16.04 Premium Payments.
   16.04(a) Medical. The EMPLOYER agrees to pay the appropriate monthly family premium amounts necessary to provide the medical benefits listed in Rule 16.02 up to $1,039.50 in 2012 and an amount equivalent to “Cap plan contribution” for any employee group participating in the Cap Plan other than Binding Interest Arbitration eligible groups in 2013. A successor Cap plan may be required to have benefit modifications in order that coverage can be provided within the EMPLOYER’S contribution.

   16.04(b) Dental, Vision and Life Insurance. The EMPLOYER agrees to pay the appropriate monthly premium amounts and such increases as required to maintain the dental, vision and life benefits listed above.

16.05 Medical Schedule of Benefits. The parties agree that the schedule of benefits for the Cap Plan may require modification in order that the Cap Plan for the succeeding Plan Year, can be provided to employees and their families within the EMPLOYER’S contribution Cap amount established in rule 16.04(a). The parties agree that at any time the EMPLOYER may revise benefits to meet rule 16.04(a) limitations by following rule 16.09; may update the summary plan description and schedule of benefits in order to be legally compliant with applicable law, to avoid unintended benefit reductions or enhancements consistent with industry standards (for example, limits on experimental
procedures); administrator limitation, and may make changes in plan administrator or administration. The parties agree the EMPLOYER, may, but shall not be required to, enhance the Cap Plan. Should the EMPLOYER make any of the listed changes the Unions may request impact bargaining regarding the change.

16.06 MMP Health and Welfare.

16.06(a) MMP Plan Premiums. The EMPLOYER will pay to MMP a premium for each eligible employee subject to the MMP Plan in the amount it pays for medical, dental, and vision benefits for employees represented by the IBU. If the premium or cost of providing benefits under the MMP plan exceeds the cost of medical, dental, and vision benefits for employees represented by the IBU, each affected employee will pay directly to MMP the remainder of any premium or charges due. The EMPLOYER will have no obligations to collect or pay any premiums in excess of the premium it will contribute to MMP for benefits.

16.06(b) MMP Liable For Plan. The EMPLOYER’S responsibility is limited to the payment to MMP of the premium described in Rule16.06(a) to enable MMP to purchase medical, dental, vision, and death benefits for its bargaining unit members covered under the collective bargaining agreement. The EMPLOYER has no liability for the failure or refusal of the MMP plan to honor an employee’s claim or to pay benefits, and no such refusal or action on the part of the MMP plan shall be attributed to the EMPLOYER or constitute a breach of the collective bargaining agreement. Under no circumstances shall the EMPLOYER be responsible for paying any medical, dental, vision, or death benefit costs incurred by an employee in the MMP bargaining unit on or after the effective date of the MMP plan.

16.06(c) COBRA. The EMPLOYER shall have no obligation to administer in any way, shape, or manner the MMP plan or to provide COBRA notice or benefits to MMP members.

16.06(d) Return to EMPLOYER Health & Welfare Plans. The terms and conditions upon which MMP bargaining unit members could be eligible to return to participation in the benefit plans described in Rules 16.02, and16.03 and 16.04 are subject to negotiations.

16.07 Flex 125 Plan. All eligible bargaining unit employees may enroll in the EMPLOYER’S Flexible Spending Account Plan (“Flex 125 Plan”).

16.08 Medical Coverage Disputes. Any dispute over a denial of coverage under the Whatcom County Self Insured Medical Plan may be appealed through Human Resources to the County Executive for final resolution.

16.09 Medical Advisory Committee. If the EMPLOYER establishes a medical advisory committee of County employees for the specific purpose of reviewing, modifying or substituting a medical plan provided in Rule 16.02, the UNIONS shall be given advance notice of such committee formation and shall be afforded an opportunity to designate one (1) representative to attend and participate in such advisory committee meetings that could impact members of the bargaining unit.
RULE 17 - SICK LEAVE:

17.01 Eligibility Criteria & Accrual Rate. Cumulative sick leave shall accrue to each employee covered by this Agreement who has completed three months of at least one hundred and twenty (120) compensated hours per calendar month of employment in the amount of nine (9) hours for each month of employment to a maximum of one thousand and eighty (1,080) hours. In general nine (9) hours of sick leave is accrued each month even if an employee has accrued the maximum sick leave permitted under the contract.

17.02 Proof of Illness. Upon request of the EMPLOYER, the employee will provide proof of illness.

17.03 Accrual During Leave or Layoff. Sick leave shall continue to accrue during periods of approved sick leave, Maintenance and Cure, or absence with pay only. If an employee is on layoff, sick leave shall not accrue during such layoff, however, upon return to work the sick leave accrual at time of layoff shall be made available to the employee and additional days shall accrue from the first.

17.04 Cashout. An employee with three (3) or more years of employment with the EMPLOYER shall be entitled to cash termination in the amount of twenty-five (25%) of their sick leave bank which has been accrued (up to 1,080 hours), provided that such employee has given at least thirty (30) days notice prior to termination and provided further, that this rule shall not apply to any employee terminated for cause. The total amount of accumulated sick leave accrued and unused by the employee shall be subject to the cash-out provisions of this RULE, regardless of when accrued.

RULE 18 - BEREAVEMENT LEAVE:

18.01 Bereavement Leave. If an employee suffers a death in the immediate family, the employee shall be allowed not more than four (4) days (not to exceed 40 hours) off without loss in pay for the death of a spouse, child or parent of either the employee or the employee’s spouse including step-parents and step-children; three (3) days off without loss in pay for the death of other immediate family members; and two (2) additional days off without pay upon approval of the EMPLOYER as personal holiday, vacation, comp time, or unpaid leave, to make necessary arrangements regarding the death and/or to attend the funeral. Other immediate family is defined to be: registered spousal equivalent, brothers, sisters, grandchildren or grandparents of either the employee or the employee’s spouse. Employees must register their spousal equivalent with Administrative Services – Human Resources on the appropriate form before being able to utilize bereavement leave.

RULE 19 - HOLIDAYS:

19.01 Holiday Schedule. The following shall be paid holidays:

- New Year's Day
- M.L. King's Birthday
- President's Day
- Memorial Day
- Independence Day
- Labor Day
- Veteran's Day
- Thanksgiving Day
- Day after Thanksgiving
- Christmas Eve
- Christmas Day
- Personal Holiday
19.02 **Personal Holiday.** Each employee shall receive one (1) personal holiday, nine (9) hours, each calendar year which may be taken by the employee after the employee has notified the department head one (1) week in advance of the holiday. The personal holiday must be taken during the year and cannot be cashed out upon separation. No employee shall be eligible to receive a personal day until after completion of three months of employment.

19.03 **Holiday Pay.**

19.03(a) **Work on Holidays.** All employees required to work on holidays shall be paid at the straight time rate of pay with one (1) additional hour's pay for each hour worked for the first nine (9) hours during the period from midnight to midnight of the holiday.

19.03(b) **Work Beyond Nine Hours on Holidays.** Any hours worked in excess of nine (9) hours on a holiday will be paid at three (3) times the regular rate.

19.03(c) **Not Working on Holiday.** Regular employees not scheduled to work on a paid holiday shall be paid for nine (9) hours at the straight time rate of pay.

19.03(d) **Regular Relief.** Regular relief employees shall be paid on a pro-rated basis.

**RULE 20 - MAINTENANCE AND CURE:**

20.01 **Maintenance Rate.** When a crew member is entitled to daily maintenance, it shall be at the rate of seventy-five dollars ($75.00) per day. For payments made, $37.50 shall be deemed maintenance and $37.50 shall be deemed wage substitute. If an employee elects to utilize sick leave for the same period in which maintenance and cure is received, the combined rate for maintenance and cure and sick leave shall not exceed the employee’s regular pay. Should any lawsuit arise concerning this issue, the settlement will be reduced by the amount of wage substitute money already received under this Rule. Transportation to or from a hospital if needed shall be furnished by the EMPLOYER if the employee becomes ill or is injured on duty.

20.02 **No Pay Withheld.** Wages and maintenance and cure shall not be withheld merely because an employee claimant has also filed a claim for damages or has filed suit therefore, or has taken steps toward that end, regardless of the EMPLOYER’S arrangement with the insurance company.

20.03 **Reimbursement for Lost Personal Items.** Crew personnel will be reimbursed for the loss of personal effects, equipment or instruments resulting from shipwreck, stranding, sinking, burning or collision of the vessel in an amount not to exceed three hundred dollars ($300.00). Each employee must provide the EMPLOYER with an itemized list including replacement value.

**RULE 21 - STANDARD DRESS:**

21.01 **Ferry Dress Code.** All personnel covered by this Agreement shall be required to wear standard dress in accordance with Whatcom County’s Ferry Dress Code. This shall consist of an ANSI-approved Class II or III high-visibility orange shirt, jacket or vest (depending on the season), navy blue trousers and appropriate footwear. During inclement weather, employees will wear similarly equipped foul weather gear.
RULE 22 - EXPENSE ALLOWANCE:

22.01 Actual Expenses. Crew members required to remain away from home over twenty-four (24) hours shall be paid for actual expenses incurred for quarters and subsistence.

RULE 23 - FERRY PASSAGE:

23.01 Employee Passage. Employees and members of their immediate family who reside with them shall be allowed free passage on the Whatcom County Ferry.

23.02 Retiree Passage. Retired members and their spouses of the Whatcom County Ferry crew receiving state retirement benefits and residing full time on Lummi Island shall be allowed free passage. Following ratification, retired employees, listed in separate Memorandum of Understanding (MOU), currently receiving State retirement benefits and residing full time on Lummi Island shall be subject to “on call” rules to work for absent crew members to reduce overtime costs. Such retired crew members who meet the job qualifications set by the County and agree to be “regularly available” for work will earn free passage for themselves and their spouse. Such retired crew members that are determined by the County to be unable to perform the required job functions will retain their pass privileges so long as they reside full time on Lummi Island. A deceased retired employee’s spouse of an employee listed in the separate MOU will retain a pass so long as the spouse resides full time on Lummi Island.

“Regularly available” is defined as a willingness to work on call at least 3 times per calendar quarter or six times during the first six months and six times during the 2nd six months of each calendar year.

Retired regular full-time employees who are not named in the separate MOU shall retain pass privileges for:

1. five years post retirement, or;
2. so long as they agree and are qualified to work on call as outlined above and for five years beyond the end of their on-call service.

Spousal individual passes shall not exceed 3 years beyond the death of the retired employee but not more than 5 years post retirement of the employee.

All passes referred to herein are for the personal, non-commercial vehicle plus driver and/or spousal passenger use of the retired employee or vehicle plus driver use of the spouse of a deceased employee.

RULE 24 - JURY DUTY LEAVE:

24.01 Jury Duty Leave. When a regular employee covered by this Agreement is called upon for jury service in any municipal, county, state or federal court, the employee shall advise the department head upon receipt of such call and if taken from work for such service, shall be reimbursed as provided herein for any loss in wages while performing such services; PROVIDED, that there shall be deducted from the wages of such employee an amount equal to the amount such employee received from jury duty.

RULE 25 - BENEFIT ELIGIBILITY:

25.01 Paid Leave Eligibility. To be eligible to accrue vacation leave, sick leave, or holiday benefits under RULES 15, 17 and 19, employees must receive compensation for
work performed, vacation, holiday, and/or paid leave must equal or exceed payment for one hundred twenty (120) hours in a calendar month. Income resulting from an industrial injury to a maximum of twelve (12) months from the date of the injury shall also be credited as compensation.

RULE 26 - TERM OF AGREEMENT:

26.01 Duration. This Agreement shall be in force from the date it is approved by the Council until December 31, 2013, and shall continue in full force and effect thereafter during negotiations for a subsequent Agreement, unless written notice of desire to cancel or terminate the Agreement is served by either party upon the other at least sixty (60) days prior to the date of expiration.

26.02 Notice of Continuation & Intent to Bargain. It is further provided that where no cancellation or termination notice is served and the parties desire to continue said Agreement but also desire to negotiate changes or revisions in this Agreement, either party may serve upon the other a notice at least sixty (60) days prior to January 1, 2014 advising that such party desires to continue this Agreement but also desires to revise or change the terms or conditions of such Agreement.

26.03 Effective Date for Revisions. Revisions agreed upon shall be effective on the date it is approved by the Council, unless otherwise specified.

RULE 27 - SEPARABILITY AND SAVINGS:

27.01 Separability & Savings. If a Rule in this Agreement should be held invalid by operation of law or by any tribunal of competent jurisdiction, the balance of this Agreement shall continue in full force and effect. The Rule held invalid shall be modified as required by law or the tribunal of competent jurisdiction, or shall be renegotiated for purpose of an adequate replacement.

RULE 28 - MANAGEMENT RIGHTS:

28.01 Management Rights. Subject to strict and absolute compliance with all terms and conditions of this Agreement including past practices, the EMPLOYER retains the right and duty to manage its business, including the right to adopt regulations governing the appearance, dress, conduct, discipline and work procedures of its employees, which regulations are in no way contrary to the terms and provisions of this Agreement and in accordance with past practices and which are reasonably required to maintain safety, efficiency, quality of service and the confidence of the traveling public. Rights not specifically abrogated by this Agreement or past practice are reserved to the EMPLOYER. The UNION reserves the right to intercede on behalf of any employee who feels aggrieved because of any exercise of rights by the EMPLOYER in accordance with the conditions set out in RULE 11.

28.02 Change in Ferry Dock. In the event the EMPLOYER shall, in its absolute discretion, change its mainland ferry dock location, the EMPLOYER, may upon 90 days notice to the UNIONS open this Agreement.
IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed this 26th day of March, 2013.

INLANDBOATMEN’S UNION OF THE PACIFIC

By: Dennis Conklin

WHATCOM COUNTY, WASHINGTON

By: Jack Louws
Whatcom County Executive

INTERNATIONAL ORGANIZATION OF MASTERS, MATES & PILOTS Pacific Maritime Region

By: Michael Murray

APPROVED AS TO FORM:

By: Daniel Gibson
Assistant Chief Civil Deputy Prosecuting Attorney

DATE COUNCIL APPROVED:
LETTER OF UNDERSTANDING #1
BY AND BETWEEN
WHATCOM COUNTY, WASHINGTON,
THE INLANDBOATMEN'S UNION OF THE PACIFIC
AND
THE INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS

This Letter of Understanding is in consideration of and attached to the Date of Adoption – December 31, 2013, collective bargaining agreement BETWEEN the Inlandboatmen's Union of the Pacific (IBU), the International Organization of Masters, Mates and Pilots Union (MMP), and Whatcom County.

1. Until the purser duties are discontinued, the rates for the three (3) current Purser/Deckhands and anyone appointed to this classification during the term of this agreement will be:

   Position                      1-1-10 – 12-31-13  
   Purser/Deckhand               26.29

2. Effective with the discontinuation of the purser duties, the rates for those in the Purser/Deckhand classification at that time shall become a Grandfathered-Deckhand classification:

   Position                      1-1-10 – 12-31-13
   Grandfathered-Deckhand         26.29

3. Employees who because of their shift assignment must make bank deposits outside their regular work hours shall be compensated at the rate of ten dollars ($10.00) for each shift worked as a purser. It is understood and agreed that this compensation constitutes full payment for all job-related off-duty time spent in this activity.

   Effective with the discontinuation of the purser duties, $.42 per hour will be added to the Grandfathered-Deckhand rate above.
**WHATCOM COUNTY COUNCIL AGENDA BILL**  
NO. AB2013-117

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**EXECUTIVE:**

**TITLE OF DOCUMENT:**
Amendment to 2013 Unrepresented Resolution

**ATTACHMENTS:**
Amendment to 2013 Unrepresented Resolution

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<th>( ) Yes</th>
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**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.)

Proposed amendments to 2013 Unrepresented Resolution.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:**
2012-039

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.
RESOLUTION NO. 2013 – _____________

AN AMENDMENT TO RESOLUTION NO. 2012-039

A RESOLUTION IN THE MATTER OF ADOPTING A SALARY SCHEDULE AND POLICIES FOR UNREPRESENTED WHATCOM COUNTY EMPLOYEES EFFECTIVE JANUARY 1, 2013

WHEREAS, a RESOLUTION in the Matter of Adopting a Salary Schedule and Policies for Unrepresented Whatcom County Employees effective January 1, 2013; and,

WHEREAS, the County has experienced some recent changed circumstances; and,

WHEREAS, it is in the best interests of the County to handle any needed changes to the Unrepresented Resolution via an amendment focusing on budgetary-driven and clarifying language changes;

NOW, THEREFORE, BE IT RESOLVED, that the Council intends that the Administration will apply the following amendments to the 2013 Unrepresented Resolution which shall become effective March 31, 2013;

AND FURTHER, BE IT RESOLVED:

2. NON-REPRESENTED SALARY MATRICES – EXHIBITS A THROUGH F

The monthly salaries of non-represented positions as established in Exhibits A through F shall be increased 3.8%.

3.2 Flat Rate Positions. Amounts listed in Exhibit G shall be increased by 3.8%.

The following sections will be replaced in their entirety:

4.14 Binding Arbitration Adjustment. Amounts listed in Exhibits E and F shall be increased 3.8%. In recognition of the fact that two bargaining units within the Sheriff’s Office have access to binding interest arbitration, unrepresented employees in the Sheriff’s Office shall receive or be eligible for, on approximately the same basis as employees directly reporting to them, the following items:

- The same basis for calculating Recognition and Retention Premium (Longevity). Performance evaluation within last year must be 3.38 or better overall in order to be eligible for the Premium (non-represented employees only).
- The same annual clothing allowance if they must maintain a dress uniform.
8.2.1.1 **Cap Plan (QHDHP) and Health Savings Account.** Employees participating in the Cap Plan (QHDHP) will be eligible to establish a Health Savings Account, if they are otherwise qualified to have such account. The County will contribute to the HSA a total of $1,250 per employee if signing up as an employee only OR $2,500 per employee as seed money in 2013 if signing up as an employee plus dependents. Part-time non-represented employees will receive a pro-rated contribution based on their budgeted FTE. One half the annual HSA contribution amount will be funded in January and the balance will be contributed in 11 equal monthly amounts for the remaining months in 2013. Participating employees are also eligible to contribute to the HSA.

8.2.1.1.1 **New Hires.** Employees hired on or after January 1, 2013, and participating in the Cap Plan (QHDHP) will be eligible to establish a Health Savings Account, if they are otherwise qualified to have such account. The County will contribute to the HSA a total of up to $1,000 for employee only OR up to $2,000 for employee plus dependents as seed money in 2013. Fifty percent (50%) will be contributed the calendar month following eighty (80) hours of compensation in one calendar month and enrolled in the HSA with monthly contributions of either $45.45 (employee only) or $90.91 (employee plus dependents) throughout the remaining months in 2013. Participating employees are also eligible to contribute to the HSA.

10. **EFFECTIVE DATE**

All amendments in salaries and benefits under this resolution shall become effective on March 31, 2013 and shall remain in effect until rescinded, except where noted otherwise and except that any further changes may be retroactively applied as approved by the County Council.

AND FURTHER, THEREFORE, BE IT RESOLVED, that Resolution No. 2012-039 is hereby amended as described herein effective March 31, 2013,

APPROVED this 26th day of March, 2013,

ATTEST: WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Council Clerk
Kathy Kershner, Chair

APPROVED as to form:

Assistant Chief Civil Deputy Prosecuting Attorney
### Exhibit “A” 2013 Department Head Salary Matrix – effective March 31, 2013

<table>
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*Ranges 500.1, 510.1, 510.2, 520.1, 520.2 & 525.1 – Supplemental Compensation Replacement

### Exhibit “B” 2013 Management Salary Matrix – effective March 31, 2013

<table>
<thead>
<tr>
<th>Range</th>
<th>12 months of service at each step required to move to next step</th>
<th>36 months of service at each step required to move to next step</th>
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<tbody>
<tr>
<td></td>
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*Ranges 425.1 & 440.1 - Supplemental Compensation Replacement

Amendment to 2013 Unrepresented Resolution – March 26, 2013 – Page 3
### Exhibit “C” 2013 Professional/Supervisory Salary Matrix – effective March 31, 2013

<table>
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* Range 345.1 - Supplemental Compensation Replacement

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### Exhibit “F” 2013 Corrections Binding Arbitration Adjustment Salary Matrix – effective March 31, 2013

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Amendment to 2013 Unrepresented Resolution – March 26, 2013 – Page 5
Exhibit “G” 2013 Court Reporters & Health Officer Salary Matrix – effective March 31, 2013

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<th>Range</th>
<th>12 months of service at each step required to move to next step</th>
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</table>
**CLEARANCES** | **Initial** | **Date** | **Date Received in Council Office** | **Agenda Date** | **Assigned to:**
--- | --- | --- | --- | --- | ---
C. Brueske | (CB) | 3/8/15 | 3/12/13 | |
F. Abari | (2B) FA | 3/12/13 | 3/12/13 | |
D. Gibson | (2B) | 3/12/13 | 3/12/13 | |
B. Bennett | (BB) | 3/12/13 | 3/12/13 | |
J. Lowes | [Signature] | 3/9/15 | 3/19/15 | |

**TITLE OF DOCUMENT:**
Recreation and Conservation Office Agreement Amendment #4 for the Canyon Creek Barrier Removal Project

**ATTACHMENTS:**
Amendment to Project Agreement and Exhibits

**SEPA review required?**
- Yes ( )
- No (X)

**SEPA review completed?**
- Yes ( )
- No (X)

**Should Clerk schedule a hearing?**
- Yes ( )
- No (X)

**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.)

Amendment #4 to Washington State Recreation and Conservation Office Agreement No. 10-1481R (WCC 201011025) provides an additional $292,248 in grant funds matched by $73,062 in Flood Funds for construction of the lower Canyon Creek integrated fish and flood project. The original project agreement of $973,750 is amended to $1,339,060.

**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](http://www.co.whatcom.wa.us/council).
MEMORANDUM

TO: The Honorable Members of the Whatcom County Flood Control Zone District Board of Supervisors

THROUGH: Frank M. Abart, Public Works Director

FROM: Paula J. Cooper, P.E., River and Flood Manager
Chris Brueske, P.E., Assistant Director

RE: Amendment #4 to RCO Agreement for Canyon Creek Barrier Removal Project

DATE: March 13, 2013

Enclosed are two (2) originals of Amendment #4 to the Canyon Creek Barrier Removal project agreement between the Washington State Recreation and Conservation Office (RCO) and Whatcom County Flood Control Zone District (FCZD) for your review and signature.

Requested Action
Public Works respectfully requests that the County Executive, acting on behalf of the FCZD Board of Supervisors, amend the existing grant agreement with RCO to increase the grant funding and local sponsor match for construction of Phase 2 of the Canyon Creek integrated salmon recovery and flood hazard management project.

Background and Purpose
The proposed amendment revises the existing project agreement by adding a new Salmon Recovery Funding Board grant to help fund project construction. The Phase 2 scope of work includes removing the existing levee, relocating the riprap to the edge of the active alluvial fan and constructing 23 engineered log jams. Due to the estimated cost, the project has been split into two parts; Schedule A includes the levee and riprap work and construction of 11 of the 23 jams and is scheduled for construction in 2013. Schedule B includes construction of the remaining 12 jams and will be implemented in 2014 if funding can be obtained.

Funding Amount and Source
The existing project agreement with RCO provides $973,750 in federal funding from NOAA with no local match required. The amendment provides an additional $292,248 in state and federal salmon recovery funds matched by $73,062 from the FCZD fund. The approved 2013 FCZD budget includes the original grant funding and an additional $1,302,020 of FCZD funding which will more than cover the local match required by the new grant. A supplemental budget request will be submitted to provide the additional expenditure authority associated with this grant amendment.

Please contact Paula Cooper at extension 50625 or John N. Thompson at extension 50695, if you have any questions or concerns regarding the terms of this agreement.

Enclosure
# WHATCOM COUNTY CONTRACT INFORMATION SHEET

<table>
<thead>
<tr>
<th>Originating Department:</th>
<th>Public Works-River &amp; Flood and Natural Resources</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract Administrator:</td>
<td>John N. Thompson, L.E.G., Senior Planner</td>
</tr>
<tr>
<td>Contractor's / Agency Name:</td>
<td>Washington State Recreation and Conservation Office</td>
</tr>
</tbody>
</table>

**Is this a New Contract?**  Yes _X_ No _X_  
If not, is this an Amendment or Renewal to an Existing Contract?  Yes _X_ No _X_ No Number  
If yes, previous number(s): 201011025  

**Is this a grant agreement?**  Yes _X_ No _X_  
If yes, grantor agency contract number(s) RCO No.10-1481R  
CFDA #  

**Is this contract grant funded?**  Yes _X_ No _X_  
If yes, associated Whatcom County grant contract number(s)  

**Is this contract the result of a RFP or Bid process?**  Contract  
Yes _X_ No _X_  
If yes, RFP and Bid number(s)  
Cost Center: 169114  

**Is this contract excluded from E-Verify?**  No _X_  
If no, include Attachment D Contractor Declaration Form  
If yes, indicate qualified exclusion(s) below:  
- Contract less than $100,000.  
- Work is for less than 120 days  
- Interlocal Agreement (between Govt.)  
- Professional services agreement for certified/licensed professional  
- Contract for Commercial off the shelf items (COTS)  
- Public Works Dept. - Local Agency/Federally Funded FHWA  

**Contract Amount:**  
(sum of orig contract amt and any prior amendments)  
$973,750  

**This Amendment Amount:**  
$365,310  

**Total Amended Amount:**  
$1,339,060  

**Scope of Services:** [Insert language from contract (Exhibit A) or summarize; expand space as necessary]  
Amendment #4 to Washington State Recreation and Conservation Office Agreement 10-1481R (WCC 201011025) provides an additional $292,248 in grant funds matched by $73,062 in Flood Funds for construction of the lower Canyon Creek integrated fish and flood project. The original project agreement of $973,750, no match required, is amended to $1,339,060.  

**Term of Contract:**  
Expiration Date: September 30, 2013  

**Contract Routing Steps & Signoff:** [sign or initial]  
1. Prepared by J.N. Thompson  
2. Attorney reviewed Daniel L. Gibson  
3. AS Finance reviewed  
4. IT reviewed if IT related  
5. Corrections made  
6. Attorney signoff Daniel L. Gibson  
7. Contractor signed  
8. Submitted to Exec Office  
9. Council approved (if necessary)  
10. Executive signed  
11. Contractor Original Returned to dept.  
12. County Original to Council  
**[indicate date transmitted]**  
1. Date 3/11/13 [electronic]  
2. Date 3/12/13 [electronic]  
3. Date 3/14/13 [electronic]  
4. Date 3/14/13 [electronic]  
5. Date 3/14/13 [electronic]  
6. Date 3/14/13 [electronic]  
7. Date 2-7-13 [summary via electronic; hardcopies]  
8. Date  
9. Date  
10. Date  
11. Date  
12. Date  

---

116
Amendment to Project Agreement

Project Sponsor: Whatcom County FCZD
Project Title: Canyon Creek Barrier Removal

Amendment Type:
Cost Change

Amendment Description:
The SRFB grant, 12-1521, is added into this grant for administrative efficiencies.

Project Funding:
The total cost of the project for the purpose of this Agreement changes as follows:

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<th>Old Amount</th>
<th>New Amount</th>
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<tbody>
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<tr>
<td>A&amp;E Limit</td>
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Agreement Terms
In all other respects the Agreement, to which this is an Amendment, and attachments thereto, shall remain in full force and effect. In witness whereof the parties hereto have executed this Amendment.

State Of Washington
Recreation and Conservation Office

BY: [Signature]
Kaelen Cottinham

TITLE: Director
DATE: 2/7/13
Pre-approved as to form:
BY: [Signature]
Assistant Attorney General

Whatcom County FCZD

AGENCY: ______________________

BY: ______________________

TITLE: ______________________

DATE: ______________________

Approved as to form:
[Signature]
Daniel L. Gibson, Asst. Chief Civil Deputy Pros. Atty.,
Whatcom County
Amendment Agreement Description

Project Sponsor: Whatcom County FCZD
Project Title: Canyon Creek Barrier Removal

Project Number: 10-1481 R
Amendment Number: 4

Agreement Description

Assessments of the geomorphology and alluvial fan risk on lower Canyon Creek led to recommendations for acquisition of properties in high risk areas, standards for new construction, and partial removal and setback of an existing levee. These measures are intended, in part, to reverse ongoing impacts to salmon habitat. With a combination of state and federal flood hazard reduction (FEMA) and Salmon Recovery Funding Board funding, Whatcom County partnered with the Whatcom Land Trust to purchase repetitive flood loss and undeveloped properties in the high risk zone of the Canyon Creek alluvial fan. The acquisitions presented the opportunity to engage in the restoration design process. This project will build on progress to date by: 1) addressing floodplain constriction through additional levee shortening, setback and/or removal; 2) providing instream structure (Engineered Log Jams) to improve habitat complexity and diversity and riparian persistence; 3) ensure long-term anadromous fish passage at the manmade rivermile 0.2 bedrock cascade; and, 4) riparian plantings to speed recovery of riparian function at stable floodplain nodes.
Amendment Special Conditions

Project Sponsor: Whatcom County FCZD
Project Title: Canyon Creek Barrier Removal
Project Number: 10-1481 R
Amendment Number: 4

Special Conditions
The SRFB grant (#12-1521) and its matching funds, totalling $365,310, is not eligible for indirect administration costs. The PSCS grant funds, totalling $973,750, is eligible for indirect administration funds equal to the federal indirect agreement on record. Currently the PSCS budget does not include indirect administration costs.
Amendment Eligible Scope Activities

Project Sponsor: Whatcom County Flood Control Zone District
Project Title: Canyon Creek Barrier Removal
Program: Puget Sound Critical Stock
Project Number: 10-1481
Project Type: Restoration
Amendment #: 4

Restoration Metrics

Worksite #1, Canyon Creek
Targeted salmonid ESU/DPS:

Targeted species (non-ESU species):

Project Identified In a Plan or Watershed Assessment:

Type Of Monitoring:

Fish Passage Improvement
Miles Of Stream Made Accessible:

Square Miles Of streambed made accessible:

Fish passage blockages removed or altered
Number of Blockages/Impediments/Barriers Removed/Altered:

Type Of Barrier:

Instream Habitat Project
Total Miles Of Instream Habitat Treated:
Channel structure placement
Material Used For Channel Structure:

Miles of Stream Treated for channel structure placement:

Acres Of Streambed Treated for channel structure placement:

Chinook Salmon-Puget Sound ESU, Chum Salmon-Puget Sound/Strait of Georgia ESU, Coho Salmon-Puget Sound/Strait of Georgia ESU, Pink Salmon-unidentified ESU, Sockeye Salmon-unidentified ESU, Steelhead-Puget Sound DPS Bull Trout
Implementation Monitoring

3.90
The partial barrier is at RM 0.2. Total length of historic anadromous access is ~4.1 miles.
1.00
3.9 miles of stream habitat with an average width of 60 or less will be opened up. Terrestrial habitat is not included as that is not the restoration objective for this project.

1
Bedrock cascade and chutes at ~RM 0.2 Weir
The partial barrier is a bedrock controlled section of streams that was created through blasting as part of a flood control project in 1994. The 'weirs' are a series of more resistant layers of sandstone that create a series of cascades and chutes which are a partial to full blockage to upstream salmonid migration depending on species and life stage.

0.70
Logs Fastened Together (Logjam), Other Engineered Structures
0.56
This is an estimate and will be adjusted based on final design and as-built data.
18.3

February 5, 2013
Amendment Eligible Scope Activities

Pools Created through channel structure placement:

Yards Of Average Stream-Width At Mid-Point Of Worksite:
Number of structures placed in channel:

Streambank stabilization
Miles of Streambank Stabilized:

Riparian Habitat Project
Total Riparian Miles Streambank Treated:
Total Riparian Acres Treated:
Planting
Acres Planted in riparian:

Site Maintenance Project
Stream or streambank maintained
Miles of Streambank Maintained:

General restoration activities
Implementation monitoring
Number of site visits:
Restoration signs
Number of signs installed:
Traffic control

Cultural Resources
Cultural resources
Permits
Obtain permits

Architectural & Engineering
Architectural & Engineering (A&E)

Estimated cumulative historic channel area in which placement of channel structures will be placed. This does not reflect the total area of the structures which will be much less.
8

This is an estimate. Final number of pools created by placed structures will be determined in final design.
20
15

This is an estimate. This includes both structure to be placed in-channel as well as floodplain roughness structures to encourage complex channel form and riparian forest retention. Final number of structures to be determined in final design.

0.28
This is an estimate with final length to be stabilized dependent on final design.

ATTACHMENTS: Cover Memo, Contract Information Sheet, Contract

SEPA review required? ( ) Yes (x) NO
SEPA review completed? ( ) Yes (x) NO
Should Clerk schedule a hearing? ( ) Yes (x) No
Requested Date:

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Whatcom County, in coordination with the cities, is initiating a multi-year project to update the Whatcom County Comprehensive Plan and conduct the urban growth area (UGA) review by June 30, 2016, as required by the Growth Management Act. The County and cities have signed a cost sharing interlocal agreement for consultant services to address population, employment and environmental analysis. Whatcom County Planning and Development Services is requesting that the County Council authorize the Executive to enter into the attached contract agreement with Berk & Associates, Inc. to provide these consultant services in support of the comprehensive plan update and UGA review.

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.
MEMORANDUM

TO: Jack Louws, the Honorable Whatcom County Executive

THROUGH: Mark Personius, Long Range Planning Division Manager

FROM: Matt Aamot, Senior Planner

RE: Berk & Associates, Inc. contract

DATE: March 18, 2013

Enclosed are two (2) originals of the contract between Berk & Associates, Inc. and Whatcom County for your review.

- Background and Purpose

Whatcom County is initiating a multi-year project to update the Whatcom County Comprehensive Plan and conduct the urban growth area (UGA) review by June 30, 2016, as required by the Washington State Growth Management Act. The Comp Plan update and UGA review will be conducted in close coordination with the seven cities in Whatcom County. The scope of work in this contract sets forth tasks for the consultant, including:

- County-wide population projections and allocations to urban growth areas, rural areas and resource lands;
- County-wide employment projections and allocations to urban growth areas, rural areas and resource lands; and
- Environmental review under the State Environmental Policy Act.

- Funding Amount and Source

The contract is for $140,000. The County Planning and Development Services Department will fund $60,486 of this amount from the professional services account. Pursuant to an interlocal agreement concerning cost sharing for planning studies associated with the comprehensive plan update and UGA review, which was finalized in January 2013, the seven cities in Whatcom County will fund $79,514.

As discussed last November, the detailed scope of work utilizes the State Office of Financial Management’s (OFM) medium population projection as the county-wide baseline projection for study purposes (Task 1.4). The consultant will not evaluate or analyze the OFM medium projection. However, the consultant will develop a reasonable range of population projections above and below the OFM medium projection to provide alternatives for the SEPA review process, allow consideration of a range of options during the public review process and provide flexibility in the legislative decision-making process. Less than $3,000 is budgeted to develop a range of county-wide projections around the OFM medium projection (no money is budgeted for the county-wide medium projection). Since costs are
being divided between the County and the cities, the County’s share for this task is a little under $1,300. Other population-related tasks in the budget include coordination with other jurisdictions, allocating population to urban growth areas, allocating population to rural areas, etc.

The Whatcom Council of Governments will also provide funding by a separate contract for several tasks, including allocating population and employment to smaller geographical units such as transportation analysis zones and special purpose districts and work relating to the transportation model analysis.

Please contact me at extension 50260, if you have any questions or concerns regarding the terms of this agreement.

Encl.
**WHATCOM COUNTY CONTRACT INFORMATION SHEET**

**Originating Department:** Planning & Development Services

**Contract Administrator:** J.E. “Sam” Ryan, Director

**Contractor’s / Agency Name:** Berk & Associates, Inc.

**Is this a New Contract?** Yes x No __

**Is this a grant agreement?** Yes __ No x If yes, grantor agency contract number(s) ______

**Is this contract grant funded?** Yes x No x If yes, associated Whatcom County grant contract number(s) ______

**Is this contract the result of a RFP or Bid process?** Yes x No __ If yes, RFP and Bid number(s) 13-06

**Contract Amount:** (sum of orig contract amt and any prior amendments)

$140,000.00

**If a Professional Services Agreement is more than $15,000 or a Bid is more than $35,000, please submit an Agenda Bill for Council approval and a supporting memo. Any amendment that provides either a 10% increase in amount or more than $10,000, whichever is greater, must also go to Council and will need an agenda bill and supporting memo. If less than these thresholds, just submit to Executive with supporting memo for approval.**

**This Amendment Amount:** $ ______

**Total Amended Amount:** $ ______

**Scope of Services**

Whatcom County is initiating a multi-year project to update the Whatcom County Comprehensive Plan and conduct the urban growth area (UGA) review by June 30, 2016. The scope of work in this contract sets forth several major tasks for the consultant, including:

- County-wide population projections and allocations to UGAs, rural and resource lands;
- County-wide employment projections and allocations to UGAs, rural and resource lands; and
- Environmental review under the State Environmental Policy Act.

**Term of Contract:** Expiration Date: 8/31/2015

**Contract Routing Steps & Signoff:** [sign or initial] [indicate date transmitted]

1. Prepared by: BB Date 2/25/13 [electronic]
2. Attorney reviewed: BB Date 3-14-13 [electronic]
3. AS Finance reviewed: BB Date 3-14-13 [electronic]
4. IT reviewed if IT related
5. Corrections made: Date 3-14-13 [electronic] hard copy printed
6. Attorney sign off: Date 3-14-13
7. Contractor signed: Date
8. Submitted to Exec Office Date [summary via electronic; hardcopies]
9. Reviewed by DCA Date
10. Council approved (if necessary) Date
11. Executive signed: Date
12. Contractor Original Date
13. Returned to dept: Date
14. County Original to Council Date\n
this form may need to expand to more than one page
this form may need to expand to more than one page
CONTRACT FOR SERVICES AGREEMENT
Berk & Associates, Inc.

Berk & Associates, Inc., hereinafter called Contractor, and Whatcom County, hereinafter referred to as County, agree and contract as set forth in this Agreement, including:

General Conditions, pp. 3 to 7.
Exhibit A (Scope of Work), pp. 8 to 17.
Exhibit B (Compensation), pp. 18 to 18.

Copies of these items are attached hereto and incorporated herein by this reference as if fully set forth herein.

The term of this Agreement shall commence on the 2nd day of April, 2013, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 31st day of August, 2015.

The general purpose or objective of this Agreement is to: assist in the 2016 Whatcom County Comprehensive Plan update and UGA review, as more fully and definitively described in Exhibit A hereto. The language of Exhibit A controls in case of any conflict between it and that provided here.

The maximum consideration for the initial term of this agreement or for any renewal term shall not exceed $140,000.00. The Contract Number, set forth above, shall be included on all billings or correspondence in connection therewith.

Contractor acknowledges and by signing this contract agrees that the Indemnification provisions set forth in Paragraphs 11.1, 21.1, 30.1, 31.2, 32.1, 34.2, and 34.3, if included, are totally and fully part of this contract and have been mutually negotiated by the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement this ___ day of ______________, 20__.

CONTRACTOR:

Berk & Associates, Inc.

__________________________

STATE OF WASHINGTON )

) ss.

COUNTY OF ________________

On this ___ day of ________, 20__, before me personally appeared __________________ to me known to be the ________________ (title) of __________________ (Company) and who executed 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 ______________.
WHATCOM COUNTY:
Recommended for Approval:

Department Director Date 3-14-13

Approved as to form:

Prosecuting Attorney Date 3-14-13

Approved:
Accepted for Whatcom County:

By: ____________________________
Jack Louws, Whatcom County Executive

STATE OF WASHINGTON )
COUNTY OF WHATCOM ) ss

On this _____ day of ________, 20___, before me personally appeared Jack Louws, to me known to be the Executive of Whatcom County, who executed 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 _____________________.

CONTRACTOR INFORMATION:

Berk & Associates, Inc.
2025 First Avenue, Suite 800
Seattle WA 98121
206-324-8760
www.berkconsulting.com

Contract for Services Agreement
Berk & Associates, Inc.
GENERAL CONDITIONS

Series 00-09: Provisions Related to Scope and Nature of Services

0.1 Scope of Services:
The Contractor agrees to provide to the County services and any materials as set forth in the project narrative identified as Exhibit "A", during the agreement period. No material, labor, or facilities will be furnished by the County, unless otherwise provided for in the Agreement.

Series 10-19: Provisions Related to Term and Termination

10.1 Term:
Services provided by Contractor prior to or after the term of this contract shall be performed at the expense of Contractor and are not compensable under this contract unless both parties hereto agree to such provision in writing. The term of this Agreement may be extended by mutual agreement of the parties; provided, however, that the Agreement is in writing and signed by both parties.

10.2 Extension:
The duration of this Agreement may be extended by mutual written consent of the parties, for a period of up to one year at a time, and for a total of no longer than three years.

11.1 Termination for Default:
If the Contractor defaults by failing to perform any of the obligations of the contract or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the County may, by depositing written notice to the Contractor in the U.S. mail, first class postage prepaid, terminate the contract, and at the County's option, obtain performance of the work elsewhere. Termination shall be effective upon Contractor's receipt of the written notice, or within three (3) days of the mailing of the notice, whichever occurs first. If the contract is terminated for default, the Contractor shall no longer be entitled to receive any further payments under the contract until all work called for has been fully performed. Any extra cost or damage to the County resulting from such default(s) shall be deducted from any money due or coming due to the Contractor. The Contractor shall bear any extra expenses incurred by the County in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the County by reason of such default.

11.2 Termination for Reduction in Funding:
Whatcom County has approved a biennial budget for 2013-2014. Funding for Contractor work in 2015 is contingent upon future budget approval. If the Whatcom County Council does not authorize funds in the 2015-2016 biennial budget for Contractor work in 2015, the County may terminate this agreement in whole or in part. Whenever the Agreement is terminated in accordance with this paragraph, the Contractor shall be entitled to payment for actual work performed at unit contract prices for completed items of work. An equitable adjustment in the contract price for partially completed items of work will be made, but such adjustment shall not include provision for loss of anticipated profit on deleted or uncompleted work. Termination of this Agreement by the County shall not constitute breach of contract by the County.

11.3 Termination for Public Convenience:
The County may terminate the Agreement in whole or in part whenever the County determines, in its sole discretion, that such termination is in the interests of the County. Whenever the Agreement is terminated in accordance with this paragraph, the Contractor shall be entitled to payment for actual work performed at unit contract prices for completed items of work. An equitable adjustment in the contract price for partially completed items of work will be made, but such adjustment shall not include provision for loss of anticipated profit on deleted or uncompleted work. Termination of this Agreement by the County at any time during the term, whether for default or convenience, shall not constitute breach of contract by the County.

Series 20-29: Provisions Related to Consideration and Payments

20.1 Accounting and Payment for Contractor Services:
Payment to the Contractor for services rendered under this Agreement shall be on an hourly basis as set forth in Exhibit "B" (not to exceed the estimated cost by task, unless specifically authorized by the County). Where Exhibit "B" requires payments by the County, payment shall be based upon written claims supported, unless otherwise provided in Exhibit "B," by documentation of units of work actually performed and amounts earned, including, where appropriate, the actual number of days worked each month, total number of hours for the month, and the total dollar payment requested, so as to comply with municipal auditing requirements.

Unless specifically stated in Exhibit "B" or approved in writing in advance by the official executing this Agreement for the County or his designee (hereinafter referred to as the "Administrative Officer") the County will not reimburse the Contractor for any costs or expenses
incurred by the Contractor in the performance of this contract. Where required, the County shall, upon receipt of appropriate documentation, compensate the Contractor, no more often than monthly, in accordance with the County’s customary procedures, pursuant to the fee schedule set forth in Exhibit "B."

21.1 Taxes:
The Contractor understands and acknowledges that the County will not withhold Federal or State income taxes. Where required by State or Federal law, the Contractor authorizes the County to withhold for any taxes other than income taxes (i.e., Medicare). All compensation received by the Contractor will be reported to the Internal Revenue Service at the end of the calendar year in accordance with the applicable IRS regulations. It is the responsibility of the Contractor to make the necessary estimated tax payments throughout the year, if any, and the Contractor is solely liable for any tax obligation arising from the Contractor’s performance of this Agreement. The Contractor hereby agrees to indemnify the County against any demand to pay taxes arising from the Contractor’s failure to pay taxes on compensation earned pursuant to this Agreement.

The County will pay sales and use taxes imposed on goods or services acquired hereunder as required by law. The Contractor must pay all other taxes, including, but not limited to, Business and Occupation Tax, taxes based on the Contractor’s gross or net income, or personal property to which the County does not hold title. The County is exempt from Federal Excise Tax.

22.1 Withholding Payment:
In the event the County’s Administrative Officer determines that the Contractor has failed to perform any obligation under this Agreement within the times set forth in this Agreement, then the County may withhold from amounts otherwise due and payable to the Contractor the amount determined by the County as necessary to cure the default, until the Administrative Officer determines that such failure to perform has been cured. Withholding under this clause shall not be deemed a breach entitling Contractor to termination or damages, provided that the County promptly gives notice in writing to the Contractor of the nature of the default or failure to perform, and in no case more than 10 days after it determines to withhold amounts otherwise due. A determination of the Administrative Officer set forth in a notice to the Contractor of the action required and/or the amount required to cure any alleged failure to perform shall be deemed conclusive, except to the extent that the Contractor acts within the times and in strict accord with the provisions of the Disputes clause of this Agreement. The County may act in accordance with any determination of the Administrative Officer which has become conclusive under this clause, without prejudice to any other remedy under the Agreement, to take all or any of the following actions: (1) cure any failure or default, (2) to pay any amount so required to be paid and to charge the same to the account of the Contractor, (3) to set off any amount so paid or incurred from amounts due or to become due the Contractor. In the event the Contractor obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to Contractor by reason of good faith withholding by the County under this clause.

23.1 Labor Standards: Not Applicable

Series 30-39: Provisions Related to Administration of Agreement

30.1 Independent Contractor:
The Contractor’s services shall be furnished by the Contractor as an independent contractor, and nothing herein contained shall be construed to create a relationship of employer-employee or master-servant, but all payments made hereunder and all services performed shall be made and performed pursuant to this Agreement by the Contractor as an independent contractor.

The Contractor acknowledges that the entire compensation for this Agreement is specified in Exhibit “B” and the Contractor is not entitled to any benefits including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, or any other rights or privileges afforded to employees of the County. The Contractor represents that he/she/it maintains a separate place of business, serves clients other than the County, will report all income and expense accrued under this contract to the Internal Revenue Service on a Schedule C, and has a tax account with the State of Washington Department of Revenue for payment of all sales and use and Business and Occupation taxes collected by the State of Washington.

Contractor will defend, indemnify and hold harmless the County, its officers, agents or employees from any loss or expense, including, but not limited to, settlements, judgments, setoffs, attorneys’ fees or costs incurred by reason of claims or demands because of breach of the provisions of this paragraph.

30.2 Assignment and Subcontracting:
The performance of all activities contemplated by this agreement shall be accomplished by the Contractor. No portion of this contract may be assigned or subcontracted to any other individual, firm or entity without the express and prior written approval of the County.
30.3 **No Guarantee of Employment:**

The performance of all or part of this contract by the Contractor shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of the Contractor or any employee of the Contractor or any subcontractor or any employee of any subcontractor by the County at the present time or in the future.

31.1 **Ownership of Items Produced:**

All writings, programs, data, public records or other materials prepared by the Contractor and/or its consultants or subcontractors, in connection with performance of this Agreement, shall be the sole and absolute property of the County.

31.2 **Patent/Copyright Infringement:** Not Applicable

32.1 **Confidentiality:**

The Contractor, its employees, subcontractors, and their employees shall maintain the confidentiality of all information provided by the County or acquired by the Contractor in performance of this Agreement, except upon the prior written consent of the County or an order entered by a court after having acquired jurisdiction over the County. Contractor shall immediately give to the County notice of any judicial proceeding seeking disclosure of such information. Contractor shall indemnify and hold harmless the County, its officials, agents or employees from all loss or expense, including, but not limited to, settlements, judgments, setoffs, attorneys’ fees and costs resulting from Contractor’s breach of this provision.

33.1 **Right to Review:** Not Applicable

34.1 **Proof of Insurance:** The Contractor shall submit to the County proof of general commercial liability insurance in the amount of at least $1,000,000 per occurrence and $2,000,000 aggregate and professional liability insurance in the amount of at least $1,000,000 per occurrence and $2,000,000 aggregate. This insurance shall be maintained throughout the duration of the contract, shall be considered as primary and shall waive all rights of subrogation. The county insurance shall be noncontributory.

34.2 **Industrial Insurance Waiver:** Not Applicable

34.3 **Defense & Indemnity Agreement:**

The Contractor agrees to defend, indemnify and save harmless the County, its appointed and elective officers and employees, from and against all loss or expense, including, but not limited to, judgments, settlements, attorneys’ fees and costs by reason of any and all claims and demands upon the County, its elected or appointed officials or employees for damages because of personal or bodily injury including death at any time resulting therefrom, sustained by any person or persons and on account of damage to property, including loss of use thereof, whether such injury to persons or damage to property is due to negligence, negligent acts, omissions, or willful misconduct of the Contractor, its subcontractors, its successor or assigns, or its agents, servants, or employees, the County, its appointed or elected officers, employees or their agents, except only such injury or damage as shall have been occasioned by the sole negligence of the County or its appointed or elected officials or employees.

35.1 **Non-Discrimination in Employment:**

The County’s policy is to provide equal opportunity in all terms, conditions and privileges of employment for all qualified applicants and employees without regard to race, color, creed, religion, national origin, sex, age, marital status, disability, or veteran status. The Contractor shall comply with all laws prohibiting discrimination against any employee or applicant for employment on the grounds of race, color, creed, religion, national origin, sex, age, marital status, disability, or veteran status, except where such constitutes a bona fide occupational qualification.

Furthermore, in those cases in which the Contractor is governed by such laws, the Contractor shall take affirmative action to insure that applicants are employed, and treated during employment, without regard to their race, color, creed, religion, national origin, sex, age, marital status, disability, or veteran status, except where such constitutes a bona fide occupational qualification. Such action shall include, but not be limited to: advertising, hiring, promotions, layoffs or terminations, rate of pay or other forms of compensation benefits, selection for training including apprenticeship, and participation in recreational and educational activities. In all solicitations or advertisements for employees placed by them or on their behalf, the Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color religion, sex or national origin.

The foregoing provisions shall also be binding upon any subcontractor, provided that the foregoing provision shall not apply to contracts or subcontractors for standard commercial supplies or raw materials, or to sole proprietorships with no employees.

35.2 **Non-Discrimination in Client Services:** Not Applicable

36.1 **Waiver of Noncompetition:** Not Applicable

Contract for Services Agreement
Berk & Associates, Inc.

Page 5
36.2 **Conflict of Interest:** If at any time prior to commencement of, or during the term of this Agreement, Contractor or any of its employees involved in the performance of this Agreement shall have or develop an interest in the subject matter of this Agreement that is potentially in conflict with the County’s interest, then Contractor shall immediately notify the County of the same. The notification of the County shall be made with sufficient specificity to enable the County to make an informed judgment as to whether or not the County’s interest may be compromised in any manner by the existence of the conflict, actual or potential. Thereafter, the County may require the Contractor to take reasonable steps to remove the conflict of interest. The County may also terminate this contract according to the provisions herein for termination.

37.1 **Administration of Contract:**
This Agreement shall be subject to all laws, rules, and regulations of the United States of America, the State of Washington, and political subdivisions of the State of Washington. The Contractor also agrees to comply with applicable federal, state, county or municipal standards for licensing, certification and operation of facilities and programs, and accreditation and licensing of individuals.

The County hereby appoints, and the Contractor hereby accepts, the Whatcom County Executive, and his or her designee, as the County’s representative, hereinafter referred to as the Administrative Officer, for the purposes of administering the provisions of this Agreement, including the County’s right to receive and act on all reports and documents, and any auditing performed by the County related to this Agreement. The Administrative Officer for purposes of this agreement is:

J.E. “Sam” Ryan, Director, Whatcom County Planning and Development Services

37.2 **Notice:**
Except as set forth elsewhere in the Agreement, for all purposes under this Agreement except service of process, notice shall be given by the Contractor to the County’s Administrative Officer under this Agreement. Notice to the Contractor for all purposes under this Agreement shall be given to the address provided by the Contractor herein above in the “Contractor Information” section. Notice may be given by delivery or by depositing in the US Mail, first class, postage prepaid.

**Series 40-49: Provisions Related to Interpretation of Agreement and Resolution of Disputes**

40.1 **Modifications:**
Either party may request changes in the Agreement. Any and all agreed modifications, to be valid and binding upon either party, shall be in writing and signed by both of the parties.

40.2 **Contractor Commitments, Warranties and Representations:** Not Applicable

41.1 **Severability:**
If any term or condition of this contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this contract are declared severable.

41.2 **Waiver:**
Waiver of any breach or condition of this contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this contract shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto. The failure of the County to insist upon strict performance of any of the covenants and agreements of this Agreement, or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such, or any other covenant or agreements, but the same shall be and remain in full force and effect.

42.1 **Disputes:**

a. **General:**
Differences between the Contractor and the County, arising under and by virtue of the Contract Documents, shall be brought to the attention of the County at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Except for such objections as are made of record in the manner hereinafter specified and within the time limits stated, the records, orders, rulings, instructions, and decisions of the Administrative Officer shall be final and conclusive.

b. **Notice of Potential Claims:**
The Contractor shall not be entitled to additional compensation which otherwise may be payable, or to extension of time for (1) any act or failure to act by the Administrative Officer or the County, or (2) the happening of any event or occurrence, unless the Contractor has given the County a written Notice of Potential Claim within ten (10) days of the commencement of the act, failure, or event giving rise to

Contract for Services Agreement
Berk & Associates, Inc.
Page 6

v 1.0
the claim, and before final payment by the County. The written Notice of Potential Claim shall set forth the reasons for which the Contractor believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. Contractor shall keep full and complete daily records of the work performed, labor and material used, and all costs and additional time claimed to be additional.

c. Detailed Claim:
The Contractor shall not be entitled to claim any such additional compensation, or extension of time, unless within thirty (30) days of the accomplishment of the portion of the work from which the claim arose, and before final payment by the County, the Contractor has given the County a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or the extension of time claimed to be due.

d. Arbitration: Not Applicable

43.1 Venue and Choice of Law:
In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the courts of the State of Washington in and for the County of Whatcom. This Agreement shall be governed by the laws of the State of Washington.

44.1 Survival:
The provisions of paragraphs 11.1, 11.2, 11.3, 21.1, 22.1, 30.1, 31.1, 31.2, 32.1, 33.1, 34.2, 34.3, 36.1, 40.2, 41.2, 42.1, and 43.1, if utilized, shall survive, notwithstanding the termination or invalidity of this Agreement for any reason.

45.1 Entire Agreement:
This written Agreement, comprised of the writings signed or otherwise identified and attached hereto, represents the entire Agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.
Exhibit A
Detailed Scope of Work

The Whatcom County Department of Planning and Development Services, in coordination with the cities, is initiating a multi-year project to update the Whatcom County Comprehensive Plan and conduct the urban growth area (UGA) review by 2016, as required by the Washington State Growth Management Act (GMA).

The GMA has two separate requirements:

- RCW 36.70A.130(1) requires review and, as necessary, update of the comprehensive plan and development regulations; and
- RCW 36.70A.130(3) requires the County to review its UGAs and, as necessary, revise the UGAs to accommodate the urban growth projected to occur in the succeeding 20-year planning period.

Considering the 2016 update process as a whole, project goals include:

- **Community Values** – Ensure that community values are incorporated in the Whatcom County Comprehensive Plan;
- **County/City Coordination** – Ensure coordination and consistency between County and city comprehensive planning efforts;
- **Environmental Analysis** – Analyze and address environmental impacts, mitigation, and alternatives;
- **Growth Planning** – Guide development, land use, utilization and conservation of resource lands, provision of public facilities and services, and preservation of environmentally sensitive areas over the 20-year planning period; and
- **State Law Compliance** – Facilitate County Council action to review and, if needed, revise the Whatcom County Comprehensive Plan and UGAs to ensure compliance with the requirements of the GMA.

The consultant team will support and provide planning services to Whatcom County (County) in the Comprehensive Plan update and UGA review process. The consultant work will primarily address efforts between April 2013 and August 2015. The Comprehensive Plan update and UGA review will be completed by June 30, 2016.

**Project Description**

The scope of work represents the consultant tasks in a multi-year process to complete the 2016 Comprehensive Plan update and UGA review. Specifically, consultant services will be provided to achieve the following:

1. **Population/Dwelling Unit/Household Projections and Allocations** – Utilize the State Office of Financial Management (OFM) medium population projection as the county-wide baseline projection and develop low and high projections around the OFM medium projection. Develop county-wide dwelling unit and household projections for the 2014-2036 period. Develop population, dwelling unit and household growth allocations to UGAs, transportation analysis zones and public facility/service providers.
2. **Employment Projections and Allocations** – Develop county-wide employment projections for the 2014-2036 period. Develop employment allocations to UGAs, transportation analysis zones and public facility/service providers.

3. **SEPA Environmental Analysis** – Complete the SEPA process for the Comprehensive Plan and UGA Review. It is anticipated that this will include preparation of a draft Environmental Impact Statement (EIS) and final EIS.

**Assumptions**
The scope, budget and schedule contained in this document are predicated upon the following provisions, assumptions and conditions. The purpose of this list is to enumerate and describe mutual expectations and understandings required of all parties to this scope of work in order to complete the project on time and within budget.

- Budget cost estimates for each task may be transferred from one task to another due to greater or lesser level of effort, provided that each task is completed and the total budget is not exceeded. Work in the “contingency” category will be pre-authorized by the County.

- Additional service requests or alterations beyond those described in this document will require supplemental contract modifications or explicit, pre-approved substitutions. The consultant will not perform additional work until written authorization is provided.

- Research and data collection will be based on readily available secondary sources of information, including previous environmental documents, reports, inventories, maps and other similar literature from local governments and other sources.

- The County will provide available necessary government documents, subarea plans, prior EIS documents, studies, GIS data layers, mapping and other technical information pertaining to the County, including any appropriate electronic GIS data and aerial photos. The County will provide Assessor data to the consultant. The County may provide any or all information in electronic format.

- The consultant will provide GIS services only when pre-authorized by the County.

- Whatcom County is responsible for document reproduction and distribution of all review and final drafts for the purpose of staff comments. All consultant preliminary draft deliverables will be limited to electronic file transfers and “camera ready” documents.

- County/City review and comment on draft documents will occur in accordance with the project schedule.

- The consultant will attend conference calls with staff relating to the population and employment projections/allocations. The consultant will attend one public meeting in Whatcom County relating to the population and employment projections/allocations.

- The consultant will attend conference calls with staff relating to the SEPA review process. The consultant will attend up to two public meetings in Whatcom County relating to environmental review (i.e. a scoping meeting and public hearing on the draft EIS).

The scope of work to be completed by the consultant is set forth below and a generalized schedule is attached.
Task 1: Population, Dwelling Unit & Household Projections
Projections of future population, dwelling units and households are an integral component of land use planning. In 2012, the Washington State Office of Financial Management (OFM) developed a twenty year population projection for the County. The consultant will assist the County and the cities to develop new projections for the 2014 to 2036 timeframe. Development of new projections will consider:

- Consistency with past population growth trends
- OFM population estimates and projections
- Employment trends and projections
- Social, economic and demographic factors and trends

The following work elements identify specific activities related to population projections:

1.1 Review data, including Census data and OFM population estimates and projections.

1.2 Develop baseline data, including historic population estimates for UGAs and other study areas and historic growth rates.

1.3 Coordinate with cities and other jurisdictions to ensure consistent planning.

1.4 Utilize the OFM medium population projection as the county-wide baseline projection for the 2014-2036 timeframe. Develop low and high county-wide population projections for the 2014-2036 timeframe. Develop low, medium and high County-wide dwelling unit and household projections for the 2014-2036 timeframe.

1.5 Develop low, medium and high technical allocations of population, dwelling units and households to urban growth areas, rural areas and resource lands. Prepare documents setting forth and explaining the technical allocations.

1.6 Develop low, medium and high technical allocations of population, dwelling units and households for 2010, 2016, 2022, 2026 and 2036 and other years within the 20-year planning period requested by the County to transportation analysis zones and public facility and service providers (i.e. water purveyors, sewer purveyors, school districts, fire districts and park districts). Prepare documents setting forth and explaining the technical allocations. NOTE: Task 1.6 will be funded by the Whatcom Council of Governments in a separate contract.

1.7 Develop a policy based allocation. The consultant will assist the City/County Planner Group and the County Council to develop a policy based allocation. The consultant will answer questions and provide strategic advice in relation to the technical allocation, GMA, and other factors.

1.8 Conduct an analysis of age cohort changes (historical and projected) and local circumstances, such as housing trends, to inform the allocation and scenario development processes.
Task 2: Employment Projections
The consultant will review current state employment projections. The consultant will assist the County and the cities to develop new projections for the 2014 to 2036 timeframe. The consultant will:

2.1 Review and summarize historic and current data and economic conditions.

2.2 Develop baseline data, including historic employment estimates for UGAs and other study areas and historic growth rates.

2.3 Consult with other agencies and jurisdictions to ensure coordinated and consistent planning and review local economic development goals provided by local jurisdictions.

2.4 Develop low, medium and high County-wide employment projections for the 2014-2036 timeframe.

2.5 Develop low, medium and high technical allocations of employment to urban growth areas, rural areas and resource lands. Prepare documents setting forth and explaining the technical allocations.

2.6 Develop low, medium and high technical allocations of employment for 2010, 2016, 2022, 2026 and 2036 and other years within the 20-year planning period requested by the County to transportation analysis zones and public facility and service providers (i.e. water surveyors, sewer surveyors, school districts, fire districts and park districts). Prepare documents setting forth and explaining the technical allocations. NOTE: Task 2.6 will be funded by the Whatcom Council of Governments in a separate contract.

2.7 Develop a policy based allocation. The consultant will assist the City/County Planner Group and the County Council to develop a policy based allocation. The consultant will answer questions and provide strategic advice in relation to the technical allocation, GMA, and other factors.

Task 3: SEPA Environmental Analysis
Consistent with WAC 197-11, the consultant will prepare a SEPA environmental impact statement to evaluate a range of Comprehensive Plan and UGA alternatives. The proposed level of detail for environmental analysis will be programmatic and area-wide. The EIS will focus on the Comprehensive Plan update and UGA review.

The environmental topics described below represent the preliminary list of anticipated topics that the consultant will address for the SEPA analysis. However, the final list of topics will be determined through the scoping process and the scope and budget may be amended if the scoping process produces additional topics not anticipated to date or if anticipated topics can be removed.

3.1 Scoping
Through a public review process consistent with the SEPA rules, the consultant will work with the County to determine the scope of the EIS.
3.2 Prepare Preliminary Draft EIS
The consultant will compile and prepare a Preliminary Draft EIS based on tasks 3.2.1 to 3.2.12. Following County and City review of the Preliminary Draft EIS, the consultant will review County and City staff comments.

3.2.1 General Sections
The consultant will prepare the required environmental summary, fact sheet, table of contents, distribution lists, and references.

3.2.2 Alternatives Description
The consultant will incorporate draft descriptions of each of the alternatives that have been developed by the City/County Planner Group (it is anticipated that there will be no action alternative and three action alternatives). The purpose of the descriptions is to provide a general overview of the main characteristics and to highlight significant differences among the alternatives. The alternatives description will also address SEPA objectives.

3.2.3 Earth
The consultant will evaluate prior EIS documents for potential incorporation by reference or adaptation into the current EIS. Areas of review are anticipated to include the topography and soils found in the County, naturally occurring asbestos, and the areas subject to geologic hazards including erosion, landslides, liquefaction and other hazards. The identification of geologic conditions and hazards will be based upon Critical Areas Ordinance maps and other available resources. A comparison of growth scenarios and land use alternatives to the location of the sensitive or hazard areas will be made and a discussion of the level of effectiveness of critical area and building regulations will be provided. Mitigation measures to avoid, minimize or rectify impacts will be identified as appropriate.

3.2.4 Air Quality
The air quality analysis will outline requirements of federal, state and regional air quality regulations for the proposed alternatives. The consultant will reference previous environmental documentation, applicable regulations, and air quality status of the county. The analysis will summarize air-monitoring data at continuous monitoring stations based on Northwest Clean Air Agency data. Existing emission inventories of selected pollutants will be summarized if available. The EIS will qualitatively compare the alternatives’ potential to contribute to emissions, including greenhouse gas emissions, based on an order of magnitude comparison of VMT model output through Task 4. A summary of current climate change programs applicable to the county or region will be summarized. Mitigation measures to avoid, minimize or rectify impacts will be identified.

3.2.5 Water Resources
The consultant will summarize existing conditions regarding water quantity and water quality based on available County and State inventories and analyses of critical areas. The consultant will review drainage, flooding, and storm water run-off in the County and seven cities and provide guidance for corrective actions to mitigate or cleanse those discharges that pollute waters of the state. The consultant will prepare an impact analysis of alternatives at a programmatic level using order of magnitude analysis (e.g. broad estimates of impervious surfaces based on acres by class and typical impervious
surfaces associated with the use category). Mitigation measures to avoid, minimize or rectify impacts will be identified. No modeling is included in the scope of services.

3.2.6 Plants and Animals
Plant and animal habitat will be described based on existing County and State published sources. The consultant will qualitatively address common impacts due to habitat alteration or habitat loss due to increased population and employment growth, comparing the land use alternatives in an order-of-magnitude fashion. Mitigation measures to avoid, minimize or rectify impacts will be identified.

3.2.7 Land and Shoreline Use
The land and shoreline use affected environment section will generally describe land use patterns in the county, including a description of location and distribution of urban, rural, and resource land uses. Potential land use impacts will be identified at a programmatic level for each of the alternatives including changes in activity levels, intensity of development and urban/rural land use patterns, land use compatibility, and ability to absorb the densities proposed. Mitigation measures to avoid, minimize or rectify impacts on land and shoreline uses, including on urban, rural and resource lands, will be identified.

3.2.8 Plans and Policies
The EIS will describe the policy and regulatory context in the County. The impact analysis will evaluate the internal and external consistency of the proposed alternatives. Internal consistency will focus on the Comprehensive Plan update and proposed alternatives in the context of the County’s plans and regulations. External consistency with relevant local, regional and state plans and policies including GMA Goals, Shoreline Management Act goals and requirements, Countywide Planning Policies, and local Comprehensive Plans will also be included.

3.2.9 Population, Housing and Employment
The EIS will assess impacts of the land use alternatives on employment, housing, and population in the County including growth rates, land capacity in relation to growth projections, jobs/housing balance and related issues. Mitigation measures to avoid, minimize or rectify impacts will be identified. This may include reference to mitigation measures proposed in sections addressing other elements of the environment.

3.2.10 Cultural Resources
The consultant will evaluate prior EIS documents for potential incorporation by reference or adaptation into the current EIS. Areas of review are anticipated to include historic and cultural resources known to be present in the County based upon published State and County sources. Potential impacts will be discussed at a programmatic level. Mitigating measures, including federal, state and local requirements, will be identified as appropriate.

3.2.11 Transportation
Analysis described under Task 4 will be incorporated into the Draft EIS. Transportation inventory and existing conditions analysis results will be incorporated into the affected environment section. Impacts will be identified through analysis of future conditions for each of the land use alternatives, and will primarily be based upon LOS analysis results assuming County LOS standards. The consultant will use WCOG Model output to
generate link-based LOS results. Mitigation measures to avoid, minimize or rectify
impacts will be identified. Mitigation will include transportation improvement projects
identified to address deficiencies. The mitigation section will also describe potential
options under GMA for additional revenue sources, revisions to LOS/concurrency
standards, and/or land use that could be implemented to ensure a balanced
transportation plan that supports land uses proposed.

3.2.12 Public Services and Utilities
The Public Services and Utilities section will address public facilities, public services,
and private utilities including:
- Law Enforcement
- Fire and Emergency Medical Services
- Parks and Recreation
- Schools
- Water
- Wastewater
- Stormwater
- Solid Waste
- Power, Gas, and Telecommunication Utilities

The affected environment analysis will be based on existing or proposed County, city,
special districts, and private utility providers’ plans, and will generally describe the
services provided and service areas. It will also include an analysis of current levels of
service (where applicable) and capacity. The impact analysis will include future
demand projections for public facilities and services, and compare these projections to
adopted level of service standards. Mitigation measures to avoid, minimize or rectify
impacts will be identified.

3.3 Prepare Draft EIS
The consultant will prepare a revised Draft EIS incorporating County and other agency
comments authorized by the County, and will provide a preliminary version for staff to
ascertain that the comments have been incorporated as appropriate prior to
publication as a Public Draft EIS.

3.4 Prepare Final EIS
The consultant will compile and prepare a Final EIS based on tasks 3.4.1 to 3.4.3.

3.4.1 Review Comments Received on Draft Plan/EIS
At the close of the comment period, the consultant will receive from the County all
public and agency comments received on the Draft EIS. The consultant will assign a
comment number to each individual comment and provide a mark-up copy of the
comments with comment numbers noted in the margin for County review. The
consultant will also provide an electronic Adobe PDF copy of each comment with
marked-up copy and associated comment number.
The consultant, County staff and City staff will participate in one working session to (1) review the draft mark-up of comments prepared above, and (2) discuss the approach for responding to comments. The consultant will prepare responses to comments on the Draft EIS at the direction of the County.

The consultant will prepare a preliminary comments and responses section for County review. The consultant will conduct any necessary review of documents, coordinate with County staff as needed and prepare preliminary text for County review. One round of review of the preliminary comments and responses is assumed.

3.4.2 Modified Alternative for Final EIS
To support the Final EIS preparation a description of a modified alternative (for example a hybrid alternative) may be prepared by the consultant. The consultant will prepare a consistency analysis of the modified alternative with GMA goals for use in the Final EIS. The Final EIS will document how the modified alternative is within the range of the Draft EIS analysis.

3.4.3 Preliminary and Public Drafts of Final EIS
Following County review of the preliminary Final EIS, the consultant will meet with County staff to obtain final comments and prepare revisions as directed. The consultant will also respond to other agency comments authorized by the County. A print-check copy of the public review Final EIS will be provided to confirm requested changes have been made satisfactorily and, upon concurrence, the document will be printed and distributed by the County.

Task 4: Transportation Model Analysis
The Whatcom Council of Governments (WCOG) will supply transportation modeling services for the land use alternatives studied in the draft EIS and the additional modified alternative studied in the final EIS. The consultant will develop land use assumptions by Transportation Analysis Zones (TAZ). The consultant will use model outputs of volumes supplied by the WCOG and determine appropriate level of service (LOS) results for each alternative. The consultant will prepare SEPA or other planning analysis using WCOG output information, and will allow the WCOG to review a preliminary draft of the written results prior to developing public review drafts. NOTE: Tasks 4 through 4.7 will be funded by the Whatcom Council of Governments by a separate contract.

Task 4.1 Council of Governments (WCOG) Coordination
The consultant will coordinate with the WCOG to ensure that population, household and employment data developed by the consultant will be in the format required by the WCOG to run the transportation model.

Task 4.2 Base Model - Existing Conditions
The consultant will use WCOG supplied information regarding the model results for “current conditions” and prepare a summary of base year conditions for use in the SEPA and planning process. Available planning level transportation studies or traffic counts that give context to the base year model results will be incorporated by the consultant where relevant.
Task 4.3 Transportation Analysis Zone Land Use Data
For the no action and action alternatives, the consultant will convert the proposed land use to household and employment units, and allocate to TAZs defined in the WCOG travel demand forecasting model. WCOG staff will input the land use/socioeconomic information into the countywide travel demand forecasting model to develop traffic forecasts for each scenario.

Task 4.4 No Action Alternative Analysis
The WCOG will test the No Action Alternative in the travel demand model. For transportation links that are part of the concurrency/LOS analysis, the WCOG will provide link volumes allowing the consultant to prepare the volume to capacity (V/C) ratios. The consultant will then prepare, in consultation with Whatcom County, recommended transportation improvements to address deficiencies.

Task 4.5 Action Alternatives Analysis
The WCOG will test the Action Alternatives in the travel demand model. For transportation links that are part of the concurrency/LOS analysis, the WCOG will provide link volumes allowing the consultant to prepare the volume to capacity (V/C) ratios. The consultant will then prepare, in consultation with Whatcom County, recommended transportation improvements to address deficiencies.

Task 4.6 Sensitivity Analysis
The WCOG may provide assistance in conducting a sensitivity analysis, which may involve developing proposed improvements or varying land use assumptions utilized in the transportation model. For transportation links that are part of the concurrency/LOS analysis, the WCOG will provide link volumes allowing the consultant to prepare the volume to capacity (V/C) ratios.

Task 4.7 Modified Alternative Analysis
The WCOG will test one additional alternative for inclusion in the Final EIS. For transportation links that are part of the concurrency/LOS analysis, the WCOG will provide link volumes allowing the consultant to prepare V/C ratios. The consultant will then prepare, in consultation with Whatcom County, recommended transportation improvements to address deficiencies.

Task 5: Project Management
This task includes overall project management activities including invoicing, progress reports, schedule, and overall coordination.

5.1 Progress Reports and Invoicing
Once a quarter, the consultant will provide County staff with an activity report that highlights services provided and accomplished in the prior quarter, identifying services to be provided, and listing any outstanding issues to be addressed.

Billings will be provided in accordance with the contract requirements.

5.2 Schedule
The consultant and County staff will assess project progress and discuss actions necessary to ensure that the project remains on schedule and within budget.
5.3 Consultant and County Team Meetings and Conferences
The consultant and County will hold teleconferences as necessary to ensure the project remains on-track. The consultant will also attend in-person meetings up to the hours of the budget. These meetings are in addition to the individual task meetings where specified above.

County Notes
Work on tasks 1-5 above will commence concurrently consistent with the approved schedule. These tasks are not necessarily in sequential order. Priority will be given, at the direction of Whatcom County Planning and Development Services.
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Draft UGA Review Schedule 2015
**WHATCOM COUNTY COUNCIL AGENDA BILL**

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**TITLE OF DOCUMENT:**
FFY2012 State Homeland Security Program (SHSP), Contract # E13-152

**ATTACHMENTS:**
- Two (2) copies of the FFY2012 SHSP Contract
- Contract Information Sheet
- Supporting Memo

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<th>SEPA review required?</th>
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<th>Yes</th>
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<td>SEPA review completed?</td>
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<td>Yes</td>
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| 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.)

FFY2012 State Homeland Security Program provides funding to enhance local governments’ ability to prevent, protect against, mitigate, respond to, and recover from acts of terrorism and other catastrophic events.

Award amount: $48,380


**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.*
MEMO

To: Jack Louws, County Executive

From: Kent Catlin, Deputy Director

Subject: Department of Homeland Security, State Homeland Security Program (SHSP) FFY2012 SHSP Contract # E13-152

Date: February 19, 2013

Enclosed are two (2) originals of the FFY2012 State Homeland Security Program contract between Whatcom County Sheriff’s Office Division of Emergency Management (WCSO-DEM) and Snohomish County.

- Background and Purpose
  Whatcom County Sheriff’s Office Division of Emergency Management has been awarded $48,380.00 from the Dept of Homeland Security (DHS) State Homeland Security Program (SHSP) for Federal Fiscal Year 2012. This grant flows from DHS, through the Washington State Military Department and Snohomish County. Whatcom County has received an SHSP award annually since Federal Fiscal Year 2003.

  DHS provides SHSP funds to enhance the ability of state, local, and tribal government to prevent, protect against, mitigate, respond to, and recover from acts of terrorism and other catastrophic events. The Whatcom County Emergency Management Council Homeland Security Committee will further allocate these funds among Whatcom County jurisdictions to support their exercise, training, planning, and equipment needs. Whatcom County has used its allocation, in part, to support an Emergency Management Program Specialist position, public education, and community outreach.

  The performance period for this grant runs from September 1, 2012 through July 31, 2014.

- Funding Amount and Source
  $48,380.00 from the Dept of Homeland Security FFY2012 SHSP, Contract # E13-152, Funding Source Agreement EMW-2012-SS-00115-S01, CFDA 97.067 HSGP.

  If you have any questions or concerns regarding this contract, please contact Frances Burkhart or me at 676-8681.
WHATCOM COUNTY CONTRACT
INFORMATION SHEET

Originating Department: Sheriff's Office – Division of Emergency Management
Contract Administrator: Kent Catlin
Contractor's / Agency Name: Snohomish County

Is this a New Contract? Yes __X__ No ______
If not, is this an Amendment or Renewal to an Existing Contract?
Yes ___ No ___
If yes, previous number(s): __________________________

Is this a grant agreement? Yes __X__ No _____
If yes, grantor agency contract number(s) E13-152, CFDA # 97.067 - HSGP

Is this contract grant funded? Yes ___ No __X__
If yes, associated Whatcom County grant contract number(s) __________________

Is this contract the result of a RFP or Bid process? Yes ___ No __X__
If yes, RFP and Bid number(s) __________________

Cost Center: _______________________

Is this contract excluded from E-Verify? No ______
Yes __X__ If no, include Attachment D Contractor Declaration Form
If yes, indicate qualified exclusion(s) below:
_X__ Contract less than $100,000.
_X__ Work is for less than 120 days
_X__ Interlocal Agreement (between Govt.)

Professional services agreement for certified/licensed professional
Contract for Commercial off the shelf items (COTS)
Public Works Dept. Local Agency/Federally Funded FHWA

Contract Amount (sum of orig contract amt and any prior amendments)
$ 48,380.00
This Amendment Amount:
$ __________________________
Total Amended Amount:
$ __________________________

If a Professional Services Agreement is more than $15,000 or a Bid is more than $35,000, please submit an Agenda Bill for Council approval and a supporting memo. Any amendment that provides either a 10% increase in amount or more than $10,000, whichever is greater, must also go to Council and will need an agenda bill and supporting memo if less than these thresholds, just submit to Executive with supporting memo for approval.

Scope of Services: [Insert language from contract (Exhibit A) or summarize; expand space as necessary]
To enhance local governments' ability to prevent, protect against, mitigate, respond to, and recover from acts of terrorism and other catastrophic events.
Funding for this contract is provided by the US Dept of Homeland Security State Homeland Security Program for Federal Fiscal Year 2012.

Term of Contract: ________________ Expiration Date: July 31, 2014

Contract Routing Steps & Signoff: [sign or initial] [indicate date transmitted]
1. Prepared by __X__ 2. Attorney reviewed __X__
3. AS Finance reviewed __X__
4. IT reviewed if IT related ___
5. Corrections made ___
6. Attorney signoff __X__
7. Contractor signed ___
8. Submitted to Exec Office ___
9. Council approved (if necessary) ___
10. Executive signed ___
11. Contractor Original Returned to dept. ___
12. County Original to Council ___

Date 3/11/13 [summary via electronic; hardcopies]
Date 2/19/13 [electronic]
Date 2/15/13 [electronic]
Date 2/19/13 [electronic]
Date 2/11/13 [electronic]

Last Revised 1/19/12
150
SNOHOMISH COUNTY HOMELAND SECURITY GRANT AGREEMENT FACE SHEET

1. Subgrantee Name and Address: Whatcom County - Division of Emergency Management 311 Grand Ave Bellingham, WA 98225

2. Grant Agreement Amount: $48,380

3. Grant Agreement Number: E13-152

4. Subgrantee Contact, phone number: Frances Burkhart, 360-778-7161

5. Grant Agreement Start Date: 9/1/2012

6. Grant Agreement End Date: 7/31/2014

7. County Program Manager(s), phone: Bill Ekse, 425-388-5761 Tammy Jones, 425-388-5072

8. Data Universal Numbering System (DUNS): 060044641

9. UBI # (state revenue): 313-014-461

10. Funding Authority: Snohomish County (County), Washington State Military Department (the "Department") and the U.S. Department of Homeland Security (DHS)

11. Federal Funding Source Agreement #: EMW-2012-SS-00115-S01

12. Department Funding Code (PI): 723SL

13. Catalog of Federal Domestic Assistance (CFDA) # & Title: 97.067 - HSGP

14. TIN: 91-6001383

15. Service Districts: (BY LEGISLATIVE DISTRICT): 38, 44 (BY CONGRESSIONAL DISTRICT): 2

16. Service Area by County(ies): Whatcom

17. Women/Minority-Owned, State Certified?: □ N/A □ NO □ YES, OMWBE #

18. Agreement Classification

□ Personal Services □ Client Services X Public/Local Gov't
 □ Collaborative Research □ A/E □ Other

19. Contract Type (check all that apply):

□ Contract □ Grant □ Agreement
 □ Intergovernmental (RCW 39.34) □ Interagency

20. Subgrantee Selection Process:

X "To all who apply & qualify" □ Competitive Bidding
 □ Sole Source □ A/E RCW □ N/A
 □ Filed w/OFM? □ Advertised? □ YES □ NO

21. Subcontractor Type (check all that apply):

□ Private Organization/Individual □ For-Profit
 □ Public Organization/Jurisdiction X Non-Profit
 □ VENDOR X SUBRECIPIENT □ OTHER

22. PURPOSE:

The FY 2012 Homeland Security Grant Program (HSGP) funding plays an important role in the implementation of Presidential Policy Directive – 8 (PPD-8) by supporting the development and sustainment of core capabilities to fulfill the National Preparedness Goal (NPG). HSGP funding shall be used for costs related to the planning, organization, equipment, training, and exercise needs that prevent, protect against, mitigate, respond to, and recover from acts of terrorism and other catastrophic events. The HSGP consists of the State Homeland Security Program (SHSP), the Urban Area Security Initiative (UASI), and Operation Stonegarden (OPSG).

The County and Subgrantee acknowledge and accept the terms of this Grant Agreement, including all referenced Exhibits and Attachments which are hereby incorporated in and made a part hereof, and have executed this Grant Agreement as of the date and year written below. This Grant Agreement Face Sheet; Special Terms & Conditions (Exhibit A); General Terms and Conditions (Exhibit B); Approved Projects (Exhibit C); Milestone Timeline (Exhibit D); Budget (Exhibit E); and all other documents, exhibits and attachments expressly referenced and incorporated herein contain all the terms and conditions agreed upon by the parties and govern the rights and obligations of the parties to this Grant Agreement. No other understandings, oral or otherwise, regarding the subject matter of this Grant Agreement shall be deemed to exist or to bind any of the parties hereto.

In the event of an inconsistency in this Grant Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order:

1. Applicable Federal and State Statutes and Regulations
2. Approved Projects
3. Special Terms and Conditions
4. General Terms and Conditions, and,
5. Other provisions of the grant agreement incorporated by reference.

IN WITNESS WHEREOF, the parties hereto have executed this Grant Agreement on the day and year last specified below.

FOR THE COUNTY:

Signature Date
Aaron Reardon, Snohomish County Executive

Signature Date
John Pennington, Director Snohomish County DEM

FOR THE SUBGRANTEE:

Signature Date
Jack Lewis, Whatcom County Executive

Signature Date
Bill Ekse, Whatcom County Sheriff

Signature Date
Randall J. Wett, Whatcom County Civil Deputy Prosecutor
SPECIAL TERMS AND CONDITIONS

ARTICLE I -- KEY PERSONNEL
The individuals listed below shall be considered key personnel for point of contact under this Grant Agreement. Any substitution of key personnel by either party shall be made by written notification to the current key personnel.

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ARTICLE II -- ADMINISTRATIVE AND/OR FINANCIAL REQUIREMENTS
The Subgrantee shall comply with all applicable state and federal laws, regulations and program guidance. A non-exclusive list of laws, regulations and guidance commonly applicable to DHS/FEMA grants are listed here for reference only, and include, but are not limited to, the following:


3. Grant funds will not replace (supplant) funds that have been budgeted for the same purpose through non-Federal sources. The Subgrantee, upon written request by the County, the Department, DHS or FEMA, shall demonstrate through supporting records and documentation that a reduction in non-Federal resources occurred for reasons other than the receipt or expected receipt of Federal funds.

4. Duplication of Benefits: There may not be a duplication of any Federal assistance by governmental entities per 2 CFR Part 225, Appendix A, Basic Guidelines, Section C.3 (c), which states: "Any cost allocable to a particular Federal award or cost objective under the principles provided for in 2 CFR Part 225 may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by law or terms of the Federal awards, or for other reasons." However, this prohibition would not preclude governmental units from shifting costs that are allowable under two or more awards in accordance with existing program agreements. Non-governmental entities are also subject to this prohibition per 2 CFR Parts 220 and 230 and 48 CFR Part 31.2.

5. The Subgrantee shall comply with all applicable federal laws, regulations and guidance referenced in the Fiscal Year (FY) 2012 Homeland Security Grant Program (HSGP) Funding Opportunity Announcement (FOA) which can be found at http://www.fema.gov/grants and is hereby incorporated in and made a part of this Grant Agreement.
6. The Subgrantee shall comply with the Federal Funding Accountability and Transparency Act (FFATA) and related OMB Guidance consistent with Public Law 109-282 as amended by section 6202(a) of Public Law 110-252 (see 31 U.S.C. 6101 note) and complete and return to the County Attachment #1 attached to and made a part of this Grant Agreement.

ARTICLE III – REIMBURSEMENT/INVOICING PROCEDURES

1. The Subgrantee acknowledges that since this Grant Agreement involves federal funding, the period of performance described herein will likely begin prior to the availability of appropriated federal funds. The Subgrantee agrees that it will not hold the County, the Department, the State of Washington, or the United States liable for any damages, claim for reimbursement, or any type of payment whatsoever for services performed under this Grant Agreement prior to distribution of appropriated federal funds.

2. This is a fixed price, reimbursement Grant Agreement. Within the total Grant Agreement amount, travel, sub-contracts, salaries and wages, benefits, printing, equipment, and other goods and services or other budget categories will be reimbursed on an actual cost basis unless otherwise provided in this Grant Agreement. Any travel or subsistence reimbursement allowed under the Grant Agreement shall be paid in accordance with rates set pursuant to RCW 43.03.050 and RCW 43.03.060 as now existing or amended, but shall not exceed federal maximum rates set forth at http://www.assa.gov without prior written approval by the County key personnel.

3. Copies of receipts and/or backup documentation for any approved budget line items including travel related expenses that are authorized under this Grant Agreement must be included with the Subgrantee’s reimbursement requests. Originals are to be maintained by the Subgrantee and be made available upon request by the County, the Department, and local, state, or federal auditors.

4. The Subgrantee will submit reimbursement requests to the County by submitting an invoice form and a completed reimbursement spreadsheet (in the format provided by the County) detailing the expenditures and allocable project for which reimbursement is sought. Reimbursement requests shall be submitted to the County’s key personnel and must be submitted no more frequently than monthly; and it is required that invoices be submitted at least quarterly.

5. All work under this Grant Agreement must end on or before the Grant Agreement End Date, and the final reimbursement request must be submitted to the County within 10 days after the Grant Agreement End Date. The maximum amount of all reimbursement requests permitted to be submitted under this Grant Agreement, including the final reimbursement request, is limited to and shall not exceed the total Grant Agreement Amount.

6. No equipment or supply costs will be reimbursed until the related equipment/supplies have been received by the Subgrantee and invoiced by the vendor.

7. Requests for reimbursement of equipment purchases must include a copy of the vendor’s invoice and packing slip or a statement signed and dated by the Subgrantee’s authorized representative that states “all items invoiced have been received in good working order, are operational, and have been inventoried according to contract and local procurement requirements”.

8. Failure to timely submit complete reports and reimbursement requests as required by this Grant Agreement (including but not limited to those reports in the Milestone Timeline) will prohibit the Subgrantee from being reimbursed until such complete reports and reimbursement requests are submitted and the County has had reasonable time to conduct its review.

9. Final reimbursement requests will not be approved for payment if Subgrantee is not current with all reporting requirements contained in this Grant Agreement.
ARTICLE IV – REPORTING REQUIREMENTS
1. The Subgrantee shall submit a reimbursement request by July 10th and January 10th to assist the County in the preparation of the Region 1 bi-annual progress reports as indicated in the Milestone Timeline.

2. The Subgrantee shall submit a Grant Funded Typed Resource Report by July 10th and January 10th as indicated in the Milestone Timeline.

3. The Subgrantee shall submit a final report describing completed activities under this Grant Agreement within 10 days of Grant Agreement End Date.

ARTICLE V – EQUIPMENT MANAGEMENT
All equipment purchased under this Grant Agreement, by the Subgrantee or a contractor, will be recorded and maintained in the Subgrantee’s equipment inventory system.

1. Upon successful completion of the terms of this Grant Agreement, all equipment purchased through this Grant Agreement will be owned by the Subgrantee, or a recognized sub-recipient for which a contract, sub-Grant Agreement, or other means of legal transfer of ownership is in place.

2. The Subgrantee, or a recognized Subgrantee/sub-contractor, shall be responsible for any and all operational and maintenance expenses and for the safe operation of their equipment including all questions of liability. The Subgrantee shall develop appropriate maintenance schedules and procedures to ensure the equipment is well maintained and kept in good operating condition.

3. The Subgrantee shall maintain equipment records that include: a description of the property; the manufacturer’s serial number, model number, or other identification number; the source of the equipment, including the Catalogue of Federal Domestic Assistance (CFDA) number; who holds title; the acquisition date; the cost of the equipment and the percentage of Federal participation in the cost; the location, use and condition of the equipment at the date the information was reported; and disposition data including the date of disposal and sale price of the property.

4. Records for equipment shall be retained by the Subgrantee for a period of six years from the date of the disposition, replacement or transfer. If any litigation, claim, or audit is started before the expiration of the six year period, the records shall be retained by the Subgrantee until all litigation, claims, or audit findings involving the records have been resolved.

5. The Subgrantee shall take a physical inventory of the equipment and reconcile the results with the property records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the records shall be investigated by the Subgrantee to determine the cause of the difference. The Subgrantee shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.

6. The Subgrantee shall develop a control system to ensure adequate safeguards to prevent loss, damage, and theft of the property. Any loss, damage or theft shall be investigated and a report generated and sent to the County.

7. If the Subgrantee is authorized or required to sell the property, proper sales procedures must be established and followed to ensure the highest possible return.

8. When original or replacement equipment is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, disposition of the equipment will be made as follows:
   a. Items of equipment with a current per-unit fair market value of less than $5,000 may be retained, sold or otherwise disposed of by the Subgrantee with no further obligation to the awarding agency.
   b. Items of equipment with a current per-unit fair market value of more than $5,000 may be retained or sold and the Subgrantee shall compensate the Federal-sponsoring agency for its share.
9. As recipient of federal funds the Subgrantee must pass on equipment management requirements that meet or exceed the requirements outlined above for all sub-contractors, consultants, and Subgrantees who receive pass-through funding from this Grant Agreement.

ARTICLE VI – ENVIRONMENTAL AND HISTORICAL PRESERVATION
2. The Subgrantee agrees that to receive any federal preparedness funding, all EHP compliance requirements outlined in applicable guidance must be met. The Subgrantee is advised that any project or expenditure with the potential to impact natural or biological resources or historic properties, including but not limited to, communication towers, physical security enhancements, new construction, renovation, or modification to buildings or structures, cannot be initiated until FEMA has completed the required EHP review. If potential impact is identified, EHP review is required prior to project implementation. Projects implemented prior to receiving EHP approval from FEMA risk de-obligation of funds.

ARTICLE VII – PROCUREMENT
The Subgrantee shall comply with all procurement requirements of 44 CFR Part 13.36, Procurement. All sole source contracts expected to exceed $100,000 must be submitted to the County for review and approval prior to the Subgrantee’s award and execution of a contract. This requirement must be passed on to all of the Subgrantee’s sub-contractors, at which point the Subgrantee will be responsible for reviewing and approving their sub-contractor’s sole source justifications.

Per the 44 CFR Part 13.36, the Subgrantee’s contracts must contain the following provisions:

1. Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts more than $100,000)
2. Termination for cause and for convenience by the Subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of $10,000)
3. Compliance with Executive Order 11246 of September 24, 1965, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Chapter 60). (All construction contracts awarded in excess of $10,000)
4. Compliance with the Copeland “Anti-Kickback” Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). (All contracts and sub-grants for construction or repair)
5. Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of $2,000 awarded when required by Federal grant program legislation)
6. Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts in excess of $2,000, and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers)
7. Notice of requirements and regulations pertaining to reporting.
8. Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.
9. Requirements and regulations pertaining to copyrights and rights in data.
10. Access by the County, Department, the Subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

11. Retention of all required records for six years after the Subgrantee makes final payments and all other pending matters are closed.

12. Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and sub-grants of amounts in excess of $100,000)

13. All recipients of financial assistance will comply with the requirements of the Federal regulations at 45 CFR Part 46, which requires that recipients comply with applicable provisions/law for the protection of human subjects for purposes of research.

14. All recipients of financial assistance will comply with the requirements of Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency.

15. If, during the past three years, the recipient has been accused of discrimination on the grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status, the recipient must provide a list of all such proceedings, pending or completed, including outcome and copies of settlement agreements to the County for forwarding to the Department and the DHS awarding office and the DHS Office of Civil Rights and Civil Liberties. In the event any court or administrative agency makes a finding of discrimination on grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status against the recipient, or the recipient settles a case or matter alleging such discrimination, recipients must forward a copy of the complaint and findings to the DHS Component and/or awarding office. The United States has the right to seek judicial enforcement of these obligations.

16. Subgrantee must obtain prior approval prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.

17. All recipients of financial assistance will comply with the requirements that project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.

ARTICLE VIII – SUBGRANTEE MONITORING
1. The County will monitor the activities of the Subgrantee from award to closeout. The goal of the County’s monitoring activities will be to ensure that agencies receiving federal pass-through funds are in compliance with this Grant Agreement, federal and state audit requirements, federal grant guidance, and applicable federal and state financial regulations, as well as OMB Circular A-133, Audits of States, Local Governments and Non-Profit Organizations.

2. Monitoring activities may include, but are not limited to:
   a. review of performance reports;
   b. monitor and document the completion of Grant Agreement deliverables;
   c. documentation of phone calls, meetings, e-mails and correspondence;
   d. review of reimbursement requests and supporting documentation to ensure allowability and consistency with Grant Agreement budget and federal requirements;
   e. observation and documentation of Grant Agreement related activities, such as exercises, training, funded events and equipment demonstrations;
f. on-site visits to review equipment records and inventories, to verify source
documentation for reimbursement requests and performance reports, and to verify
completion of deliverables.

3. As a sub-recipient of federal funds, the Subgrantee is required to meet or exceed the
monitoring activities, as outlined above, for all sub-contractors, consultants, and sub-
recipients who receive pass-through funding from this Grant Agreement.

ARTICLE IX – GRANT AGREEMENT MODIFICATION REQUESTS
A Subgrantee may request a modification to the Grant Agreement in writing to the County key
personnel. Modifications may be requested for Grant Agreement end date, budget or scope
change.

ARTICLE X – NIMS COMPLIANCE
1. The Subgrantee agrees that in order to receive Federal Fiscal Year 2012 (FFY12) federal
preparedness funding, the National Incident Management System (NIMS) compliance
requirements for 2012 must be met.

2. In accordance with Homeland Security Presidential Directive (HSPD)-5, Management of
Domestic Incidents, the adoption of the National Incident Management System (NIMS) is a
requirement to receive Federal preparedness assistance, through grants, contracts, and
other activities. The NIMS provides a consistent nationwide template to enable all levels of
government, Tribal nations, nongovernmental organizations including voluntary
organizations, and private sector partners to work together to prevent, protect against,
respond to, recover from, and mitigate the effects of incidents, regardless of cause, size,
location, or complexity.

3. All local government and Tribal nations Subgrantees should update their respective NIMS
Compliance Assistance Support Tool (NIMSCAST) assessments and, if necessary, submit
a Corrective Action Plan via NIMSCAST for FFY12. Corrective Action Plans are only
required if a jurisdiction fails to meet one of the NIMS implementation activities.
Comprehensive information concerning NIMS implementation for States, Tribal nations,
local governments, nongovernmental organizations, and the private sector is available
through the National Integration Center (NIC) at FEMA's NIMS Resource Center at

4. Local governments and tribal nations should continue to implement NIMS training guidance
(course curricula and instructor qualifications) contained in the NIMS Training Plan,
released in September 2011 and any successor guidance released by FEMA. [Note: Coursework and training
developed and/or delivered by National Wildfire Coordinating Group (NWCG) meet the course and instructor requirements of the NIMS Training Plan].
NIMS training guidance is available on FEMA's NIMS Resource Center at

ARTICLE XI – HSGP SPECIFIC REQUIREMENTS
The Washington State Military Department -EMD receives grant funding each year from the
(FEMA) through the Homeland Security Grant Program (HSGP). The FY 2012 HSGP funding
plays an important role in the implementation of Presidential Policy Directive – 8 (PPD-8) by
supporting the development and sustainment of core capabilities to fulfill the National
Preparedness Goal (NPG). HSGP funding shall be used for costs related to the planning,
organization, equipment, training, and exercise needs that prevent, protect against, mitigate,
respond to, and recover from acts of terrorism and other catastrophic events.

The State Homeland Security Program (SHSP) is a component of the HSGP funding.

1. The FFY 2012 HSGP grant stipulates the following:
   a. Up to 5 percent may be used for management and administrative purposes
      associated with the HSGP award.
b. At least 25 percent of the combined HSGP funds allocated under SHSP are dedicated towards law enforcement terrorism prevention activities (LETPA) linked to one or more capabilities within the NPG. The LETPA allocation can be from SHSP, UAS, or both.

c. Personnel expenses may not exceed 50 percent of the HSGP award.

d. Although no longer funded as discrete grant programs, all activities and costs allowed under the FY 2010 Buffer Zone Protection Program (BZPP), FY 2010 Interoperable Emergency Communications Grant Program (IECGP), FY 2011 Citizen Corps Program (CCP), FY 2011 Driver’s License Security Grant Program (DLSGP), and FY 2011 Metropolitan Medical Response System (MMRS) are allowable activities and costs.

2. Use of HSGP funds must be consistent with and supportive of implementation of the State Homeland Security Strategy.

3. SHSP-funded projects must address the identified planning, organization, equipment, training, and exercise needs to prevent, protect against, respond to, and recover from acts of terrorism and other catastrophic events.

   In addition, SHSP projects are to support the implementation of the National Preparedness Guidelines, the National Incident Management System, the National Response Framework, and the National Strategy for Information Sharing, the National Infrastructure Protection Plan, and the State Preparedness Report.

4. The Subgrantee shall use HSGP funds to perform tasks as described in the Projects of the Subgrantee’s award for funding, as approved by the County and the Department.

5. Exercises should be managed and executed in accordance with the Homeland Security Exercise and Evaluation Program (HSEEP). Upon completion of the exercise, an After Action Report and an Improvement Plan must be prepared and submitted. [Link]

6. Equipment must be in compliance with the FEMA Authorized Equipment List (AEL), as detailed at: [Link]

7. Subgrantees will provide report and/or assist with completion of reports required by the grant.

8. The Subgrantee or a Subcontractor shall submit all proposed equipment purchases to the Committee on Homeland Security, Subcommittee on Equipment to ensure that the requested equipment is on the Authorized Equipment List, is aligned with the statewide equipment purchasing strategy, and meets all statewide interoperability and standardization requirements. No reimbursement for equipment costs will occur until the appropriate approvals have been obtained.

9. Equipment purchased with funds from DHS grant programs, when possible, should be marked with “Purchased with funds provided by the U.S. Department of Homeland Security” whenever possible.

10. The Subgrantee will comply with

   a. All applicable state and federal statutes, regulations and executive orders relating to nondiscrimination, including but not limited to: (a) Title VI of the Civil Rights Act of 1964 (PL 88-352, 42 U.S.C. 2000d) which prohibits discrimination on the basis of race, color or national origin, (b) Civil Right Act of 1968 (42 U.S.C. 3601), which prohibits recipients from discriminating in the sale, rental, financing, and advertising of dwellings, or in the provision of services in connection therewith, on the basis of race, color, national origin, religion, disability, familial status, and sex, (c) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681 et seq.), which prohibits discrimination on the basis of sex; (d) Section 504 of the
Rehabilitation Act of 1973 (PL 93-112), as amended (29 U.S.C §794), which prohibits discrimination on the basis of disability; (e) the Age Discrimination Act of 1975, as amended (42 U.S.C §§6101 et seq.), which prohibits discrimination on the basis of age; (f) Fly America Act of 1974 which states preference for U.S. Flag Air Carriers, (g) Drug-Free Workplace Act of 1988 which requires the Subgrantee to notify the County if an employee of the recipient is convicted of violating a criminal drug statute, (h) Trafficking Victims Protection Act of 2000, (i) Animal Welfare Act of 1966, (j) Clean Air Act of 1970, (k) Clean Water Act of 1977, (l) National Flood Insurance Act of 1968, (m) Flood Disaster Protection Act of 1973, (n) Coastal Wetlands Planning, Protection, and Restoration Act of 1990, (o) USA Patriot Act of 2001, and (p) the Fair Housing Amendments Act of 1988 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing. However, the requirements of Section 202 of Executive Order 11246, as amended, do not apply to a government contractor or subcontractor that is a religious corporation, association, educational institution or society, with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution or society of its activities.

b. If applicable, environmental standards prescribed pursuant to the following: (a) protection and enhancement of environmental quality pursuant to Executive Order (EO) 11514, as amended; (b) administration of the Clean Air Act and the Federal Water Pollution Control Act with respect to Federal contracts, grants, or loans pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990, as amended; (d) floodplains management pursuant to EO 11888, as amended; (e) the Coastal Zone Management Act of 1972 (P.L. 92-583), 16 U.S.C. §§1451 et seq., as amended; (f) Air Quality & Emission Limitations pursuant to 42 U.S.C. §§7401 et seq.; (g) the Safe Drinking Water Act of 1974 (PL 93-523), as amended; and, (h) the Endangered Species Act of 1973 (PL 93-205), as amended.

11. Per 2 CFR Part 215, Subgrantees are subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements.”

The Subgrantee may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. DHS/FEMA reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

The Federal Government has the right to: obtain, reproduce, publish or otherwise use the data first produced under an award and authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

All recipients of financial assistance will comply with requirements to acknowledge Federal funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with Federal funds.
A.1 DEFINITIONS
As used throughout this Grant Agreement, the following terms will have the meaning set forth below:

a. "Department" means the Washington State Military Department, as a state agency, any division, section, office, unit or other entity of the Department, or any of the officers or other officials lawfully representing that Department.

b. "Subgrantee" means the government or other eligible legal entity to which a subgrant is awarded and which is accountable to the Grantee for the use of the funds provided under this Grant Agreement, and includes all employees of the Subgrantee and any sub-contractor retained by the Subgrantee as permitted under the terms of this Grant Agreement. The term "Subgrantee" and "Contractor" may be used interchangeably in this Grant Agreement.

c. "Subgrantee Agent" means the official representative and alternate designated or appointed by the Subgrantee in writing and authorized to make decisions on behalf of the Subgrantee.

d. "Grantee" means the government to which a grant is awarded and which is accountable for the use of the funds provided. The Grantee is an entire legal entity even if only a particular component of the entity is designated in the grant award document. For the purpose of this Grant Agreement, Snohomish County is the Grantee. The Grantee and the County are one and the same.

e. "Monitoring Activities" means all administrative, financial, or other review activities that are conducted to ensure compliance with all state and federal laws, rules, authorities and policies.

f. "Investment Justification" means grant application investment justification submitted by the Subgrantee describing the project for which federal funding is sought and provided under this Grant Agreement. Such grant application investment justification is hereby incorporated into this Grant Agreement by reference.

g. "PL" – is defined and used herein to mean the Public Law.

h. "CFR" – is defined and used herein to mean the Code of Federal Regulations.

i. "OMB" – is defined and used herein to mean the Office of Management and Budget.

j. "WAC" – is defined and used herein to mean the Washington Administrative Code.

k. "RCW" – is defined and used herein to mean the Revised Code of Washington.

A.2 SINGLE AUDIT ACT REQUIREMENTS (INCLUDING ALL AMENDMENTS)
Non-federal entities as subrecipients that expend $500,000 or more in one fiscal year of federal funds from all sources, direct and indirect, are required to have a single or a program-specific audit conducted in accordance with the Office of Management and Budget (OMB) Circular A-133-Audits of States, Local Governments, and Non-Profit Organizations (amended June 27, 2003, effective for fiscal years ending after December 31, 2003, and further amended June 26, 2007). Non-federal entities that spend less than $500,000 a year in federal awards are exempt from federal audit requirements for that year, except as noted in Circular No. A-133. As defined in Circular A-133, the term "non-federal entity" means a State, local government, or non-profit organization, and the term "State" includes Indian tribes. Circular A-133 is available on the OMB Home Page at http://www.omb.gov.

A Subgrantee required to have an audit must ensure the audit is performed in accordance with Generally Accepted Government Auditing Standards (GAGAS) as found in the Government Auditing Standards (the Revised Yellow Book) developed by the Comptroller General and the OMB Compliance Supplement. The Subgrantee-grantee has the responsibility of notifying its auditor and requesting an audit in
compliance with Circular A-133, to include the Washington State Auditor’s Office, a
dederal auditor, or a public accountant performing work using GAGAS, as appropriate.
Costs of the audit may be an allowable grant expenditure as authorized by Circular A-
133.

The Subgrantee shall maintain auditable records and accounts so as to facilitate the
audit requirement and shall ensure that any sub-contractors also maintain auditable
records.

The Subgrantee is responsible for any audit exceptions incurred by its own organization
or that of its sub-contractors. Responses to any unresolved management findings and
disallowed or questioned costs shall be included with the audit report. The Subgrantee
must respond to County or Department requests for information or corrective action
concerning audit issues or findings within 30 days of the date of request. The County or
Department reserves the right to recover from the Subgrantee all disallowed costs
resulting from the audit.

Once the single audit has been completed, the Subgrantee must send a full copy of the
audit to the County and a letter stating there were no findings, or if there were findings,
the letter should provide a list of the findings. The Subgrantee must send the audit and
the letter no later than nine (9) months after the end of the Subgrantee’s fiscal year(s) to:

Regional Coordinator
Snohomish County – Dept. of Emergency Management
720 80th Street SW
Everett, WA 98203

In addition to sending a copy of the audit, the Subgrantee must include a corrective
action plan for any audit findings and a copy of the management letter if one was
received.

If Subgrantee claims it is exempt from the audit requirements of Circular A-133,
Subgrantee must send a letter identifying this Grant Agreement and explaining the
criteria for exemption no later than nine (9) months after the end of the Subgrantee fiscal
year(s) to the same address shown above. The County retains the sole discretion to
determine whether a valid claim for an exemption from the audit requirements of this
provision has been established.

The Subgrantee shall include the above audit requirements in any sub-contracts.

Conducting a single or program-specific audit in compliance with Circular A-133 is a
material requirement of this Grant Agreement. In the absence of a valid claim of
exemption from the audit requirements of Circular A-133, the Subgrantees failure to
comply with said audit requirements may result in one or more of the following actions in
the County’s sole discretion: a percentage of federal awards being withheld until the
audit is completed in accordance with Circular A-133; the withholding or disallowing of
overhead costs; the suspension of federal awards until the audit is conducted and
submitted; or termination of the federal award.

A.3 ADVANCE PAYMENTS PROHIBITED

The County shall make no payments in advance or in anticipation of goods or services to
be provided under this Grant Agreement. Subgrantee shall not invoice the County in
advance of delivery and invoicing of such goods or services.

A.4 AMENDMENTS AND MODIFICATIONS

The Subgrantee or the County may request, in writing, an amendment or modification of
this Grant Agreement. However, such amendment or modification shall not be binding,
take effect or be incorporated herein until made in writing and signed by the authorized
representatives of the County and the Subgrantee. No other understandings or
agreements, written or oral, shall be binding on the parties.
A.5 AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, 42
U.S.C. §2101 ET SEQ. AND ITS IMPLEMENTING REGULATIONS ALSO REFERRED
TO AS THE “ADA” 28 CFR Part 35.
The Subgrantee must comply with the ADA, which provides comprehensive civil rights
protection to individuals with disabilities in the areas of employment, public
accommodations, state and local government services, and telecommunication.

A.6 ASSURANCES
The County and Subgrantee agree that all activity pursuant to this Grant Agreement will
be in accordance with all the applicable current federal, state and local laws, rules and
regulations.

A.7 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, OR INELIGIBILITY
As federal funds are a basis for this Grant Agreement, the Subgrantee certifies that the
Subgrantee is not presently debarred, suspended, proposed for debarment, declared
ineligible, or voluntarily excluded from participating in this Grant Agreement by any
federal department or agency.

If requested by the County, the Subgrantee shall complete and sign a Certification
Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion form. Any
such form completed by the Subgrantee for this Grant Agreement shall be incorporated
into this Grant Agreement by reference.

Further, the Subgrantee agrees to comply with all applicable federal regulations
concerning the federal debarment and suspension system, including 2 CFR Part 180.
The Subgrantee certifies that it will ensure that potential sub-contractors or sub-
recipients or any of their principals are not debarred, suspended, proposed for
debarment, declared ineligible, or voluntarily excluded from participation in “covered
transactions” by any federal department or agency. “Covered transactions” include
procurement contracts for goods or services awarded under a non-procurement
transaction (e.g. grant or cooperative agreement) that are expected to equal or exceed
$25,000, and sub-awards to sub-recipients for any amount. With respect to covered
transactions, the Subgrantee may comply with this provision by obtaining a certification
statement from the potential sub-contractor or sub-recipient or by checking the Excluded
Parties List System (EPLS) maintained by the federal General Services Administration
(GSA). The Subgrantee also agrees not to enter into any arrangements or contracts
with any party on the Washington State Department of Labor and Industries’ “Debarred
Contractor List.”

A.8 CONFLICT OF INTEREST
No officer or employee of the County; no member, officer, or employee of the
Subgrantee or its designees or agents; no member of the governing body of the
jurisdiction in which the project is undertaken or located; and no other official of such the
Subgrantee who exercises any functions or responsibilities with respect to the project
during his or her tenure, shall have any personal or pecuniary gain or interest, direct or
indirect, in any contract, subcontract, or the proceeds thereof, for work to be performed
in connection with the project assisted under this Grant Agreement. The Subgrantee
shall incorporate, or cause to incorporate, in all such contracts or subcontracts, a
provision prohibiting such interest pursuant to this provision.

A.9 COMPLIANCE WITH APPLICABLE STATUTES, RULES AND DEPARTMENT POLICIES
The Subgrantee and all its contractors shall comply with, and the County is not
responsible for determining compliance with, any and all applicable federal, state, and
local laws, regulations, executive orders, OMB Circulars, and/or policies. This obligation
includes, but is not limited to: nondiscrimination laws and/or policies, Energy Policy and
Conservation Act (PL 94-163, as amended), the Americans with Disabilities Act (ADA),
the Robert T. Stafford Disaster Relief and Emergency Assistance Act, (PL 93-288, as
amended), Ethics in Public Service (RCW 42.52), Covenant Against Contingent Fees
(48 CFR Section 52.203-5), Public Records Act (RCW 42.56), Prevailing Wages on
Public Works (RCW 39.12), State Environmental Policy Act (RCW 43.21C), Shoreline Management Act of 1971 (RCW 90.58), State Building Code (RCW 19.27), Energy Related Building Standards (RCW 19.27A), Provisions in Buildings for Aged and Handicapped Persons (RCW 70.92), and safety and health regulations.

in the event of the Subgrantee's or its contractor's noncompliance or refusal to comply with any applicable law, regulation, executive order, OMB Circular or policy, the County may rescind, cancel, or terminate the Grant Agreement in whole or in part in its sole discretion. The Subgrantee is responsible for all costs or liability arising from its failure to comply with applicable law, regulation, executive order, OMB Circular or policy.

A.10 DISCLOSURE
The use or disclosure by any party of any information concerning the County for any purpose not directly connected with the administration of the County's or the Subgrantee's responsibilities with respect to services provided under this Grant Agreement is prohibited except by prior written consent of the County. However, the parties acknowledge that the County, the Department and state and local agencies as defined in RCW 42.56.010, are subject to RCW 42.56, the state Public Records Act.

A.11 DISPUTES
The County and Subgrantee shall make every effort to resolve disputes arising out of or relating to this Grant Agreement through discussion and negotiation. Should discussion and negotiation fail to resolve a dispute arising under this Grant Agreement, the parties shall select a dispute resolution team to resolve the dispute. The team shall consist of a representative appointed by each party and a third representative mutually agreed upon by both parties. The team shall attempt, by majority vote, to resolve the dispute.

Both parties agree that this dispute resolution process shall precede any action in a judicial or quasi-judicial tribunal. Nothing in this section shall preclude the parties from mutually agreeing to a different dispute resolution method in lieu of the procedure outlined above.

A.12 LEGAL RELATIONS
It is understood and agreed that this Grant Agreement is solely for the benefit of the parties to the Grant Agreement and gives no right to any other party. No joint venture or partnership is formed as a result of this Grant Agreement.

To the extent allowed by law, the Subgrantee, its successors or assigns, will protect, save and hold harmless the County, the Department, the State of Washington, and the United States Government and their authorized agents and employees, from all claims, actions, costs, damages or expenses of any nature whatsoever by reason of the acts or omissions of the Subgrantee, its sub-contractors, assigns, agents, contractors, consultants, licensees, invitees, employees or any person whomsoever arising out of or in connection with any acts or activities authorized by this Grant Agreement.

To the extent allowed by law, the Subgrantee further agrees to defend the County, the Department and the State of Washington and their authorized agents and employees in any litigation; including payment of any costs or attorneys' fees for any claims or action commenced thereon arising out of or in connection with acts or activities authorized by this Grant Agreement.

This obligation shall not include such claims, costs, damages or expenses which may be caused by the sole negligence of the County; provided, that if the claims or damages are caused by or result from the concurrent negligence of (1) the County or Department, and (2) the Subgrantee, its agents, or employees, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Subgrantee, or Subgrantee's agents or employees.
Insofar as the funding source, the Department of Homeland Security (DHS)/Federal Emergency Management Agency (FEMA), is an agency of the federal government, the following shall apply:

**44 CFR 206.9 Non-liability.** The federal government shall not be liable for any claim based upon the exercise or performance of, or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the federal government in carrying out the provisions of the Stafford Act.

A.13 **LIMITATION OF AUTHORITY – Authorized Signature**
The signatories to this Grant Agreement represent that they have the authority to bind their respective organizations to this Grant Agreement. Only the County’s Authorized Signature representative and the Authorized Signature representative of the Subgrantee or Alternate for the Subgrantee, formally designated in writing, shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Grant Agreement. Any alteration, amendment, modification, or waiver of any clause or condition of this Grant Agreement is not effective or binding unless made in writing and signed by both parties Authorized Signature representatives. Further, only the Authorized Signature representative or Alternate for the Subgrantee shall have signature authority to sign reimbursement requests, time extension requests, amendment and modification requests, requests for changes to projects or work plans, and other requests, certifications and documents authorized by or required under this Grant Agreement.

A.14 **LOSS OR REDUCTION OF FUNDING**
In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Grant Agreement and prior to normal completion or end date, the County may unilaterally reduce the scope of work and budget or unilaterally terminate all or part of the Grant Agreement as a “Termination for Cause” without providing the Subgrantee an opportunity to cure. Alternatively, the parties may renegotiate the terms of this Grant Agreement under “Amendments and Modifications” to comply with new funding limitations and conditions, although the County has no obligation to do so.

A.15 **NONASSIGNABILITY**
Neither this Grant Agreement, nor any claim arising under this Grant Agreement, shall be transferred or assigned by the Subgrantee.

A.16 **NONDISCRIMINATION**
The Subgrantee shall comply with all applicable federal and state non-discrimination laws, regulations, and policies. No person shall, on the grounds of age, race, creed, color, sex, sexual orientation, religion, national origin, marital status, honorably discharged veteran or military status, or disability (physical, mental, or sensory) be denied the benefits of, or otherwise be subjected to discrimination under any project, program, or activity, funded, in whole or in part, under this Grant Agreement.

A.17 **NOTICES**
The Subgrantee shall comply with all public notices or notices to individuals required by applicable local, state and federal laws and shall maintain a record of this compliance.

A.18 **OCCUPATIONAL SAFETY/HEALTH ACT and WASHINGTON INDUSTRIAL SAFETY/HEALTH ACT (OSHAWISHA)**
The Subgrantee represents and warrants that its work place does now or will meet all applicable federal and state safety and health regulations that are in effect during the Subgrantee’s performance under this Grant Agreement. To the extent allowed by law, the Subgrantee further agrees to indemnify and hold harmless the County, and its employees and agents from all liability, damages and costs of any nature, including but not limited to, costs of suits and attorneys’ fees assessed against the County, as a result of the failure of the Subgrantee to so comply.
A.19 OWNERSHIP OF PROJECT/CAPITAL FACILITIES
The County makes no claim to any capital facilities or real property improved or
constructed with funds under this Grant Agreement, and by this grant of funds does not
and will not acquire any ownership interest or title to such property of the Subgrantee.
The Subgrantee shall assume all liabilities arising from the ownership and operation of
the project and agrees to hold the County, the Department and the state of Washington
and the United States government harmless from any and all causes of action arising
from the ownership and operation of the project.

A.20 POLITICAL ACTIVITY
No portion of the funds provided herein shall be used for any partisan political activity or
to further the election or defeat of any candidate for public office or influence the
approval or defeat of any ballot issue.

A.21 PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION
The assistance provided under this Grant Agreement shall not be used in payment of
any bonus or commission for the purpose of obtaining approval of the application for
such assistance or any other approval or concurrence under this Grant Agreement
provided, however, that reasonable fees or bona fide technical consultant, managerial,
or other such services, other than actual solicitation, are not hereby prohibited if
otherwise eligible as project costs.

A.22 PUBLICITY
The Subgrantee agrees to submit to the County prior to issuance all advertising and
publicity matters relating to this Grant Agreement wherein the County's name is
mentioned or language used from which the connection of the County's name may, in
the County's judgment, be inferred or implied. The Subgrantee agrees not to publish or
use such advertising and publicity matters without the prior written consent of the
County. The Subgrantee may copyright original work it develops in the course of or
under this Grant Agreement; however, pursuant to 44 CFR 13.34, FEMA reserves a
royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise
use, and to authorize others to use the work for government purposes.

Publication resulting from work performed under this Grant Agreement shall include an
acknowledgement of FEMA's financial support, by CFDA number, and a statement that
the publication does not constitute an endorsement by FEMA or reflect FEMA's views.

A.23 RECAPTURE PROVISION
In the event the Subgrantee fails to expend funds under this Grant Agreement in
accordance with applicable federal, state, and local laws and/or the provisions of the
Grant Agreement, the County reserves the right to recapture funds in an amount
equivalent to the extent of noncompliance. Such right of recapture shall exist for the life
of the project following Grant Agreement termination. Repayment by the Subgrantee of
funds under this recapture provision shall occur within 30 days of demand.

In the event the County is required to institute legal proceedings to enforce the recapture
provision, the County shall be entitled to its costs thereof, including attorney fees.

A.24 RECORDS
a. The Subgrantee agrees to maintain all books, records, documents, receipts, invoices
and all other electronic or written records necessary to sufficiently and properly
reflect the Subgrantee's contracts, grant administration, and payments, including all
direct and indirect charges, and expenditures in the performance of this Grant
Agreement (the "records").

b. The Subgrantee's records related to this Grant Agreement and the projects funded
may be inspected and audited by the County, the Department or its designee, by the
Office of the State Auditor, DHS, FEMA or their designees, by the Comptroller
General of the United States or its designees, or by other state or federal officials
authorized by law, for the purposes of determining compliance by the Subgrantee
with the terms of this Grant Agreement and to determine the appropriate level of funding to be paid under the Grant Agreement.

c. The records shall be made available by the Subgrantee for such inspection and audit, together with suitable space for such purpose, at any and all times during the Subgrantee’s normal working day.

d. The Subgrantee shall retain and allow access to all records related to this Grant Agreement and the funded project(s) for a period of at least six (6) years following final payment and closure of the grant under this Grant Agreement.

A.25 RESPONSIBILITY FOR PROJECT/STATEMENT OF WORK/WORK PLAN

While the County undertakes to assist the Subgrantee with the project/statement of work/work plan (project) by providing grant funds pursuant to this Grant Agreement, the project itself remains the sole responsibility of the Subgrantee. The County undertakes no responsibility to the Subgrantee, or to any third party, other than as is expressly set out in this Grant Agreement.

The responsibility for the design, development, construction, implementation, operation and maintenance of the project, as these phrases are applicable to this project, is solely that of the Subgrantee, as is responsibility for any claim or suit of any nature by any third party related in any way to the project.

Prior to the start of any construction activity, the Subgrantee shall ensure that all applicable Federal, State, and local permits and clearances are obtained, including but not limited to FEMA compliance with the National Environmental Policy Act, the National Historic Preservation Act, the Endangered Species Act, and all other environmental laws and executive orders.

The Subgrantee shall defend, at its own cost, any and all claims or suits at law or in equity, which may be brought against the Subgrantee in connection with the project. The Subgrantee shall not look to the County, the Department, or to any state or federal agency, or to any of their employees or agents, for any performance, assistance, or any payment or indemnity, including but not limited to cost of defense and/or attorneys’ fees, in connection with any claim or lawsuit brought by any third party related to any design, development, construction, implementation, operation and/or maintenance of a project.

A.26 CERTIFICATION REGARDING RESTRICTIONS ON LOBBYING

As required by 44 CFR Part 18, the Subgrantee hereby certifies that to the best of its knowledge and belief: (1) no federally appropriated funds have been paid or will be paid by or on behalf of the Subgrantee to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement; (2) that if any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Grant Agreement, grant, loan, or cooperative agreement, the Subgrantee will complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions; (3) and that, as applicable, the Subgrantee will require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into, and is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code.
A.27  **SEVERABILITY**
If any court of rightful jurisdiction holds any provision or condition under this Grant Agreement or its application to any person or circumstances invalid, this invalidity does not affect other provisions, terms or conditions of the Grant Agreement, which can be given effect without the invalid provision. To this end, the terms and conditions of this Grant Agreement are declared severable.

A.28  **SUB-CONTRACTING**
The Subgrantee shall use a competitive procurement process in the award of any contracts with contractors or sub-contractors that are entered into under the original contract award. The procurement process followed shall be in accordance with 44 CFR Part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, or with OMB Circular A-110, Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations, as applicable to the Subgrantee.

All sub-contracting agreements entered into pursuant to this Grant Agreement shall incorporate this Grant Agreement by reference.

A.29  **SUBGRANTEE NOT EMPLOYEE**
The parties intend that an independent contractor relationship will be created by this Grant Agreement. The Subgrantee, and/or employees or agents performing under this Grant Agreement are not employees or agents of the County in any manner whatsoever. The Subgrantee will not be presented as nor claim to be an officer or employee of the County, the Department or of the State of Washington by reason of this Grant Agreement, nor will the Subgrantee make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the County, the Department or of the State of Washington by reason of this Grant Agreement, including, but not limited to, Workmen’s Compensation coverage, unemployment insurance benefits, social security benefits, retirement membership or credit, or privilege or benefit which would accrue to a civil service employee under Chapter 41.06 RCW.

A.30  **TAXES, FEES AND LICENSES**
Unless otherwise provided in this Grant Agreement, the Subgrantee shall be responsible for, pay and maintain in current status all taxes, unemployment contributions, fees, licenses, assessments, permit charges and expenses of any other kind for the Subgrantee or its staff required by statute or regulation that are applicable to Grant Agreement performance.

A.31  **TERMINATION FOR CONVENIENCE**
Notwithstanding any provisions of this Grant Agreement, the Subgrantee may terminate this Grant Agreement by providing written notice of such termination to the County’s Key Personnel identified in the Grant Agreement, specifying the effective date thereof, at least thirty (30) days prior to such date.

Except as otherwise provided in this Grant Agreement, the County, in its sole discretion and in the best interests of the State of Washington, may terminate this Grant Agreement in whole or in part by providing ten (10) calendar days written notice, beginning on the second day after mailing to the Subgrantee. Upon notice of termination for convenience, the County reserves the right to suspend all or part of the Grant Agreement, withhold further payments, or prohibit the Subgrantee from incurring additional obligations of funds. In the event of termination, the Subgrantee shall be liable for all damages as authorized by law. The rights and remedies of the County provided for in this section shall not be exclusive and are in addition to any other rights and remedies provided by law.

A.32  **TERMINATION OR SUSPENSION FOR CAUSE**
In the event the County, in its sole discretion, determines the Subgrantee has failed to fulfill in a timely and proper manner its obligations under this Grant Agreement, is in an unsound financial condition so as to endanger performance hereunder, is in violation of
any laws or regulations that render the Subgrantee unable to perform any aspect of the Grant Agreement, or has violated any of the covenants, agreements or stipulations of this Grant Agreement, the County has the right to immediately suspend or terminate this Grant Agreement in whole or in part.

The County may notify the Subgrantee in writing of the need to take corrective action and provide a period of time in which to cure. The County is not required to allow the Subgrantee an opportunity to cure if it is not feasible as determined solely within the County’s discretion. Any time allowed for cure shall not diminish or eliminate the Subgrantee liability for damages or otherwise affect any other remedies available to the County. If the County allows the Subgrantee an opportunity to cure, the County shall notify the Subgrantee in writing of the need to take corrective action. If the corrective action is not taken within ten (10) calendar days or as otherwise specified by the County, or if such corrective action is deemed by the County to be insufficient, the Grant Agreement may be terminated in whole or in part.

The County reserves the right to suspend all or part of the Grant Agreement, withhold further payments, or prohibit the Subgrantee from incurring additional obligations of funds during investigation of the alleged compliance breach, pending corrective action by the Subgrantee, if allowed, or pending a decision by the County to terminate the Grant Agreement in whole or in part.

In the event of termination, the Subgrantee shall be liable for all damages as authorized by law, including but not limited to, any cost difference between the original Grant Agreement and the replacement or cover Grant Agreement and all administrative costs directly related to the replacement Grant Agreement, e.g., cost of administering the competitive solicitation process, mailing, advertising and other associated staff time. The rights and remedies of the County provided for in this section shall not be exclusive and are in addition to any other rights and remedies provided by law.

If it is determined that the Subgrantee: (1) was not in default or material breach, or (2) failure to perform was outside of the Subgrantee’s control, fault or negligence, the termination shall be deemed to be a “Termination for Convenience”.

A.33 TERMINATION PROCEDURES

In addition to the procedures set forth below, if the County terminates this Grant Agreement, the Subgrantee shall follow any procedures specified in the termination notice. Upon termination of this Grant Agreement and in addition to any other rights provided in this Grant Agreement, the County may require the Subgrantee to deliver to the County any property specifically produced or acquired for the performance of such part of this Grant Agreement as has been terminated.

If the termination is for convenience, the County shall pay to the Subgrantee agreed upon price, if separately stated, for properly authorized and completed work and services rendered or goods delivered to and accepted by the County prior to the effective date of Grant Agreement termination, and the amount agreed upon by the Subgrantee and the County for (i) completed work and services and/or equipment or supplies provided for which no separate price is stated, (ii) partially completed work and services and/or equipment or supplies provided which are accepted by the County, (iii) other work, services and/or equipment or supplies which are accepted by the County, and (iv) the protection and preservation of property.

Failure to agree with such amounts shall be a dispute within the meaning of the "Disputes" clause of this Grant Agreement. If the termination is for cause, the County shall determine the extent of the liability of the County. The County shall have no other obligation to the Subgrantee for termination. The County may withhold from any amounts due the Subgrantee such sum as the County determines to be necessary to protect the County against potential loss or liability.

The rights and remedies of the County provided in this Grant Agreement shall not be exclusive and are in addition to any other rights and remedies provided by law.
After receipt of a notice of termination, and except as otherwise directed by the County in writing, the Subgrantee shall:

a. Stop work under the Grant Agreement on the date, and to the extent specified, in the notice;

b. Place no further orders or sub-contracts for materials, services, supplies, equipment and/or facilities in relation to this Grant Agreement except as may be necessary for completion of such portion of the work under the Grant Agreement as is not terminated;

c. Assign to the County, in the manner, at the times, and to the extent directed by the County, all of the rights, title, and interest of the Subgrantee under the orders and sub-contracts so terminated, in which case the County has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and sub-contracts;

d. Settle all outstanding liabilities and all claims arising out of such termination of orders and sub-contracts, with the approval or ratification of the County to the extent the County may require, which approval or ratification shall be final for all the purposes of this clause;

e. Transfer title to the County and deliver in the manner, at the times, and to the extent directed by the County any property which, if the Grant Agreement had been completed, would have been required to be furnished to the County;

f. Complete performance of such part of the work as shall not have been terminated by the County in compliance with all contractual requirements; and

g. Take such action as may be necessary, or as the County may require, for the protection and preservation of the property related to this Grant Agreement which is in the possession of the Subgrantee and in which the County has or may acquire an interest.

A.34 TRAVEL AND SUBSISTENCE REIMBURSEMENT

Unless the Grant Agreement specifically provides for different rates, any travel or subsistence reimbursement allowed under the Grant Agreement shall be paid in accordance with rates set pursuant to RCW 43.03.050 and RCW 43.03.060 as now existing or amended. The Subgrantee may be required to provide to the County copies of receipts for any travel related expenses other than meals and mileage (example: parking) that are authorized under this Grant Agreement.

A.35 UTILIZATION OF MINORITY AND WOMEN BUSINESS ENTERPRISES (MWBE)

The Subgrantee is encouraged to utilize business firms that are certified as minority-owned and/or women-owned in carrying out the purposes of this Grant Agreement. The Subgrantee may set utilization standards, based upon local conditions or may utilize the state of Washington MWBE goals, as identified in WAC 326-30-041.

A.36 WAIVERS

No conditions or provisions of this Grant Agreement can be waived unless approved in advance by the County in writing. The County’s failure to insist upon strict performance of any provision of the Grant Agreement or to exercise any right based upon a breach thereof, or the acceptance of any performance during such breach, shall not constitute a waiver of any right under this Grant Agreement.

A.37 VENUE

This Grant Agreement shall be construed and enforced in accordance with, and the validity and performance shall be governed by the laws of the state of Washington. Venue of any suit between the parties arising out of this Grant Agreement shall be the Superior Court of Snohomish County, Washington. The Subgrantee, by execution of this Grant Agreement acknowledges the jurisdiction of the courts of the State of Washington.
2012 Homeland Security Grant (HSGP)
STATE HOMELAND SECURITY PROGRAM (SHSP)
APPROVED PROJECTS

Agency: Whatcom County

The Washington State Military Department Emergency Management Division's (EMD) Homeland Security Section is responsible for programs designed to prepare and improve the State's ability to prepare for, prevent, protect against, respond to and recover from terrorist attacks and other major disasters. Through the U.S. Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA), the FFY 2012 Homeland Security Grant Program (HSGP) is providing funds to enhance the capability of state and local units of government to make measurable progress towards the achievement of the National Preparedness Guidelines by addressing the unique exercise, training, planning, organization, equipment, and administration needs of citizen preparedness and of emergency responders.

Washington State is subdivided into nine (9) Homeland Security Regions. Within each of the nine regions a Regional Homeland Security Coordinating Office (RHSCO) has been identified. Snohomish County is the Region 1 RHSCO.

Homeland Security Region One consists of the recognized emergency management agencies within Snohomish, Island, San Juan, Skagit and Whatcom counties, and the federally recognized Indian Tribes within those jurisdictions.

Through its application, Region 1 has been approved for the following projects:

<table>
<thead>
<tr>
<th>PROJECT #1</th>
<th>Strengthen Whole Community Preparedness</th>
</tr>
</thead>
<tbody>
<tr>
<td>Project Description</td>
<td>Improve whole community preparedness for the possibility of terrorist attack or natural disasters.</td>
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</table>

<table>
<thead>
<tr>
<th>PROJECT #2</th>
<th>Strengthen Interoperable/Operable Communications Capabilities</th>
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</thead>
<tbody>
<tr>
<td>Project Description</td>
<td>Make it possible for all disciplines and jurisdictions to communicate effectively in the preparation for and response to incidents.</td>
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</table>

<table>
<thead>
<tr>
<th>PROJECT #3</th>
<th>Strengthen Preparedness</th>
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<tbody>
<tr>
<td>Project Description</td>
<td>Ensure regional consistency and coordination of plans, implementation, training, exercises and equipment to protect the community, economy and environment.</td>
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## MILESTONE TIMELINE

**FFY12 Homeland Security Grant Program (HSGP)**  
**State Homeland Security Program (SHSP)**

<table>
<thead>
<tr>
<th>MILESTONE</th>
<th>TASK</th>
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<tbody>
<tr>
<td>September 1, 2012</td>
<td>Start of Grant Agreement performance period</td>
</tr>
<tr>
<td>July 15, 2013</td>
<td>Reports due: Progress Report, Grant Funded Typed Resource Report</td>
</tr>
<tr>
<td>July 31, 2014</td>
<td>Grant Agreement End Date. All work ceases.</td>
</tr>
<tr>
<td><strong>NLT: 10 days after Grant performance period ends</strong></td>
<td>Reports due: Final Progress Report, Grant Funded Typed Resource Report, and final request for reimbursement</td>
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</table>
# Budget Sheet

**FFY12 Homeland Security Grant Program (HSGP)**  
**State Homeland Security Program (SHSP)**

## SOLUTION AREAS

<table>
<thead>
<tr>
<th>CATEGORIES</th>
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<th>PROJECT</th>
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<td>Contracting - Non-personnel</td>
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<td>Overtime/Backfill</td>
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<tr>
<td>Consultants/Contractors - Personnel</td>
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<tr>
<td>Travel/Per Diem</td>
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</tbody>
</table>

**TOTAL ALLOCATION AMOUNT:** $48,380

Less Equipment Pass Through (direct contract with EMD)  

**TOTAL AGREEMENT AMOUNT:** $48,380

Law Enforcement Terrorism Prevention Activities  

Percent of Personnel Expenses: 25%

Cumulative changes to Solution Areas in excess of 10% of the contract award will not be reimbursed without prior written authorization from the County.

To manage HSGP caps (M&A and Personnel expenses) reimbursement requests above the current allocation will not be reimbursed without written approval.

### Investment Justifications for SHSP-12

**Project #1**  
Ensure regional consistency and coordination of plans, implementation, training, exercises and equipment to protect the community, economy and environment (Note: includes CBRNE)

**Project #2**  
Make it possible for all disciplines and jurisdictions to communicate effectively in the preparation for and response to incidents

**Project #3**  
To improve whole community preparedness for the possibility of terrorist or natural disasters
ATTACHMENT #1

ADDITIONAL AGREEMENT PROVISIONS AND WORKSHEET
For Compliance With The

The Federal Funding Accountability and Transparency Act (FFATA) was signed on September 26, 2006. The FFATA legislation requires information on federal awards (federal financial assistance and expenditures) be made available to the public via a single, searchable website. Federal awards include grants, subgrants, loans, awards, cooperative agreements and other forms of financial assistance as well as contracts, subcontracts, purchase orders, task orders, and delivery orders. The legislation does not require inclusion of individual transactions below $25,000 or credit card transactions before October 1, 2008. However, if an award is initially below this amount yet later increased, the act is triggered. Due to this variability in compliance Subrecipients are required by the Military Department to be familiar with the FFATA requirements and complete this Worksheet for each contract for the State’s submission in to the FFATA portal.

ADDITIONAL PROVISIONS

A. This contract (subaward) is supported by federal funds, requiring compliance with the Federal Funding Accountability and Transparency Act (FFATA or the Transparency Act) and Office of Management and Budget Guidance (OMB). Public Law 109-282 as amended by section 6202(a) of Public Law 110-252 (see 31 U.S.C. 6101 note). By entering into this contract, contractor agrees to provide all applicable reporting information to the Washington Military Department (WMD) required by FFATA and OMB Guidance.

B. The FFATA requires the OMB to establish a publicly available online database (USASpending.gov) containing information about entities that are awarded Federal grants, loans, and contracts. As required by FFATA and OMB Guidance, certain information on the first-tier subawards related to Federal contracts and grants, and the executive compensation of awardees, must be made publicly available.

C. For new Federal grants beginning October 1, 2010, if the initial subaward is equal to or greater than $25,000, reporting of the subaward and executive compensation information is required. If the initial subaward is below $25,000 but subsequent grant modifications result in a total subaward equal to or over $25,000, the subaward will be subject to the reporting requirements as of the date the subaward exceeds $25,000. If the initial subaward equals or exceeds $25,000 but funding is subsequently de-obligated such that the total award amount falls below $25,000, the subaward continues to be subject to the reporting requirements of the Transparency Act and OMB Guidance.

D. As a Federal grant subawardee under this contract, your organization is required by FFATA, OMB Guidance and this contract to provide the WMD, as the prime grant awardee, all information required for FFATA compliant reporting by WMD. This includes all applicable subawardee entity information required by FFATA and OMB Guidance, subawardee DUNS number, and relevant executive compensation data, as applicable.

1. Data about your organization will be provided to USASpending.gov by the WMD or by the Federal Contractor Registry (CCR). CCR is a government wide registration system for organizations that do business with the Federal Government. CCR stores information about awardees including financial account information for payment purposes and a link to D&B for maintaining current DUNS information, www.ccr.gov. WMD encourages
CCR registration and annual renewal by your organization to minimize unnecessary data entry and re-entry required by both WMD and your organization. It will also reduce the potential of inconsistent or inaccurate data entry.

2. Your organization must have a Data Universal Numbering System (DUNS) number obtained from the firm Dun and Bradstreet (D&B) (www.dnb.com). A DUNS number provides a method to verify data about your organization. D&B is responsible for maintaining unique identifiers and organizational linkages on behalf of the Federal Government for organizations receiving Federal assistance.

E. The WMD, as the prime awardee, is required by FFATA to report names and total compensation of the five (5) most highly compensated officers of your organization (as the subawardee) if:

1. Your organization (the subawardee), in the preceding fiscal year, received 80 percent or more of its annual gross revenues from Federal awards and $25,000,000 or more in annual gross revenues from Federal awards; and

2. The public does not have access to this information about the compensation of the senior executives of your organization through periodic reports filed under section 13(a) or 15(d) of the Securities and Exchange Act of 1934 (15 U.S.C. §§ 78m(a), 78o(d) or section 6104 of the Internal Revenue Code of 1986.

“Total compensation” for purposes of this requirement generally means the cash and non-cash value earned by the executive during the past fiscal year and includes salary and bonus; awards of stock, stock options and stock appreciation rights; and other compensation such as severance and termination payments, and value of life insurance paid on behalf of the employee, and as otherwise provided by FFATA and applicable OMB guidance.

F. If (1) in the preceding fiscal year your organization received 80 percent or more of its annual gross revenues from Federal awards and $25,000,000 or more in annual gross revenues from Federal awards, and (2) the public does not have access to this information about the compensation of the senior executives of your organization through periodic reports filed under section 13(a) or 15(d) of the Securities and Exchange Act of 1934 (15 U.S.C. §§ 78m(a), 78o(d) or section 6104 of the Internal Revenue Code of 1986, insert the names and total compensation for the five most highly compensated officers of your organization in the table below.
### WORKSHEET

**Subrecipient Agency:** Whatcom County  
**Grant and Year:** SHSP.2012  
**Agreement Number:** E13-152  
**Completed by:** Frances Burkart  
**Date Completed:**  

#### STEP 1

<table>
<thead>
<tr>
<th>Question</th>
<th>Yes</th>
<th>No</th>
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<tbody>
<tr>
<td>Is your grant agreement less than $25,000?</td>
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<td></td>
</tr>
<tr>
<td>Stop, no further analysis needed, go to Step 6</td>
<td></td>
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#### STEP 2

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<tr>
<th>Question</th>
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<tr>
<td>In your preceding fiscal year, did your organization receive 80% or more of its annual gross revenues from federal funding?</td>
<td></td>
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<td>Stop, no further analysis needed, go to Step 6</td>
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#### STEP 3

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<th>Question</th>
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<th>No</th>
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<td></td>
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<td>Stop, no further analysis needed, go to Step 6</td>
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#### STEP 4

<table>
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<tr>
<th>Question</th>
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<th>No</th>
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</thead>
<tbody>
<tr>
<td>Does the public have access to information about the total compensation* of senior executives in your organization?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Stop, no further analysis needed, go to step 6</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

#### Executive #1

<table>
<thead>
<tr>
<th>Name</th>
<th>Total Compensation amount: $</th>
</tr>
</thead>
</table>

#### Executive #2

<table>
<thead>
<tr>
<th>Name</th>
<th>Total Compensation amount: $</th>
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#### Executive #3

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<th>Name</th>
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#### Executive #4

<table>
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<tr>
<th>Name</th>
<th>Total Compensation amount: $</th>
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</thead>
</table>

#### Executive #5

<table>
<thead>
<tr>
<th>Name</th>
<th>Total Compensation amount: $</th>
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### STEP 6

If your organization does not meet these criteria, specifically identify below each criteria that is not met for your organization: For Example: "Our organization received less than $25,000."

**Whatcom County received less than 80% of its annual gross revenue from Federal funds.**

**Signature:** Frances Burkart  
**Date:** 02/15/2013

*Total compensation refers to:
- Salary and bonuses
- Awards of stock, stock options, and stock appreciation rights
- Other compensation including, but not limited to, severance and termination payments
- Life insurance value paid on behalf of the employee*

Additional Resources:
- [http://www.whitehouse.gov/omb/open](http://www.whitehouse.gov/omb/open)
TITLE OF DOCUMENT: Contract Amendment for Card Lock Fuel Service (Reisner Distributor, Inc.), Bid #07-131

ATTACHMENTS: Memo and Contract Amendment

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

Approval and authorization for the County Executive to enter into a contract amendment for services with Reisner Distributor, Inc., in the amount of approximately $300,000.00 (for a new running amended total of approximately $2,300,000.00) for the purposes of providing a magnetic card lock fuel service, which matches the County’s system, for Whatcom County fleet vehicles, including law enforcement vehicles, when unable to refuel at the Central Shop fueling station. Contract term to remain from January 1, 2012 through December 31, 2013.

COMMITTEE ACTION:

COUNCIL ACTION:

Related County Contract #: 200802020, 200802020-1, 200802020-2, 200802020-3
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.
MEMORANDUM

TO: The Honorable Jack Louws, County Executive and
The Honorable Members of the Whatcom County Council

THROUGH: Frank M. Abart, PW Director

FROM: Eric L. Schlehuber, PW Equipment Services Manager

RE: Card Lock Fuel Service Contract – Amendment 4
Reisner Distributor, Inc. (WC Contract 200802020)

DATE: March 12, 2013

- Requested Action
Enclosed for your review and signature are two (2) contract amendment originals between Whatcom County Public Works and Reisner Distributor, Inc. in the amount of $300,000.00.

- Background and Purpose
This agreement is a result of the bidding process in 2007, which resulted in the awarding of a bid pursuant to 
Bid 07-131 – Card Lock Fuel Service for the purposes of providing a card lock fuel service for fleet vehicles. This contractor was chosen because they were the sole responsive and responsible bidder. The bid and subsequent contract received unanimous executive/council approval on January 15, 2008 at the Regular County Council Meeting. Current contract term expires December 31, 2013.

- Funding Amount and Source
This contract amendment is in the approximate amount of $300,000.00 for a new running total of approximately $2,300,000.00. This contract will be an open-ended amount with a fixed “handling charge” per gallon during the duration of the contract. The actual amount may vary from this figure since the price per gallon is subject to fluctuation during the term of the contract.

- Differences from Previous Contract
This is an amendment increasing the contract amount for the purchase of fuel due to increased per gallon fuel prices with the same fixed delivery “handling charge”.

- Recommended Action
Please approve this contract and forward to the Executive and the Whatcom County Council for approval at the March 26, 2013 Whatcom County Council Meeting. Please contact Eric L. Schlehuber at extension 50607, if you have any questions or concerns regarding the terms of this agreement.

Enclosures
## WHATCOM COUNTY CONTRACT INFORMATION SHEET

### Contract Information

<table>
<thead>
<tr>
<th>Originating Department:</th>
<th>Public Works / Equipment Services Division</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract Administrator:</td>
<td>Eric L. Schlehuber, Equipment Services Manager</td>
</tr>
<tr>
<td>Contractor's / Agency Name:</td>
<td>Reisner Distributor, Inc.</td>
</tr>
</tbody>
</table>

### Contract Details

- **Is this a New Contract?** No  
  **Yes**  
  If not, is this an Amendment or Renewal to an Existing Contract?  
  Yes  
  No  
  If yes, previous number(s): 200802020, 200802020-1, 200802020-2, and 200802020-3

- **Is this a grant agreement?** No  
  **Yes**  
  If yes, grantor agency contract number(s):  
  CFDA number

- **Is this contract grant funded?** No  
  **Yes**  
  If yes, associated Whatcom County grant contract number(s)

- **Is this contract the result of a RFP or Bid process?** No  
  **Yes**  
  If yes, RFP and Bid number(s): 07-131  
  **Cost Center:** 501100

- **Is this contract excluded from E-Verify?** No  
  **Yes**
  If no, include Attachment D Contractor Declaration Form. If yes, indicate qualified exclusions(s) below:

  - _Contract Less than $100,000_
  - _Work is for less than 120 days_
  - _Interlocal Agreement (between Govt.)_
  - _Professional services agreement for certified/license professional_
  - _Contract for Commercial off the shelf items (COTS)_
  - _Public Works Dept. – Local Agency/Federally Funded FHWA_

### Contract Details

- **Contract Amount:** (sum of orig contract amount and any prior amendments)  
  $2,000,000.00 (approximation)

- **This Amendment Amount:**  
  $300,000.00 (approximation)

- **Total Amended Amount:**  
  $2,300,000.00 (approximation)

### Scope of Services

- Provide magnetic car lock fuel service, which matches the County's system, for Whatcom County fleet vehicles, including law enforcement vehicles, when unable to refuel at the Central Shop fueling station.

### Term of Contract

- **Term of Contract:** 2 years w/2 year extensions; this contract is for years 5 & 6
- **Expiration Date:** December 31, 2013

### Routing Steps & Signoff

1. Prepared by Deb Douglas  
   Date 03/05/13 [electronic]
2. Attorney reviewed Daniel L. Gibson  
   Date 03/05/13 [electronic]
3. AS-Finance reviewed bbs bbenett  
   Date 03/05/13 [electronic]
4. IT reviewed if IT related  
   Date [electronic]
5. Corrections made  
   Date [electronic] hard copy printed
6. Attorney signoff Daniel L. Gibson  
   Date 03/05/13
7. Contractor signed Dan Averill  
   Date 03/08/13
8. Submitted to Exec Office  
   Date 3-14-13 [summary via electronic; hardcopies]
9. Council approved (if necessary)  
   Date
10. Executive signed  
   Date
11. Contractor Original returned to dept  
   Date
12. County Original to Council  
   Date this form may need to expand to more than one page
This amendment of Whatcom County Contract #200802020 is made this ____ day of March, 2013, by and between Whatcom County, a municipal corporation, hereinafter referred to as the “COUNTY”, and Reisner Distributor, Inc., hereinafter referred to as the “CONTRACTOR”, for the purpose of providing for the purchase and delivery of fuel to be used on Whatcom County equipment and vehicles.

The term of this Agreement shall not change, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 31st day of December 2013. The term shall be as stated regardless of the date of signature.

A. Exhibit “A-2” (Scope of Work) shall remain the same and not be substituted.
B. Exhibit “B-3” (Compensation) shall remain the same and not be substituted.
C. Exhibit “C-3” (Certificate of Insurance) shall remain the same and not be substituted.
D. All other terms and conditions set forth in the original agreement will remain in full force and effect.
E. The maximum consideration for the extended term of this agreement or for any renewal term shall not exceed $1,100,000.00 ($800,000.00 as previously approved for 2012-2013, plus an additional $300,000.00 with this amendment), with the actual amount being a function of the supplier rack price, the fixed handling charge, and the amount of fuel purchased, for a total amended amount of approximately $2,300,000.00 on this contract. The contract number, set forth above, shall be included on all billings or correspondence in connection therewith.

IN WITNESS WHEREOF, the parties have executed this Agreement this ____ day of March, 2013.

CONTRACTOR:

REISNER DISTRIBUTOR, INC.

[Signature]

Dan Averill, Vice-President

STATE OF WASHINGTON )
COUNTY OF WHATCOM ) ss

On this ____ day of March, 2013, before me personally appeared Dan Averill, to me known to be the Vice-President of Reisner Distributor, Inc., who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

[Signature]

NOTARY PUBLIC in and for the State of Washington, residing at _______________. My commission expires ___________ 2015.
WHATCOM COUNTY:
Recommended for Approval:

Approved as to form:

Approved:
Accepted for Whatcom County:

By:

STATE OF WASHINGTON
COUNTY OF WHATCOM

On this _____ day of March, 2013, before me personally appeared Jack Louws, to me known to be the Executive of Whatcom County, who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

CONTRACTOR INFORMATION:

Reisner Distributor, Inc.

Dan Averill, Vice-President

Address:
1922 Front Street
Lynden, WA 98264

Mailing Address:
P.O. Box 673
Lynden, WA 98264

Contact Name: Dan Averill

Contact Phone: (360) 354-2165

Contact FAX: (360) 354-4768

Contact Email: daverill@reisnerdistributor.com
**WHATCOM COUNTY COUNCIL AGENDA BILL**

**CLEARANCES**

<table>
<thead>
<tr>
<th>Originator:</th>
<th>Initial</th>
<th>Date</th>
<th>Date Received in Council Office</th>
<th>Agenda Date</th>
<th>Assigned to:</th>
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<tr>
<td>C. Brueseke</td>
<td></td>
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<td></td>
<td>3/18/13</td>
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<tr>
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<tr>
<td>P. Kremer</td>
<td></td>
<td>3/18/13</td>
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</tbody>
</table>

**TITLE OF DOCUMENT:**

Grant Agreement No. N19934 between the State of Washington Department of Health and Whatcom County

**ATTACHMENTS:**

- Memo
- Contract Information Sheet
- Grant 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.)

This grant agreement will be used to supplement funding of Whatcom County’s Pollution Identification and Control Program. The grant will support activities such as additional monitoring, community outreach, technical assistance for landowners, and administrative functions to assist water quality improvement projects.

**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.
TO: The Honorable Jack Louws, Whatcom County Executive, and Honorable Members of the Whatcom County Council

THROUGH: Frank M. Abart, Public Works Director

FROM: Chris Brueske, P.E., Assistant Director
       Erika Douglas, Senior Planner-Marine Resources

RE: State of Washington Department of Health Grant Agreement # N19934
    Whatcom County Pollution Identification and Control (PIC) Program

DATE: March 11, 2013

Please find enclosed for your review and signature two (2) originals of Grant Agreement No. N19934, between the Washington State Department of Health and Whatcom County, in the amount of $164,000 to enhance Whatcom County’s PIC Program.

Requested Action
Public Works respectfully requests that the County Council authorize the County Executive to sign the attached grant agreement.

Background and Purpose
This grant agreement will be used to supplement funding of Whatcom County’s Pollution Identification and Control Program. This program focuses on monitoring approximately 90 water quality stations for fecal coliform bacteria, identifies areas with the highest bacteria levels, and works with landowners to implement water quality improvement projects. The grant will support activities such as additional monitoring, community outreach, technical assistance for landowners, and administrative functions to assist water quality improvement projects.

Funding Amount and Source
This grant agreement with the Washington State Department of Health will provide the County with $164,000 to enhance the County’s PIC Program. The County’s existing program will provide approximately $275,000 in match over a two year period through the existing program’s staff, water quality monitoring, and technical/financial support for landowners. The County’s match is funded through the Public Works Natural Resources 2013/2014 budgets. Please contact Erika Douglas at extension 50692 if you have any questions or concerns regarding the terms of this agreement.

Enclosures
WHATCOM COUNTY CONTRACT
INFORMATION SHEET

Originating Department: Public Works-Natural Resources
Contract Administrator: Erika Douglas
Contractor’s / Agency Name: Washington State Department of Health

Is this a New Contract? Yes _ X_ No ____ Is this a grant agreement? Yes X_ No ____
If yes, grantor agency contract number(s) __NI9934__ CFDA # ___66.123____
Is this contract grant funded? Yes _ X_ No ____ If yes, associated Whatcom County grant contract number(s) ____________
Is this the result of a RFP or Bid process? Yes _ X_ No ____ If yes, RFP and Bid number(s) ________________
Cost Center: ____________
Is this contract excluded from E-Verify? No X_ Yes ____ If no, include Attachment D Contractor Declaration Form:
If yes, indicate qualified exclusion(s) below:
Contract less than $100,000. __ Professional services agreement for certified/licensed professional
Work is for less than 120 days __ Contract for Commercial off the shelf items (COTS)
Interlocal Agreement (between Govt.) __ Public Works Dept. - Local Agency/Federally Funded FHWA

Contract Amount: (sum of orig contract amt and any prior amendments)
$ __164,000__
This Amendment Amount:
$ ____________
Total Amended Amount:
$ ____________

Scope of Services: [Insert language from contract (Exhibit A) or summarize; expand space as necessary]

This grant agreement will be used to supplement funding of Whatcom County’s Pollution Identification and Control (PIC) Program. The grant will support activities such as additional monitoring, community outreach, technical assistance for landowners, and administrative functions to assist water quality improvement projects.

Term of Contract: 2/11/13-4/15/15
Expiration Date: 4/15/15

Contract Routing Steps & Signoff: [sign or initial] [indicate date transmitted]
1. Prepared by __ E. Douglas Date __3/11/13__ [electronic]
2. Attorney reviewed __ Daniel L. Gibson Date __02/26/13__ [electronic]
3. AS Finance reviewed __ susan.d. Date __3/14/13__ [electronic]
4. IT reviewed if IT related ____________ Date ____________ [electronic]
5. Corrections made ____________ Date ____________ [electronic]
6. Attorney signoff __ Daniel L. Gibson Date __03/13/13__ [electronic]
7. Contractor signed ____________ Date ____________
8. Submitted to Exec Office ____________ Date ____________ [summary via electronic; hardcopies]
9. Council approved (if necessary) Date ____________
10. Executive signed ____________ Date ____________
11. Contractor Original Returned to dept. ____________ Date ____________
12. County Original to Council ____________ Date ____________
INTERAGENCY AGREEMENT
between
STATE OF WASHINGTON
DEPARTMENT OF HEALTH
and
WHATCOM COUNTY

THIS AGREEMENT is made and entered into by and between the DEPARTMENT OF HEALTH, hereinafter referred to as DOH, and WHATCOM COUNTY, hereinafter referred to as the Contractor pursuant to the authority granted by Chapter 39.34 RCW.

IT IS THE PURPOSE OF THIS AGREEMENT for Whatcom County to carry-out community engagement and water quality monitoring in priority drainages that may affect shellfish harvest.

THEREFORE, IT IS MUTUALLY AGREED THAT:

STATEMENT OF WORK: The Contractor shall furnish the necessary personnel, equipment, material and/or services and otherwise do all things necessary for or incidental to the performance of the work set forth in Exhibit A, attached hereto and incorporated herein.

PERIOD OF PERFORMANCE: Subject to its other provisions, the period of performance of this Agreement shall commence on February 11, 2013 and be completed on April 15, 2015, unless terminated sooner as provided herein.

FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA): If checked above, this contract is supported by federal funds that require compliance with the Federal Funding Accountability and Transparency Act (FFATA or the Transparency Act). The purpose of the Transparency Act is to make information available online so the public can see how federal funds are spent.
To comply with the act and be eligible to enter into this contract, your organization must have a Data Universal Numbering System (DUNS®) number. A DUNS® number provides a method to verify data about your organization. If you do not already have one, you may receive a DUNS® number free of charge by contacting Dun and Bradstreet at www.dnb.com.

Information about your organization and this contract will be made available on www.USASpending.gov by DOH as required by P.L. 109-282. DOH’s form, Federal Funding Accountability and Transparency Act Data Collection Form, is considered part of this contract and must be completed and returned along with the contract.

PAYMENT: Compensation for the work provided in accordance with this agreement has been established under the terms of RCW 39.34.130. The parties have estimated that the cost of accomplishing the work herein will not exceed $164,000.00 in accordance with Exhibit A, attached hereto and incorporated herein. Payment will not exceed this amount without a prior written amendment. DOH will authorize payment only upon satisfactory completion and acceptance of deliverables and for allowable costs as outlined in the statement of work and/or budget.

Source of Funds: (FED) $164,000.00  (ST) $0-  (Other) $0- Total $164,000.00

Federal funds disbursed through this agreement were received by DOH in accordance with OMB Catalog of Federal Domestic Assistance Number: 66.123. Contractor agrees to comply with applicable rules and regulations associated with these federal funds.

BILLING PROCEDURE: Payment to the Contractor for approved and completed work will be made by warrant or account transfer by DOH within 30 days of receipt of the invoice. Upon expiration of the contract, any claim for payment not already made shall be submitted within 60 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.

CONFIDENTIALITY/SAFEGUARDING OF INFORMATION: The use or disclosure by any party of any information concerning a client obtained in providing service under this agreement shall be subject to Chapter 42.56 RCW and Chapter 70.02 RCW, as well as any other applicable federal and state statutes and regulations.
Any unauthorized access or use of confidential information must be reported to the DOH IT Security Officer at (360) 236-4432. The notification must be made in the most expedient time possible (usually within 24 hours of discovery) and without unreasonable delay, consistent with the legitimate needs of law enforcement, or any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

**CONTRACT MANAGEMENT:** The contract 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 Manager for DOH is:

Mary Knackstedt  
Office of Shellfish and Water Protection  
Department of Health  
PO Box 47824  
Olympia, WA 98504-7824  
(360) 236-3307

The Contract Manager for the Contractor is:

Erika Douglas  
Whatcom County  
322 N. Commercial, Suite 110  
Bellingham, WA 98225  
(360) 676-6876, Ext. 50692

**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, 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.

**GOVERNANCE:** This contract 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 state and federal statutes and rules;
b. statement of work; and
c. any other provisions of the agreement, including materials incorporated by reference.
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.

PRIVACY: Personal information collected, used or acquired in connection with this contract shall be used solely for the purposes of this contract. Contractor and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the agency or as provided by law. Contractor agrees to implement physical, electronic and managerial safeguards to prevent unauthorized access to personal information.

The Department reserves the right to monitor, audit or investigate the use of personal information collected, used or acquired by the contractor through this contract. The monitoring, auditing, or investigating may include but is not limited to "salting" by the department. Contractor shall certify the return or destruction of all personal information upon expiration of this contract. Salting is the act of placing a record containing unique but false information in a database that can be used later to identify inappropriate disclosure of data contained in the database.

Any breach of this provision may result in termination of the contract and the demand for return of all personal information. The contractor agrees to indemnify and hold harmless the department for any damages related to the contractor's unauthorized use of personal information.

RECORDS MAINTENANCE: The parties to this contract shall each maintain books, records, documents and other evidence which sufficiently and properly reflect all direct and indirect costs expended by either party in the performance of the services 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.

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 DOH. 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.
SAVINGS: In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this contract and prior to normal completion, the department may terminate the contract under the "Termination" clause, subject to renegotiation under those new funding limitations and conditions.

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.

SUBCONTRACTING: Neither the Contractor, nor any subcontractors, shall enter into subcontracts for any of the work contemplated under this agreement without prior written approval of DOH. In no event shall the existence of the subcontract operate to release or reduce the liability of the contractor to the Department for any breach in the performance of the contractor's duties. This clause does not include contracts of employment between the contractor and personnel assigned to work under this contract.

Additionally, the Contractor is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this agreement are carried forward to any subcontracts. Contractor and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of DOH or as provided by law.

if, at any time during the progress of the work, the Department determines in its sole judgment that any subcontractor is incompetent, the Department shall notify the Contractor, and the Contractor shall take immediate steps to terminate the subcontractor's involvement in the work. The rejection or approval by the Department of any subcontractor or the termination of a subcontractor shall not relieve the Contractor of any of its responsibilities under the Contract, nor be the basis for additional charges to the Department.

TERMINATION: 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.

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 the failure or violation is not corrected, this Agreement may be terminated immediately by written notice of the aggrieved party to the other.
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 HEREBIN: This Agreement, and Attachment 1, Federal Compliance, and Standard Federal Certifications and Assurances, contain 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.

IN WITNESS WHEREOF, the parties have executed this Agreement.

State of Washington
Department of Health

Whatcom County

________________________
Contracting Officer

________________________
Contractor

(please also print/type name & title)

________________________
Date

________________________
Date

APPROVED AS TO FORM ONLY:
Attorney General
May 1997

NOTE: THE CONTRACTOR’S SIGNATURE IS ALSO REQUIRED ON ATTACHMENT 1, FEDERAL CERTIFICATIONS AND ASSURANCE
WHATCOM COUNTY:
Recommended for Approval:

[Signature]
Frank M. Abart, Public Works Director  Date

Approved as to form:

[Signature]
Daniel L. Gibson  Date
Asst. Chief Civil Deputy Prosecutor

Approved:
Accepted for Whatcom County:

By: ______________________________________
Jack Louws, Whatcom County Executive

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 executed 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 ________________________.
EXHIBIT A
STATEMENT OF WORK

<table>
<thead>
<tr>
<th>CFDA #</th>
<th>CFDA Program Title</th>
<th>Federal Grant Award #</th>
<th>Federal Grant Award Name</th>
<th>Federal Agency Name</th>
</tr>
</thead>
</table>

Attachment A
Statement of Work
N19934
Whatcom County
Community Engagement and Monitoring

The Office of Shellfish and Water Protection (OSWP) will provide $164,000 to Whatcom County to supplement the County’s Pollution Identification and Control (PIC) program including comprehensive water quality monitoring (routine, target area, and storm event monitoring); annual data review and prioritization of drainage areas; community engagement to identify and address bacteria pollution sources; and technical and financial assistance to implement water quality improvement practices. In 2013, the County will work with landowners in identified priority areas in Drayton Harbor and Birch Bay watersheds to identify and implement community solutions through community engagement and linkages to technical assistance and incentive programs provided by Whatcom County and other agencies. As improvements are observed in these drainages, the program will be advanced to other priority drainages identified through the annual water quality review and ranking. Whatcom County will participate in Whatcom Clean Water Program (WCWP) coordination activities and will provide referrals to the Department of Ecology through a defined regulatory backstop as a final option which results in compliance with water quality standards for fecal coliform. The project will be completed by April 15, 2015.

Award to Whatcom County: $164,000
Estimated Local Match: $275,000 in 2013-2014 Staff Salaries/Benefits, Laboratory Services, Technical & Financial Assistance.

PIC Project Locations:
Routine water quality monitoring: minimum monthly sampling for fecal coliform at 90 stations throughout Whatcom County coastal drainages with bimonthly sampling in Portage Shellfish Protection District, Terrell Creek, California, and Dakota Creek stations. A portion of lab services and staff costs funded by Whatcom County will be provided as match.
EXHIBIT A
STATEMENT OF WORK

Targeted monitoring: identify sampling locations and analyze samples throughout the focus areas based on pollution hotspots identified through routine sampling, tributary branches, public access points, and landowner permission. The targeted monitoring will be conducted in priority areas identified through the County’s PIC program and the WCWP program. A portion of lab services and staff funded by Whatcom County will be provided as match.

Community Engagement: priority drainages in Drayton Harbor and Birch Bay in 2013. Priority areas for 2014 will be determined through annual water quality review and ranking. A portion of staff and agricultural Best Management Practices (BMP) incentives funded by Whatcom County will be provided as match.
## EXHIBIT A
### STATEMENT OF WORK

<table>
<thead>
<tr>
<th>Task #</th>
<th>Task/Activity Description</th>
<th>Deliverables/Outcomes</th>
<th>Due Date/Time Frame</th>
<th>Payment Information and/or Amount</th>
<th>Whatcom County Match</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Project Administration and Reporting Whatcom County will share all data about monitoring, community engagement activities and referrals in their progress reports.</td>
<td>Semi-annual federal EPA Puget Sound Financial and Ecosystem Accounting Tracking System (FEATS) and Women/Minority Owned Business Reports. Reporting periods are April 1 – September 30 and October 1 – March 31.</td>
<td>April 15, 2013 October 15, 2013 April 15, 2014 October 15, 2014 Final report: April 15, 2015.</td>
<td>Reimbursement up to $14,000 based on actual costs.</td>
<td></td>
</tr>
</tbody>
</table>
| 2      | Participate on the Whatcom Clean Water Program (WCWP) Committee through:  
- Data sharing and coordination.  
- Progress reports for the County’s PIC Program on a quarterly basis.  
- Report to WCWP on the County’s water quality analysis, target bacteria sources, and appropriate BMPs based upon local research and expertise. Assist in development of consistent messages in the WCWP and Pollution Identification and Correction (PIC) programs. | Attendance at WCWP meetings. Quarterly progress reports. | On-going | Reimbursement up to $15,000 based on actual costs. |  |
<table>
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<tr>
<th></th>
<th>Work with partner agencies to create a database for multi-agency fecal coliform monitoring programs in Whatcom County to identify areas with pathogen pollution. Populate the database with historic data and ongoing data collection efforts through the duration of the project.</th>
<th>Partner on the development of a multi-agency fecal coliform monitoring program database. Populate and maintain the multi-agency fecal coliform monitoring program database.</th>
<th>Ongoing</th>
<th>Reimbursement up to $20,000 based on actual costs.</th>
<th>Staff salaries and benefits: $5,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>Build options and carry out a community outreach and engagement strategy. This will include a landowner survey (social marketing), neighborhood meetings, educational materials, and training for community leaders to assist with connecting landowners with skilled, technical expertise. Whatcom County staff and other local partners experienced in assessing water quality impacts from OSS, livestock, and other sources will conduct surveys, host or participate in neighborhood meetings, develop educational materials, and train community leaders who will be working with landowners to identify potential sources of bacteria, connect with technical assistance and incentive programs, and implement community solutions. Whatcom County will provide guidance in community engagement activities and technical assistance referrals to ensure that pollution sources are managed properly within a reasonable timeframe. Monitoring</td>
<td>Community outreach and engagement strategy.</td>
<td>February 2013</td>
<td>Reimbursement up to $4,000 based on actual costs.</td>
<td>Staff salaries and benefits: $50,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Landowner surveys, neighborhood meetings, educational materials, and community leader training. Progress reports will include the number of community leaders and the types of outreach they provide and number of landowners that participate in the community engagement program in each work area.</td>
<td>Initial surveys and neighborhood meetings March 2013, Ongoing</td>
<td></td>
<td></td>
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</tbody>
</table>
## EXHIBIT A
### STATEMENT OF WORK

| 5 | Build options and carry out a targeted monitoring strategy conducted by WCPW staff and volunteers. Funds will support lab analysis, field staff focused on Lower Dakota, Birch Bay coastal, and select Portage Bay Shellfish Protection District (SPD) priorities for focused sampling. Areas sampled through targeted monitoring may be expanded in 2014. | Implementation of targeted monitoring strategy. Progress reports will include maps and number of sites and samples collected. If applicable, number of volunteers and hours of work completed by volunteers for each work area will be included. | Ongoing | Reimbursement up to $69,000 based on actual costs, including a part-time field staff. | Monitoring
Staff salaries and benefits:
$40,000
Lab services:
$110,000 |
|---|---|---|---|---|---|
| 6 | Build options and carry out a technical and financial assistance strategy. WCPW will engage citizens to implement community solutions to water quality problems. Landowners will be given time to participate voluntarily. The Community Solutions PIC Program will be implemented for a specified period which will be worked out with Department of Ecology to encourage landowners to | Progress reports will include the number of landowners who receive technical and financial assistance and a description of the type of assistance and outcomes (e.g. referrals to other agencies and improvements in livestock or onsite sewage system management) provided in each work area. | Ongoing | Reimbursement up to $30,000 based on actual costs. | Technical and Financial Asst for Ag BMPs:
$70,000 |
**EXHIBIT A**
**STATEMENT OF WORK**

<p>| | | |</p>
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<tr>
<td>resolve bacteria contributions through voluntary actions. If after this time period monitoring shows continued exceedences of water quality standards and unaddressed sources of bacteria are observed, the community leaders or county staff will make three attempts to directly work with the responsible landowners.</td>
<td>Progress reports will include the number and outcome (pollution problems resolved) of referrals made to Ecology and other agencies.</td>
<td></td>
</tr>
<tr>
<td>Whatcom County will make referrals to Ecology through a regulatory backstop strategy when water quality improvements have not been gained and when repeated and egregious violations are observed. After three unsuccessful attempts to engage the above referenced responsible landowner in the Community Solutions Program, WCPW will make a referral to Ecology.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Participate in developing and tracking performance measures, annual review, and adaptive management of the programs.</td>
<td>Performance measures provided to WCWP and OSWP for review. Annual review with adaptive management recommendations provided to WCWP and OSWP.</td>
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<td></td>
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</tbody>
</table>

This sub-grant requires a match of up to $275,000 over the contract period. $164,000 of the project will be funded by DOH and up to $275,000 may come from Whatcom County, specific to this project. The up to $275,000 of match is a cumulative total; there is no requirement for a percentage of match to be provided for each individual payment request. Any local funds of federal origin, or any type of funding already counted as federal match under another agreement, are **not eligible** to be considered as match in this agreement. Eligible forms of match include:
EXHIBIT A
STATEMENT OF WORK

- Eligible project costs paid for by local funds of the sub-grantee;
- Cash;
- Volunteer or donated time;
- Donated services or products;
- Equipment;
- Salaries;
- Agency overhead/indirect costs;
- Other verifiable costs.

To estimate the cost of match based on volunteer hours, use the following approach:

**Skilled Labor:** A professionally skilled individual is a person who has obtained a professional or technical certification, completed advanced training, has made a living performing those activities, or has such extensive experience in the activity that you can reasonably justify and document valuing the individual’s time at a higher rate. Skilled laborers must perform their “skilled” service to be eligible for the skilled labor rate. The following information will help value skilled labor costs:

- Use the hourly rate (total mean wage) as determined by the Department of Employment Security’s Workforce Explorer Washington Web site for the region where the work is performed: contact the department’s Workforce Explorer Washington, 1-800-215-1617, or the ESD Website. Or

- Document the use of an hourly wage as part of the volunteer’s current profession. When there is no Department of Employment Security job classification similar to the work being done, send DOH a request for an additional job classification that includes the job description, recommended volunteer wage, and documentation that supports the recommended wage.

**Unskilled Labor:** This is work performed that generally does not require any experience or technical or special training. To determine the value of donated unskilled labor costs, visit the Resource and Conservation (RCO) Web site at www.rcw.wa.gov/doc_pages/reimbursement.shtml
FEDERAL COMPLIANCE AND STANDARD FEDERAL CERTIFICATIONS AND ASSURANCES

In the event federal funds are included in this agreement, added by future amendment(s), or redistributed between fund sources resulting in the provision of federal funds, the following sections apply: I. Federal Compliance and II. Standard Federal Assurances and Certifications. In the instance of inclusion of federal funds as a result of an amendment, the Contractor may be designated as a subrecipient and the effective date of the amendment shall also be the date at which these requirements go into effect.

I. FEDERAL COMPLIANCE - The use of federal funds requires additional compliance and control mechanisms to be in place. The following represents the majority of compliance elements that may apply to any federal funds provided under this contract. (Refer to Catalog of Domestic Assistance number(s) cited in the “Payment” section of this contract for requirements specific to that fund source.) For clarification regarding any of these elements or details specific to the federal funds in this contract, contact:

Compliance and Internal Control Officer
Office of Financial Services
Department of Health
Post Office Box 47901
Olympia, Washington 98504-7901

1. CIRCULARS ‘COMPLIANCE MATRIX’ - The following compliance matrix identifies the OMB Circulars that contain the requirements which govern expenditure of federal funds. These requirements apply to the Department of Health, as the primary recipient of federal funds, and then follow the funds to the subrecipient. The federal Circulars which provide the applicable administrative requirements, cost principles and audit requirements are identified by subrecipient organization type.

<table>
<thead>
<tr>
<th>ENTITY TYPE</th>
<th>ADMINISTRATIVE REQUIREMENTS</th>
<th>COST PRINCIPLES</th>
<th>AUDIT REQUIREMENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>State, Local and Indian Tribal Governments &amp; Governmental Hospitals</td>
<td>A-102 &amp; Common Rule</td>
<td>A-87</td>
<td>A-133</td>
</tr>
<tr>
<td>Non-Profit Organizations &amp; Non-Profit Hospitals</td>
<td>A-110</td>
<td>A-122</td>
<td>A-133</td>
</tr>
<tr>
<td>Colleges or Universities &amp; Affiliated Hospitals</td>
<td>A-110</td>
<td>A-21</td>
<td>A-133</td>
</tr>
</tbody>
</table>

2. CITIZENSHIP/ALIEN VERIFICATION/DETERMINATION - The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 (PL 104-193) states that federal public benefits
should be made available only to U.S. citizens and qualified aliens. Entities that offer a service defined as a "federal public benefit" must make a citizenship/qualified alien determination/verification of applicants at the time of application as part of the eligibility criteria. Non-US citizens and unqualified aliens are not eligible to receive the services. PL 104-193 also includes specific reporting requirements. Exemptions from the determination/verification requirement is afforded the following programs offered by the Department of Health: Family Planning, Breast & Cervical Health Program (BCHP), Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), WIC Farmers Market Program, Immunization Programs, and Ryan White CARE Act programs and other communicable disease treatment and diagnostic programs.

3. **CIVIL RIGHTS AND NONDISCRIMINATION** - During the performance of this agreement, the Contractor shall comply with all current and future federal statutes relating to nondiscrimination. These include but are not limited to: Title VI of the Civil Rights Act of 1964 (PL 88-352), Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681-1683 and 1685-1686), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-6107), the Drug Abuse Office and Treatment Act of 1972 (PL 92-255), the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290dd-3 and 290ee-3), Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), and the Americans with Disability Act (42 U.S.C., Section 12101 et seq.).

4. **SINGLE AUDIT ACT** - A subrecipient (including private, for-profit hospitals and non-profit institutions) shall adhere to the federal Office of Management and Budget (OMB) Circular A-133, as well as all applicable federal and state statutes and regulations. A subrecipient who expends $500,000 or more in federal awards during a given fiscal year shall have a single or program-specific audit for that year in accordance with the provisions of OMB Circular A-133.

II. **STANDARD FEDERAL CERTIFICATIONS AND ASSURANCES** - Following are the Assurances, Certifications, and Special Conditions that apply to all federally funded (in whole or in part) agreements administered by the Washington State Department of Health.

**CERTIFICATIONS**

1. **CERTIFICATION REGARDING DEBARMET AND SUSPENSION**

The undersigned (authorized official signing for the contracting organization) certifies to the best of his or her knowledge and belief, that the contractor, defined as the primary participant in accordance with 45 CFR Part 75, and its principals:

A. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;
B. have not within a 3-year period preceding this contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

C. are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and

D. have not within a 3-year period preceding this contract had one or more public transactions (Federal, State, or local) terminated for cause or default.

Should the contractor not be able to provide this certification, an explanation as to why should be placed after the assurances page in the contract.

The contractor agrees by signing this contract that it will include, without modification, the clause titled Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions in all lower tier covered transactions (i.e., transactions with subgrantees and/or contractors) and in all solicitations for lower tier covered transactions in accordance with 45 CFR Part 76.

2. CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

The undersigned (authorized official signing for the contracting organization) certifies that the contractor will, or will continue to, provide a drug-free workplace in accordance with 45 CFR Part 76 by:

A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee’s workplace and specifying the actions that will be taken against employees for violation of such prohibition;

B. Establishing an ongoing drug-free awareness program to inform employees about

   i. The dangers of drug abuse in the workplace;

   ii. The contractor’s policy of maintaining a drug-free workplace;

   iii. Any available drug counseling, rehabilitation, and employee assistance programs; and

   iv. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
C. Making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by paragraph (a) above;

D. Notifying the employee in the statement required by paragraph (a), above, that, as a condition of employment under the contract, the employee will—
   i. Abide by the terms of the statement; and
   ii. Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

E. Notifying the agency in writing within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every contract officer or other designee on whose contract activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

F. Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(ii), with respect to any employee who is so convicted—
   i. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
   ii. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

G. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (A), (B), (C), (D), (E), and (F).

For purposes of paragraph (e) regarding agency notification of criminal drug convictions, DOH has designated the following central point for receipt of such notices:

Compliance and Internal Control Officer
Office of Grants Management
WA State Department of Health
PO Box 47905
Olympia, WA 98504-7905
3. CERTIFICATION REGARDING LOBBYING

Title 31, United States Code, Section 1352, entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," generally prohibits recipients of Federal grants and cooperative agreements from using Federal (appropriated) funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a SPECIFIC grant or cooperative agreement. Section 1352 also requires that each person who requests or receives a Federal grant or cooperative agreement must disclose lobbying undertaken with non-Federal (nonappropriated) funds. These requirements apply to grants and cooperative agreements EXCEEDING $100,000 in total costs (45 CFR Part 93).

The undersigned (authorized official signing for the contracting organization) certifies, to the best of his or her knowledge and belief, that:

A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

B. If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions. (If needed, Standard Form-LLL, "Disclosure of Lobbying Activities," its instructions, and continuation sheet are included at the end of this application form.)

C. The undersigned shall require that the language of this certification be included in the award documents for all subcontracts at all tiers (including subcontracts, subcontracts, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

4. CERTIFICATION REGARDING PROGRAM FRAUD CIVIL REMEDIES ACT (PFCRA)

The undersigned (authorized official signing for the contracting organization) certifies that the statements herein are true, complete, and accurate to the best of his or her knowledge, and that he or she is aware that any false, fictitious, or fraudulent statements or claims may subject him or her
to criminal, civil, or administrative penalties. The undersigned agrees that the contracting organization will comply with the Public Health Service terms and conditions of award if a contract is awarded.

5. CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE

Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such Federal funds. The law does not apply to children's services provided in private residence, portions of facilities used for inpatient drug or alcohol treatment, service providers whose sole source of applicable Federal funds is Medicare or Medicaid, or facilities where WIC coupons are redeemed.

Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity.

By signing the certification, the undersigned certifies that the contracting organization will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act.

The contracting organization agrees that it will require that the language of this certification be included in any subcontracts which contain provisions for children's services and that all subrecipients shall certify accordingly.

The Public Health Services strongly encourages all recipients to provide a smoke-free workplace and promote the non-use of tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

6. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS INSTRUCTIONS FOR CERTIFICATION

By signing and submitting this proposal, the prospective contractor is providing the certification set out below.

A. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective contractor shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective contractor to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
B. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

C. The prospective contractor shall provide immediate written notice to the department or agency to whom this contract is submitted if at any time the prospective contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

D. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the person to whom this contract is submitted for assistance in obtaining a copy of those regulations.

E. The prospective contractor agrees by submitting this contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by DOH.

F. The prospective contractor further agrees by submitting this contract that it will include the clause titled Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transaction, provided by HHS, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

G. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (of excluded parties).

H. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

I. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, DOH may terminate this transaction for cause or default.
7. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS -- PRIMARY COVERED TRANSACTIONS

A. The prospective contractor certifies to the best of its knowledge and belief, that it and its principals:

i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

ii. Have not within a three-year period preceding this contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

iii. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

iv. Have not within a three-year period preceding this contract had one or more public transactions (Federal, State or local) terminated for cause or default.

B. Where the prospective contractor is unable to certify to any of the statements in this certification, such prospective contractor shall attach an explanation to this contract.

**CONTRACTOR'S SIGNATURE IS REQUIRED**

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<th>SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL</th>
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<td>County Executive</td>
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Please also print or type name: Jack Louws

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<th>ORGANIZATION NAME: (if applicable)</th>
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FEDERAL ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the contractor, I certify that the contractor:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management, and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of handicaps; (d) the Age
Discrimination Act of 1975, as amended (42 U.S.C. 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with the provisions of the Hatch Act (5 U.S.C. 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.


10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1721 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C., 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, Audits of States, Local Governments, and Non-Profit Organizations.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

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SPECIAL TERMS & CONDITIONS
FEDERAL COMPLIANCE
ADDITIONAL FEDERAL (EPA) CERTIFICATIONS AND ASSURANCES

The Sub-Recipient shall comply with all applicable federal, State, and local laws, rules, and regulations in carrying out the terms and conditions of this Agreement.

Award Information:
Federal Agency: US Environmental Protection Agency (EPA)
CFDA Number and Title: 66.123 - Puget Sound Action Agenda: Technical Investigations and Implementation Assistance Program
Award Name and Number: DOH Puget Sound Restoration (PC-00J32601)
Award Year: 2011-2017

Administrative Conditions:
1. Cost Principles
Sub-Recipient agrees to comply with the cost principles of the below listed federal regulations are applicable as appropriate to this award.
   2 CFR 225 (A-87) for State, Local, and Indian Tribal Governments
   2 CFR 220 (A-21) for Educational Institutions
   2 CFR 230 (A-122) Nonprofit Organizations
   FAR 31.2 for Commercial Organizations
An electronic copy of all the Circulars and applicable CFR's may be obtained via the OMB Home Web page at:
http://www.whitehouse.gov/OMB/grants/index.html
Unless otherwise indicated, the Cost Principles apply to the use of funds provided under this Agreement and in-kind matching donations. The applicability of the Cost Principles depends on the type of organization incurring the costs.

2. Audit Requirements
The Sub-Recipient shall fully comply with requirements of OMB Circular A-133, 'Audits of States, Local Governments, and Non-Profit Organizations, if applicable.

3. Hotel-Motel Fire Safety Act
Pursuant to 40 CFR 30.18, if applicable, and 15 USC 2225a, Sub-Recipient agrees to ensure that all space for conferences, meetings, conventions, or training seminars funded in whole or in part with federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (PL 101-391, as amended. Sub-Recipient may search the Hotel-Motel National Master List at: http://www.usfa.dhs.gov/applications/hotel to see if a property is in compliance (FEMA ID is currently not required), or to find other information about the Act.

4. Recycled Paper
Institutions of Higher Education Hospitals and Non-Profit Organizations

In accordance with 40 CFR 30.16, Sub-Recipient agrees to use recycled paper and double-sided printing for all reports which are prepared as a part of this Agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration.

State Agencies and Political Subdivisions

In accordance with Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962) any State agency or agency of a political subdivision of a State which is using appropriated Federal funds shall comply with the requirements set forth. Regulations issued under RCRA Section 6002 apply to any acquisition of an item where the purchase price exceeds $10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was $10,000 or more. RCRA Section 6002 requires that preference be given in procurement programs to the purchases of specific products containing recycled materials identified in guidelines developed by EPA. These guidelines are listed in 40 CFR 247.

State and Local Institutions of Higher Education and Non-Profit Organizations

In accordance with 40 CRF 30.16, State and local institutions of higher education, hospitals, and non-profit organizations that receive direct Federal funds shall give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to EPA's guidelines.

State Tribal and Local Government Recipients

In accordance with the policies set forth in EPA Order 1000.25 and Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management (January 24, 2007), Sub-Recipient agrees to use recycled paper and double sided printing for all reports which are prepared a part of this Agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration.

5. Lobbying

Sub-Recipient agrees to comply with Title 40 CFR Part 34, New Restrictions on Lobbying. Sub-Recipient shall include the language of this provision in award documents for all sub-awards exceeding $100,000, and require that sub-awardees submit certification and disclosure forms accordingly.

In accordance with the Byrd Anti-Lobbying Amendment, any recipient who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each expenditure.

Part 30 Recipients

All contracts awarded by Sub-Recipient shall contain, when applicable, the anti-lobbying provisions as stipulated in the Appendix at Title 40 CFR Part 30.

Pursuant to Section 18 of the Lobbying Disclosure Act, Sub-Recipient affirms that it is not a non-profit organization described in Section 501(c) (4) of the Internal Revenue Code of 1986; or that it is a non-profit organization described in Section 501(c) (4) of the Code but does not and will not engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act.
Lobbying and Litigation

Sub-Recipient’s chief executive officer shall ensure that no grant funds awarded under this Agreement are used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. Sub-Recipient shall abide by its respective OMB Circular (A-21, A-87, or A-122), which prohibits the use of Federal grant funds for litigation against the United States or for lobbying or other political activities.

6. Suspension and Debarment

Sub-Recipient shall fully comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532, entitled ‘Responsibilities of Participants Regarding Transaction (Doing Business with Other Persons)’. Sub-Recipient is responsible for ensuring that any lower tier covered transaction as described in Subpart B of 2 CFR Part 180 and 2 CFR Part 1532, entitled ‘Covered Transactions’, includes a term or condition requiring compliance with Subpart C. Sub-Recipient is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. Sub-Recipient acknowledges that failing to disclose the information as required at 2 CFR 180.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment.

Sub-Recipient may access the Excluded Parties List System at: [http://www.epis.gov](http://www.epis.gov). This term and condition supersedes EPA Form 5700-49, ‘Certification Regarding Debarment, Suspension, and Other Responsibility Matters’.

7. Drug-Free Workplace Certification

Sub-Recipient must make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in Title 40 CFR 36.200-36.230. Additionally, in accordance with these regulations, Sub-Recipient organization must identify all known workplaces under its federal award; and keep this information on file during the performance of the award.

Sub-Recipient who are individuals must comply with the drug-free provisions set forth in Title 40 CFR 36.300. The consequences for violating this condition are detailed under Title 40 CFR 36.510. Sub-Recipients can access the Code of Federal Regulations (CFR) Title 40 Part 36 at: [http://www.access.gpo.gov/nara/cfr/waisidx_06/40cfr36_06.html](http://www.access.gpo.gov/nara/cfr/waisidx_06/40cfr36_06.html)

8. Management Fees

Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term “management fees or similar charges” refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs which are not allowable under this assistance agreement. Management fees or similar charges may not be used to improve or expand the project funded under this Agreement, except to the extent authorized as a direct cost of carrying out the scope of work.

9. Reimbursement Limitation

If Sub-Recipient expends more than the amount of federal funding in its approved budget in anticipation of receiving additional funds, it does so at its own risk. The Federal Government is not legally obligated to reimburse Sub-Recipient for costs incurred in excess of the approved budget.

10. Trafficking in Persons
ATTACHMENT 2

The following prohibition statement applies to Sub-Recipient, and all sub-awardees of Sub-Recipient. Sub-Recipient must include this statement in all sub-awards made to any private entity under this Agreement.

"YOU AS THE SUB-RECIPIENT, YOUR EMPLOYEES, SUB-AWARDEES UNDER THIS AWARD, AND SUB-AWARDEES' EMPLOYEES MAY NOT ENGAGE IN SEVERE FORMS OF TRAFFICKING IN PERSONS DURING THE PERIOD OF TIME THAT THE AWARD IS IN EFFECT; PROCURE A COMMERCIAL SEX ACT DURING THE PERIOD OF TIME THAT THE AWARD IS IN EFFECT; OR USE FORCED LABOR IN THE PERFORMANCE OF THE AWARD OR SUB-AWARDS UNDER THIS AWARD."

11. DUNS and CCR Requirements
Unless otherwise exempted from this requirement under 2 CFR 25.110, Sub-Recipient must maintain the currency of its information in the CCR until submission of its final financial report required under this Award or receive the final payment, whichever is later.
Sub-Recipient may not make a sub-award to any entity unless the entity has provided its DUNS number to Sub-Recipient.

12. FY2011 ACORN Funding Restriction
No funds provided under this Agreement may be used for sub-awards/sub-grants or contracts to the Association of Community Organizations for Reform NOW (ACORN) or any of its subsidiaries.

13. Disadvantaged Business Enterprise Requirements, General Compliance
Sub-Recipient agrees to comply with the requirements of EPA's Program for Utilization of Small, Minority and Women's Business Enterprises in procurement under assistance agreements, contained in 40 CFR, Part 33.

14. Sub-Awards
If Sub-Recipient makes sub-awards under this Agreement, Sub-Recipient is responsible for selecting its sub-awardees and, if applicable, for conducting sub-award competitions. Sub-Recipient agrees to:
1. Establish all sub-award agreements in writing;
2. Maintain primary responsibility for ensuring successful completion of the approved project (SUB-RECIPIENT CANNOT DELEGATE OR TRANSFER THIS RESPONSIBILITY TO A SUB-AWARDEE);
3. Ensure that any sub-awards comply with the standards in Section 210(a)-(d) of OMB Circular A-133, and are not used to acquire commercial goods or services for the sub-awardee.
4. Ensure that any sub-awards to 501(c)(4) organizations do not involve lobbying activities;
5. Monitor the performance of sub-awardees, and ensure sub-awardees comply with all applicable regulations, statutes, and terms and conditions which flow down in the sub-award;
6. Obtain DOH's consent before making a sub-award to a foreign or international organization, or a sub-award to be performed in a foreign country; and
7. Obtain approval from DOH for any new sub-award work that is not outlined in the approved work plan in accordance with 40 CFR Parts 30.25 and 31.30, as applicable.

Programmatic Conditions:
1. Semi-Annual Performance Reports
Sub-Recipient is required to submit performance reports every six months, unless a different reporting frequency is outlined in the Scope of Work, using the reporting tool supplied by DOH. Sub-Recipient agrees to include brief information on each of the following areas:

a) a comparison of actual accomplishments to the outputs/outcomes established in the assistance agreement work plan for the period;
b) the reasons for slippages if established outputs/outcomes were not met;
c) additional pertinent information, including when appropriate, analysis and information of cost overruns or high unit costs.

Reporting periods are from October 1 to March 31 and April 1 to September 30. Performance reports are due to DOH 15 calendar days after the end of each reporting period.

2. Final Performance Report
In addition to the periodic performance reports, the sub-recipient will submit a final performance report to DOH within 60 calendar days after the expiration or termination of the award. The report shall be submitted to the DOH Grant Manager and must be provided electronically. The report shall generally contain the same information as in the periodic reports, but should cover the entire project period.

3. Recognition of EPA Funding
Reports, documents, signage, videos, or other media, developed as part of projects funded by this Agreement shall contain the following statement:

"This project has been funded wholly or in part by the United States Environmental Protection Agency under assistance agreement PC-00J32601 to Washington Department of Health. The contents of this document do not necessarily reflect the views and policies of the Environmental Protection Agency, nor does mention of trade names or commercial products constitute endorsement or recommendation for use."

4. Copyrighted Material
EPA has the right to reproduce, publish, use, and authorize others to use copyrighted works or other data developed under this assistance agreement for Federal purposes.

DOH acknowledges that EPA may authorize another grantee to use copyrighted works or other data developed under this agreement as a result of: a) the selection of another grantee by EPA to perform a project that will involve the use of the copyrighted works or other data or; b) termination or expiration of this agreement.

5. Peer Review
The results of this project may affect management decisions relating to Puget Sound. Prior to finalizing any significant technical products the Principal Investigator (PI) of this project must solicit advice, review and feedback from a technical review or advisory group consisting of relevant subject matter specialists. A record of comments and a brief description of how respective comments are addressed by the PI will be provided to the DOH Grant Manager prior to releasing any final reports or products resulting from the funded study.

6. Quality Assurance Requirements
Acceptable Quality Assurance documentation must be submitted to the DOH within 30 days of acceptance of this agreement or another date as negotiated with the DOH grants manager. Please refer to The Department of Ecology’s website at http://www.ecy.wa.gov/programs/eap/qa/docs/NEPQAPP/index.html for guidance and templates. Submit both the Acceptable Quality Assurance documentation to Tom Gries at tgr1461@ecy.wa.gov for review with a cc to mary.knackstedt@doh.wa.gov and blake.nelson@doh.wa.gov. No work
involving direct measurements or data generation, environmental modeling; compilation of data from literature or electronic media, and data supporting the design, construction, and operation of environmental technology shall be initiated under an agreement until DOH or Department of Ecology has approved the quality assurance document.

7. **Environmental Data and Information Technology**
   Sub-recipients are required to institute standardized reporting requirements into their work plans and include such costs in their budgets. All environmental data will be required to be entered into the EPA's Storage and Retrieval data system (STORET). The best method (local or state consolidated) for reporting will be determined on a project-by-project basis between the DOH grant manager and sub-recipient. More information about STORET can be found at [http://www.epa.gov/STORET](http://www.epa.gov/STORET).

8. **Minority and Women-Owned Business Enterprise (MBE/WBE) Fair Share Objectives and Reporting**
   Subrecipients are held to the same requirements as the recipient of the EPA Grant and must accept the MBE/WBE fair share objectives/goals negotiated with EPA by the Washington Office of Minority and Women's Business Enterprises as follows:

   **MBE:** PURCHASED GOODS 8%, PURCHASED SERVICES 10%, PROFESSIONAL SERVICES 10%
   **WBE:** PURCHASED GOODS 4%, PURCHASED SERVICES 4%, PROFESSIONAL SERVICES 4%

   By accepting this financial assistance the subrecipient is accepting the fair share objectives/goals stated above and attests to the fact that it is purchasing the same or similar construction, supplies, services and equipment, in the same or similar relevant geographic buying market as, Washington Office of Minority and Women's Business Enterprises.

   Subrecipients are required to submit MBE/WBE utilization reports every six months. Reports will be in the following format and will include all qualifying purchases. Reporting periods are from October 1 to March 31 and April 1 to September 30. Reports are due to DOH 15 calendar days after the end of each reporting period. Send MBE/WBE utilization reports to david.bartruff@doh.wa.gov.

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<th>3. $ Value of Procurement</th>
<th>4. Date of Purchase MM/DD/YY</th>
<th>5. Type of Product or Services * (Enter Code)</th>
<th>6. Name/Address/Phone Number of MBE/WBE Contractor or Vendor</th>
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</tbody>
</table>

*Type of product or service codes: 1 = Construction  2 = Supplies  3 = Services  4 = Equipment*
FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA) FORM

This contract is supported by federal funds that require compliance with the Federal Funding Accountability and Transparency Act (FFATA or the Transparency Act). The purpose of the Transparency Act is to make information available online so the public can see how federal funds are spent.

To comply with the act and be eligible to enter into this contract, your organization must have a Data Universal Numbering System (DUNS®) number. A DUNS® number provides a method to verify data about your organization. If you do not already have one, you may receive a DUNS® number free of charge by contacting Dun and Bradstreet at www.dnb.com.

Required Information about your organization and this contract will be made available on USASpending.gov by the Washington State Department of Health as required by P.L. 109-282. As a tool to provide the information, DOH encourages registration with the Central Contractor Registry (CCR) because less data entry and re-entry is required by both DOH and your organization. You may register with CCR on-line at www.bpn.gov/ccr.

**CONTRACTOR**

<table>
<thead>
<tr>
<th>1. Legal Name</th>
<th>2. DUNS Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>WHATCOM COUNTY PUBLIC WORKS</td>
<td>06-004-4641</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>3. Principle Place of Performance</th>
</tr>
</thead>
<tbody>
<tr>
<td>BELLINGHAM</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>4. Are you registered in CCR (<a href="http://www.ccr.gov">http://www.ccr.gov</a>)?</th>
</tr>
</thead>
<tbody>
<tr>
<td>☐ YES (skip to page 2. Sign, date and return)</td>
</tr>
</tbody>
</table>

5. In the preceding fiscal year did your organization:
   a. Receive 80% or more of annual gross revenue from federal contracts, subcontracts, grants, loans, subgrants, and/or cooperative agreements; **and**
   b. $25,000,000 or more in annual gross revenues from federal contracts, subcontracts, grants, loans, subgrants, and/or cooperative agreements; **and**
   c. The public does not have access to information about the compensation of the executives through periodic reports filled with the IRS or the Security and Exchange Commission per 2 CFR Part 170.330

☐ NO (skip to page 2. Sign, date and return)

☐ YES (You must report the names and total compensation of the top 5 highly compensated officials of your organization).

<table>
<thead>
<tr>
<th>Name Of Official</th>
<th>Total Compensation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td></td>
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<tr>
<td>3.</td>
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<tr>
<td>4.</td>
<td></td>
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<tr>
<td>5.</td>
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</tbody>
</table>

**Note:** "Total compensation" means the cash and noncash dollar value earned by the executive during the sub-
recipient’s past fiscal year of the following (for more information see 17 CFR 229.402 ©(2)).

By signing this document, the Authorized Representative attests to the information.

<table>
<thead>
<tr>
<th>Signature of Authorized Representative</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>3/18/13</td>
</tr>
</tbody>
</table>

The Department of Health will not endorse your subaward until this form is completed and returned.

**FOR DEPARTMENT OF HEALTH USE ONLY**

<table>
<thead>
<tr>
<th>DOH Contract Number</th>
<th>N19934</th>
</tr>
</thead>
</table>

**Sub-award Project Description (see instructions and examples below)**

The Office of Shellfish and Water Protection (OSWP) will provide $164,000 to Whatcom County to supplement the County’s Pollution Identification and Control (PIC) program including comprehensive water quality monitoring (routine, target area, and storm event monitoring); annual data review and prioritization of drainage areas; community engagement to identify and address bacteria pollution sources; and technical and financial assistance to implement water quality improvement practices.

**Instructions for Sub-award Project Description:**
In the first line of the description provide a title for the sub-award that captures the main purpose of the subrecipient's work. Then, indicate the name of the subrecipient and provide a brief description that captures the overall purpose of the sub-award, how the funds will be used, and what will be accomplished.

**Example of a Sub-award Project Description:**
Increase Healthy Behaviors: Educational Services District XYZ will provide training and technical assistance to chemical dependency centers to assist the centers to integrate tobacco use into their existing addiction treatment programs. Funds will also be used to assist centers in creating tobacco free treatment environments.
**WHATCOM COUNTY COUNCIL AGENDA**

<table>
<thead>
<tr>
<th>CLEARANCES</th>
<th>Initial</th>
<th>Date</th>
<th>Date Received in Council Office</th>
<th>Agenda Date</th>
<th>Assigned to:</th>
</tr>
</thead>
<tbody>
<tr>
<td>E. Douglas</td>
<td></td>
<td></td>
<td></td>
<td>3/26/13</td>
<td>Finance/Council</td>
</tr>
<tr>
<td>C. Brueske</td>
<td></td>
<td>3/15/13</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>F. Abant</td>
<td>Ex.</td>
<td>3/13/13</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>D. Gibson</td>
<td></td>
<td>03/13/13</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>B. Bennett</td>
<td></td>
<td>3/14/13</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>J. Laws</td>
<td></td>
<td>3-18-13</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**TITLE OF DOCUMENT:**

Water Quality Analytical Testing Services

**ATTACHMENTS:**

1. Memo
2. Contract Information Sheet
3. Contract and Exhibits

<table>
<thead>
<tr>
<th>SEPA review required?</th>
<th>( ) Yes</th>
<th>( X ) NO</th>
<th>Should Clerk schedule a hearing?</th>
<th>( ) Yes</th>
<th>( X ) NO</th>
</tr>
</thead>
<tbody>
<tr>
<td>SEPA review completed?</td>
<td>( ) Yes</td>
<td>( X ) NO</td>
<td>Requested Date:</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**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.)

Public Works conducts routine water quality monitoring at approximately 90 sites throughout Whatcom County coastal drainages. The data is used to track patterns in water quality, identify high priority areas for water quality improvement projects, and work with community members to identify solutions.

Edge Analytical Labs was selected through a competitive bid process and will provide laboratory analysis of surface water samples for fecal coliform, as specified in the attached exhibit.

**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.
**WHATCOM COUNTY CONTRACT INFORMATION SHEET**

<table>
<thead>
<tr>
<th>Originating Department:</th>
<th>Public Works-Natural Resources</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract Administrator:</td>
<td>Erika Douglas</td>
</tr>
<tr>
<td>Contractor's / Agency Name:</td>
<td>Edge Analytical Labs</td>
</tr>
</tbody>
</table>

**Is this a New Contract?**
Yes _X_ No ____ If not, is this an Amendment or Renewal to an Existing Contract? Yes ____ No ____ If yes, previous number(s): ______________________

**Is this a grant agreement?**
Yes ____ No _X_ If yes, grantor agency contract number(s) ______ CFDA # _______

**Is this contract grant funded?**
Yes ____ No _X_ If yes, associated Whatcom County grant contract number(s) ______________________

**Is this contract the result of a RFP or Bid process?**
Yes _X_ No ____ If yes, RFP and Bid number(s) ______ 12-74 ______ Cost Center: 813003_

**Is this contract excluded from E-Verify?**
No ____ Yes _X_ If no, include Attachment D Contractor Declaration Form
If yes, indicate qualified exclusion(s) below:
___ Contract less than $100,000.
___ Work is for less than 120 days
___ Interlocal Agreement (between Govt.)
___ Professional services agreement for certified/licensed professional
___ Contract for Commercial off the shelf items (COTS)
___ Public Works Dept. - Local Agency/Federally Funded FHWA

**Contract Amount:** (sum of orig contract amt and any prior amendments)
$ 29,700.00

**This Amendment Amount:**

$ ___________________________

**Total Amended Amount:**

$ ___________________________

**Scope of Services:** [Insert language from contract (Exhibit A) or summarize; expand space as necessary]

*Public Works conducts routine water quality monitoring at approximately 90 sites throughout Whatcom County coastal drainages. The data is used to track patterns in water quality, identify high priority areas for water quality improvement projects, and work with community members to identify solutions.*

*Edge Analytical Labs was selected through a competitive bid process and will provide laboratory analysis of surface water samples for fecal coliform, total nitrogen and total phosphorous as specified.*

**Term of Contract:** 3/27/13-12/31/13

**Expiration Date:** 12/31/13

**Contract Routing Steps & Signoff:** [sign or initial] [indicate date transmitted]

1. Prepared by ______ E. Douglas Date 3/11/13 [electronic]
2. Attorney reviewed Daniel L. Gibson Date 3/18/13 [electronic]
3. AS Finance reviewed ______ Date 3/11/13 [electronic]
4. IT reviewed if IT related ______ Date ______ [electronic] hard copy printed
5. Corrections made ______ Date ______ [electronic]
6. Attorney signoff ______ Date 3/11/13 [summary via electronic; hardcopies]
7. Contractor signed ______ Date 3/13/13
8. Submitted to Exec Office ______ Date 3/14/13 [summary via electronic; hardcopies]
9. Council approved (if necessary) ______ Date ______
10. Executive signed ______ Date ______
11. Contractor Original Returned to dept. ______ Date ______
MEMORANDUM

TO: The Honorable Jack Louws, Whatcom County Executive, and Honorable Members of the Whatcom County Council

THROUGH: Frank M. Abart, Public Works Director

FROM: Chris Brueske, P.E., Assistant Director
       Erika Douglas, Senior Planner-Marine Resources

RE: Contract with Edge Analytical Labs for Water Quality Analytical Testing Services

DATE: March 11, 2013

Please find attached for your review and approval two (2) originals of a contract for services agreement between Whatcom County and Edge Analytical Labs for water quality analytical testing services.

Requested Action
Public Works respectfully requests that the County Council authorize the County Executive to sign the attached contract for laboratory services.

Background and Purpose
Public Works conducts routine water quality monitoring at approximately 90 sites throughout Whatcom County coastal drainages. The data is used to track patterns in water quality, identify high priority areas for water quality improvement projects, and work with community members to identify potential sources and solutions.

Edge Analytical was selected through a competitive bid process and will provide laboratory analysis of surface water samples for fecal coliform, as specified in the attached exhibit.

Funding Amount and Source
This contract is not to exceed $29,700.00 and will be funded through the Public Works Natural Resources approved 2013 budget.

Please contact Erika Douglas at extension 50692 if you have any questions or concerns regarding the terms of this agreement.

Enclosure
CONTRACT FOR SERVICES
WATER QUALITY ANALYTICAL TESTING SERVICES

EDGE ANALYTICAL LABS, hereinafter called Contractor, and Whatcom County, hereinafter referred to as County, agree and contract as set forth in this Agreement, including:

- General Conditions, pp. 3 to 8.
- Exhibit A (Scope of Work), pp. 9 to 10.
- Exhibit B (Compensation), pp. 11 to 11.
- Exhibit C (Certificate of insurance).

Copies of these items are attached hereto and incorporated herein by this reference as if fully set forth herein.

The term of this Agreement shall commence on the 27TH day of MARCH, 2013, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 31ST day of DECEMBER, 2013.

The general purpose or objective of this Agreement is to secure analytical testing services, as more fully and definitively described in Exhibit A hereto. The language of Exhibit A controls in case of any conflict between it and this Agreement.

The maximum consideration for the initial term of this agreement or for any renewal term shall be Twenty-Nine Thousand, Seven Hundred and No/100 Dollars ($29,700). The Contract Number, set forth above, shall be included on all billings or correspondence in connection therewith.

Contractor acknowledges and by signing this contract agrees that the indemnification provisions set forth in Paragraphs 11.1, 21.1, 30.1, 31.2, 32.1, 34.2, and 34.3, if included, are totally and fully part of this contract and have been mutually negotiated by the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement this 27th day of March, 2013.

CONTRACTOR:

EDGE ANALYTICAL LABS

[Signature]

Ben Miller, VP of Support Services

STATE OF WASHINGTON

) ss.

COUNTY OF SKAGIT

On this 13th day of March, 2013, before me personally appeared BEN MILLER to me known to be the VP of SUPPORT SERVICES of EDGE ANALYTICAL LABS and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

[Signature]

NOTARY PUBLIC in and for the State of Washington, residing at Burlington, My commission expires 10/31/15.
WHATCOM COUNTY:
Recommended for Approval:

Frank M. Abart
Public Works Director

Approved as to form:

Daniel L. Gibson
Assistant Chief Civil Deputy Prosecutor

Approved:
Accepted for Whatcom County:

By:
Jack Louws, Whatcom County Executive

STATE OF WASHINGTON  )
COUNTY OF WHATCOM ) ss

On this ______ day of ________, 20__, before me personally appeared Jack Louws, to me known to be the Executive of Whatcom County, who executed 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 ______________.

CONTRACTOR INFORMATION:

EDGE ANALYTICAL LABS

Ben Miller, VP of Support Services

Address:
805 W. Orchard Street, Suite 4
Bellingham, WA 98225

Contact Name: Ben Miller
Phone: 800.755.9295
Contact Email: bmiller@edgeanalytical.com
GENERAL CONDITIONS

Series 00-09: Provisions Related to Nature and Purpose of Agreement

0.1 Scope of Services:
The Contractor agrees to provide to the County services and any materials as set forth in the project narrative identified as Exhibit "A", during the agreement period. No material, labor, or facilities will be furnished by the County, unless otherwise provided for in the Agreement.

Series 10-19: Provisions Related to Term and Termination

10.1 Term:
Services provided by Contractor prior to or after the term of this contract shall be performed at the expense of Contractor and are not compensable under this contract unless both parties hereto agree to such provision in writing. The term of this Agreement may be extended by mutual agreement of the parties; provided, however, that the Agreement is in writing and signed by both parties.

10.2 Extension: Not Applicable

11.1 Termination for Default:
If the Contractor defaults by failing to perform any of the obligations of the contract or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the County may, by depositing written notice to the Contractor in the U.S. mail, first class postage prepaid, terminate the contract, and at the County's option, obtain performance of the work elsewhere. Termination shall be effective upon Contractor's receipt of the written notice, or within three (3) days of the mailing of the notice, whichever occurs first. If the contract is terminated for default, the Contractor shall not be entitled to receive any further payments under the contract until all work called for has been fully performed. Any extra cost or damage to the County resulting from such default(s) shall be deducted from any money due or coming due to the Contractor. The Contractor shall bear any extra expenses incurred by the County in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the County by reason of such default.

11.2 Termination for Reduction in Funding:
In the event that funding from State, Federal or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement, and prior to its normal completion, the County may summarily terminate this Agreement as to the funds withdrawn, reduced, or limited, notwithstanding any other termination provisions of this Agreement. If the level of funding withdrawn, reduced or limited is so great that the County deems that the continuation of the programs covered by this Agreement is no longer in the best interest of the County, the County may summarily terminate this Agreement in whole, notwithstanding any other termination provisions of this Agreement. Termination under this section shall be effective upon receipt of written notice as specified herein, or within three days of the mailing of the notice, whichever occurs first.

11.3 Termination for Public Convenience: Not Applicable

Series 20-29: Provisions Related to Consideration and Payments

20.1 Accounting and Payment for Contractor Services:
Payment to the Contractor for services rendered under this Agreement shall be as set forth in Exhibit "B." Where Exhibit "B" requires payments by the County, payment shall be based upon written claims supported, unless otherwise provided in Exhibit "B," by documentation of units of work actually performed and amounts earned, including, where appropriate, the actual number of days worked each month, total number of hours for the month, and the total dollar payment requested, so as to comply with municipal auditing requirements.

Unless specifically stated in Exhibit "B" or approved in writing in advance by the official executing this Agreement for the County or his designee (hereinafter referred to as the "Administrative Officer") the County will not reimburse the Contractor for any costs or expenses incurred by the Contractor in the performance of this contract. Where required, the County shall, upon receipt of appropriate documentation, compensate the Contractor, no more often than monthly, in accordance with the County's customary procedures, pursuant to the fee schedule set forth in Exhibit "B."
21.1 **Taxes:**
The Contractor understands and acknowledges that the County will not withhold Federal or State income taxes. Where required by State or Federal law, the Contractor authorizes the County to withhold for any taxes other than income taxes (i.e., Medicare). All compensation received by the Contractor will be reported to the Internal Revenue Service at the end of the calendar year in accordance with the applicable IRS regulations. It is the responsibility of the Contractor to make the necessary estimated tax payments throughout the year, if any, and the Contractor is solely liable for any tax obligation arising from the Contractor’s performance of this Agreement. The Contractor hereby agrees to indemnify the County against any demand to pay taxes arising from the Contractor's failure to pay taxes on compensation earned pursuant to this Agreement.

The County will pay sales and use taxes imposed on goods or services acquired hereunder as required by law. The Contractor must pay all other taxes, including, but not limited to, Business and Occupation Tax, taxes based on the Contractor's gross or net income, or personal property to which the County does not hold title. The County is exempt from Federal Excise Tax.

22.1 **Withholding Payment:**
In the event the County's Administrative Officer determines that the Contractor has failed to perform any obligation under this Agreement within the times set forth in this Agreement, then the County may withhold from amounts otherwise due and payable to Contractor the amount determined by the County as necessary to cure the default, until the Administrative Officer determines that such failure to perform has been cured. Withholding under this clause shall not be deemed a breach entitling Contractor to termination or damages, provided that the County promptly gives notice in writing to the Contractor of the nature of the default or failure to perform, and in no case more than 10 days after it determines to withhold amounts otherwise due. A determination of the Administrative Officer set forth in a notice to the Contractor of the action required and/or the amount required to cure any alleged failure to perform shall be deemed conclusive, except to the extent that the Contractor acts within the times and in strict accord with the provisions of the Disputes clause of this Agreement. The County may act in accordance with any determination of the Administrative Officer which has become conclusive under this clause, without prejudice to any other remedy under the Agreement, to take all or any of the following actions: (1) to cure any failure or default, (2) to pay any amount so required to be paid and to charge the same to the account of the Contractor, (3) to set off any amount so paid or incurred from amounts due or to become due the Contractor. In the event the Contractor obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to Contractor by reason of good faith withholding by the County under this clause.

23.1 **Labor Standards:**
The Contractor agrees to comply with all applicable state and federal requirements, including but not limited to those pertaining to payment of wages and working conditions, in accordance with RCW 39.12.040, the Prevailing Wage Act; the Americans with Disabilities Act of 1990; the Davis-Bacon Act; and the Contract Work Hours and Safety Standards Act providing for weekly payment of prevailing wages, minimum overtime pay, and providing that no laborer or mechanic shall be required to work in surroundings or under conditions which are unsanitary, hazardous, or dangerous to health and safety as determined by regulations promulgated by the Federal Secretary of Labor and the State of Washington.

**Series 30-39: Provisions Related to Administration of Agreement**

30.1 **Independent Contractor:**
The Contractor's services shall be furnished by the Contractor as an independent contractor, and nothing herein contained shall be construed to create a relationship of employer-employee or master-servant, but all payments made hereunder and all services performed shall be made and performed pursuant to this Agreement by the Contractor as an independent contractor.

The Contractor acknowledges that the entire compensation for this Agreement is specified in Exhibit "B" and the Contractor is not entitled to any benefits including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, or any other rights or privileges afforded to employees of the County. The Contractor represents that he/she/it maintains a separate place of business, serves clients other than the County, will report all income and expense accrued under this contract to the Internal Revenue Service on a Schedule C, and has a tax account with the State of Washington Department of Revenue for payment of all sales and use and Business and Occupation taxes collected by the State of Washington.

Contractor will defend, indemnify and hold harmless the County, its officers, agents or employees from any loss or expense, including, but not limited to, settlements, judgments, setoffs, attorneys' fees or costs incurred by reason of claims or demands because of breach of the provisions of this paragraph.

30.2 **Assignment and Subcontracting:**
The performance of all activities contemplated by this agreement shall be accomplished by the Contractor. No portion of this contract may be assigned or subcontracted to any other individual, firm or entity without the express and prior written approval of the County.

30.3 **No Guarantee of Employment:**
31.1 Ownership of Items Produced:
All writings, programs, data, public records or other materials prepared by the Contractor and/or its consultants or subcontractors, in connection with performance of this Agreement, shall be the sole and absolute property of the County.

31.2 Patent/Copyright Infringement:
Contractor will defend and indemnify the County from any claimed action, cause or demand brought against the County, to the extent such action is based on the claim that information supplied by the Contractor infringes any patent or copyright. The Contractor will pay those costs and damages attributable to any such claims that are finally awarded against the County in any action. Such defense and payments are conditioned upon the following:
A. The Contractor shall be notified promptly in writing by the County of any notice of such claim.
B. Contractor shall have the right, hereunder, at its option and expense, to obtain for the County the right to continue using the information, in the event such claim of infringement, is made, provided no reduction in performance or loss results to the County.

32.1 Confidentiality:
The Contractor, its employees, subcontractors, and their employees shall maintain the confidentiality of all information provided by the County or acquired by the Contractor in performance of this Agreement, except upon the prior written consent of the County or an order entered by a court after having acquired jurisdiction over the County. Contractor shall immediately give to the County notice of any judicial proceeding seeking disclosure of such information. Contractor shall indemnify and hold harmless the County, its officials, agents or employees from all loss or expense, including, but not limited to, settlements, judgments, setoffs, attorneys’ fees and costs resulting from Contractor’s breach of this provision.

33.1 Right to Review:
This contract is subject to review by any Federal, State or County auditor. The County or its designee shall have the right to review and monitor the financial and service components of this program by whatever means are deemed expedient by the Administrative Officer or by the County Auditor’s Office. Such review may occur with or without notice and may include, but is not limited to, on-site inspection by County agents or employees, inspection of all records or other materials which the County deems pertinent to the Agreement and its performance, and any all communications with or evaluations by service recipients under this Agreement. The Contractor shall preserve and maintain all financial records and records relating to the performance of work under this Agreement for three (3) years after contract termination, and shall make them available for such review, within Whatcom County, State of Washington, upon request. Contractor also agrees to notify the Administrative Officer in advance of any inspections, audits, or program review by any individual, agency, or governmental unit whose purpose is to review the services provided within the terms of this Agreement. If no advance notice is given to the Contractor, then the Contractor agrees to notify the Administrative Officer as soon as it is practical.

34.1 Proof of Insurance:
The Contractor shall carry for the duration of this Agreement general liability and property damage insurance with the following minimums:
Property Damage per occurrence - $500,000.00
General Liability & Property Damage for bodily injury- $1,000,000.00

A certificate of such insurance, that also identifies the County as an additional insured, is attached hereto as Exhibit "C". This insurance shall be considered as primary, and insurer shall waive all rights of subrogation against the County. The County insurance shall be noncontributory.

34.2 Industrial Insurance Waiver: The Contractor expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, for injuries to its employees and agrees that the obligations to indemnify, defend and hold harmless provided in this agreement extend to any claim brought by or on behalf of any employee of the Contractor. This waiver is mutually negotiated by the parties to this agreement.

34.3 Defense & Indemnity Agreement:
The Contractor agrees to defend, indemnify and save harmless the County, its appointed and elective officers and employees, from and against all loss or expense, including, but not limited to, judgments, settlements, attorneys’ fees and costs by reason of any and all claims and demands upon the County, its elected or appointed officials or employees for damages because of personal bodily injury, including death at any time resulting therefrom, sustained by any person or persons and on account of damage to property, including loss of use thereof, to the extent such injury to persons or damage to property is due to the negligence of the Contractor, its subcontractors, its successor or assigns, or its agents, servants, or employees.
It is further provided that no liability shall attach to the County by reason of entering into this contract, except as expressly provided herein.

35.1 Non-Discrimination in Employment:
The County’s policy is to provide equal opportunity in all terms, conditions and privileges of employment for all qualified applicants and employees without regard to race, color, creed, religion, national origin, sex, sexual orientation, age, marital status, disability, or veteran status. The Contractor shall comply with all laws prohibiting discrimination against any employee or applicant for employment on the grounds of race, color, creed, religion, national origin, sex, sexual orientation, age, marital status, disability, or veteran status, except where such constitutes a bona fide occupational qualification.

Furthermore, in those cases in which the Contractor is governed by such laws, the Contractor shall take affirmative action to ensure that applicants are employed, and treated during employment, without regard to their race, color, creed religion, national origin, sex, age, marital status, sexual orientation, disability, or veteran status, except where such constitutes a bona fide occupational qualification. Such action shall include, but not be limited to: advertising, hiring, promotions, layoffs or terminations, rate of pay or other forms of compensation benefits, selection for training including apprenticeship, and participation in recreational and educational activities. In all solicitations or advertisements for employees placed by them or on their behalf, the Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

The foregoing provisions shall also be binding upon any subcontractor, provided that the foregoing provision shall not apply to contracts or subcontracts for standard commercial supplies or raw materials, or to sole proprietorships with no employees.

35.2 Non-Discrimination in Client Services:
The Contractor shall not discriminate on the grounds of race, color, creed, religion, national origin, sex, age, marital status, sexual orientation, disability, or veteran status; or deny an individual or business any service or benefits under this Agreement; or subject an individual or business to segregation or separate treatment in any manner related to his/her receipt of any service or services or other benefits provided under this Agreement; or deny an individual or business an opportunity to participate in any program provided by this Agreement.

36.1 Waiver of Noncompetition:
Contractor irrevocably waives any existing rights which he may have, by contract or otherwise, to require another person or corporation to refrain from submitting a proposal to or performing work or providing supplies to the County, and contractor further promises that it will not in the future, directly or indirectly, induce or solicit any person or corporation to refrain from submitting a bid or proposal to or from performing work or providing supplies to the County.

36.2 Conflict of Interest:
If at any time prior to commencement of, or during the term of this Agreement, Contractor or any of its employees involved in the performance of this Agreement shall have or develop an interest in the subject matter of this Agreement that is potentially in conflict with the County’s interest, then Contractor shall immediately notify the County of the same. The notification of the County shall be made with sufficient specificity to enable the County to make an informed judgment as to whether or not the County’s interest may be compromised in any manner by the existence of the conflict, actual or potential. Thereafter, the County may require the Contractor to take reasonable steps to remove the conflict of interest. The County may also terminate this contract according to the provisions herein for termination.

37.1 Administration of Contract:
This Agreement shall be subject to all laws, rules, and regulations of the United States of America, the State of Washington, and political subdivisions of the State of Washington. The Contractor also agrees to comply with applicable federal, state, county or municipal standards for licensing, certification and operation of facilities and programs, and accreditation and licensing of individuals.

The County hereby appoints, and the Contractor hereby accepts, the Whatcom County Executive, and his or her designee, as the County’s representative, hereinafter referred to as the Administrative Officer, for the purposes of administering the provisions of this Agreement, including the County’s right to receive and act on all reports and documents, and any auditing performed by the County related to this Agreement. The Administrative Officer for purposes of this agreement is:

Frank M. Abart, Director
Whatcom County Public Works
322 N. Commercial Street, Suite 210
Bellingham, WA 98225
Phone: 360.676.6692
37.2 Notice:
Except as set forth elsewhere in the Agreement, for all purposes under this Agreement except service of process, notice shall be given by the Contractor to the County’s Administrative Officer under this Agreement. Notice to the Contractor for all purposes under this Agreement shall be given to the address provided by the Contractor herein above in the “Contractor Information” section. Notice may be given by delivery or by depositing in the US Mail, first class, postage prepaid.

38.1 Certification of Public Works Contractor’s Status under State Law: Not Applicable

38.2 Certification Regarding Federal Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions:
The Contractor further certifies, by executing this contract, that neither it nor its principles is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or Agency.

The Contractor also agrees that it shall not knowingly enter into any lower tier covered transactions (a transaction between the Contractor and any other person) with a person who is proposed for debarment, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, and the Contractor agrees to include this clause titled “Certification Regarding Federal Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction” without modification, in all lower tier covered transactions and in all solicitations for lower tier transactions.

The “General Service Administration List of Parties Excluded from Federal Procurement or Non-Procurement Programs” is available to research this information at http://epis.anet.gov/.

38.3 E-Verify: Not Applicable

Series 40-49: Provisions Related to Interpretation of Agreement and Resolution of Disputes

40.1 Modifications:
Either party may request changes in the Agreement. Any and all agreed modifications, to be valid and binding upon either party, shall be in writing and signed by both of the parties.

40.2 Contractor Commitments, Warranties and Representations:
Any written commitment received from the Contractor concerning this Agreement shall be binding upon the Contractor, unless otherwise specifically provided herein with reference to this paragraph. Failure of the Contractor to fulfill such a commitment shall render the Contractor liable for damages to the County. A commitment includes, but is not limited to, any representation made prior to execution of this Agreement, whether or not incorporated elsewhere herein by reference, as to performance of services or equipment, prices or options for future acquisition to remain in effect for a fixed period, or warranties.

41.1 Severability:
If any term or condition of this contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this contract are declared severable.

41.2 Waiver:
Waiver of any breach or condition of this contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this contract shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto. The failure of the County to insist upon strict performance of any of the covenants and agreements of this Agreement, or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such, or any other covenants or agreements, but the same shall be and remain in full force and effect.

42.1 Disputes:

a. General:
Differences between the Contractor and the County, arising under and by virtue of the Contract Documents, shall be brought to the attention of the County at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Except for such objections as are made of record in the manner hereinafter specified and within the time limits stated, the records, orders, rulings, instructions, and decisions of the Administrative Officer shall be final and conclusive.
b. Notice of Potential Claims:
The Contractor shall not be entitled to additional compensation which otherwise may be payable, or to extension of time for (1) any act or failure to act by the Administrative Officer or the County, or (2) the happening of any event or occurrence, unless the Contractor has given the County a written Notice of Potential Claim within ten (10) days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the County. The written Notice of Potential Claim shall set forth the reasons for which the Contractor believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. Contractor shall keep full and complete daily records of the work performed, labor and material used, and all costs and additional time claimed to be additional.

c. Detailed Claim:
The Contractor shall not be entitled to claim any such additional compensation, or extension of time, unless within thirty (30) days of the accomplishment of the portion of the work from which the claim arose, and before final payment by the County, the Contractor has given the County a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or the extension of time claimed to be due.

d. Arbitration: Not Applicable

43.1 Venue and Choice of Law:
In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the courts of the State of Washington in and for the County of Whatcom. This Agreement shall be governed by the laws of the State of Washington.

44.1 Survival:
The provisions of paragraphs 11.1, 11.2, 11.3, 21.1, 22.1, 30.1, 31.1, 31.2, 32.1, 33.1, 34.2, 34.3, 36.1, 40.2, 41.2, 42.1, and 43.1, if utilized, shall survive, notwithstanding the termination or invalidity of this Agreement for any reason.

45.1 Entire Agreement:
This written Agreement, comprised of the writings signed or otherwise identified and attached hereto, represents the entire Agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.
EXHIBIT "A"
(SCOPE OF WORK)

WATER QUALITY ANALYTICAL TESTING SERVICES

Surface water samples will be analyzed for fecal coliform bacteria between March and December 2013. Approximately 105 routine samples per month will be delivered to Edge Analytical Labs (Edge) for fecal coliform analysis. Samples will be delivered in four groupings, described below, and will be scheduled one month to one quarter in advance of delivery. During the dry season, the number of samples will be reduced based upon stream flow. The greatest reduction of sample number during the dry season will be seen in the Terrell+Coastal grouping.

Sample Groupings:
- Drayton- 35 samples
- Portage- 17 samples
- Terrell+Coastal- 42 samples
- Terrell-11 samples

Approximately 60 focus area samples (in grouping of 5-15 samples) per month will be delivered to Edge for fecal coliform analysis beginning in April. The number of samples will fluctuate with the season and stream flow. Notification of these samples runs will typically occur at least a week in advance. Edge will be notified of storm event sampling runs the day before samples are delivered.

Fecal coliform bacteria samples will be analyzed by Edge, an Ecology accredited laboratory, according to the Whatcom County Water Quality Monitoring: Fecal Coliform Quality Assurance Project Plan. Fecal coliform bacteria will be enumerated using the membrane filtration method, Standard Method 9222D (APHA et al. 2005). Analytical methods are summarized in Table 1. Edge will provide reusable, sterile bottles for sampling and a larger bottle will be provided for lab duplicate samples.

Sample bottles will be packed tightly with ice in the cooler immediately upon collection and hand delivered to the laboratory. All sample containers will be labeled with a self-adhesive label including sample identifiers. Samples will be accepted for analysis only if the temperature control is measured below 10°C at the time of sample submittal, unless the samples have been collected within two hours of submittal and were immediately placed on ice. A chain of custody (COC) form provided by Edge will accompany all samples to the laboratory. Samples may be delivered to Edge between 8:30am to 5:30pm Monday through Thursday and 8:30am to 4:30pm on Friday.

Edge will follow their quality assurance/quality control (QAQC) plan. This includes analysis of blanks pre, mid, and post batch of 20 samples and a lab duplicate for 10% of samples analyzed. Fecal coliform results will be flagged when the number of colonies grown on a plate falls outside limits for the method.
**Table 1. Summary of sample handling and analytical methods**

<table>
<thead>
<tr>
<th>Parameter</th>
<th>Description</th>
<th>Method</th>
<th>Sample Container</th>
<th>Preserve</th>
<th>Max Holding Time</th>
<th>Precision/Quantitation Limits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fecal coliform bacteria</td>
<td>Membrane filtration method</td>
<td>SM 9222D²</td>
<td>PE, 125 - 250 ml, sterile</td>
<td>10 °C, dark</td>
<td>8 hours (delivered to lab within 6hrs)</td>
<td>1 cfu/100mL</td>
</tr>
</tbody>
</table>


Preliminary results will be sent via e-mail to edouglas@co.whatcom.wa.us or faxed to Whatcom County Public Works- Natural Resources, Attention: Erika Douglas, (360) 738-2468, within 2 working days of sample delivery for fecal coliform analysis. Preliminary results exceeding 200FC/100mL will be reported within 24 hours of sample submission. Final reports will be provided within 10 working days of sample submission. Copies of results and chain of custody forms will be submitted to the County with each invoice.
**Table 2. Summary of project budget**

<table>
<thead>
<tr>
<th></th>
<th>Approximate Number of Samples</th>
<th>County Cost Per Sample</th>
<th>Estimated Cost Range</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fecal coliform-Routine</td>
<td>945</td>
<td>$20.00</td>
<td>$18,900</td>
</tr>
<tr>
<td>Fecal coliform-Focus Areas</td>
<td>540</td>
<td>$20.00</td>
<td>$10,800</td>
</tr>
</tbody>
</table>

**Maximum estimated project total amount not to exceed:** $29,700
# Certificate of Liability Insurance

**EXHIBIT "C"**

**Certification:**

**Date:** 3/26/2012

**Certificate Information:**

*Producer:* Wycoff Insurance Agency Inc.

*Address:* 501 South 2nd Street

*City:* Mount Vernon

*State:* WA

*Zip:* 98273

**Insured:**

*Name:* Burlington Analytical

*Address:* 1620 S. Walnut Street

*City:* Burlington

*State:* WA

*Zip:* 98233

**Coverages:**

<table>
<thead>
<tr>
<th>TYPE OF INSURANCE</th>
<th>LIMITS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>GENERAL LIABILITY</strong></td>
<td></td>
</tr>
<tr>
<td>COMMERCIAL GENERAL LIABILITY CLAIMS-MADE OCCUR.</td>
<td></td>
</tr>
<tr>
<td><strong>AUTOMOBILE LIABILITY</strong></td>
<td></td>
</tr>
<tr>
<td>ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS NON-OWNED AUTOS</td>
<td></td>
</tr>
<tr>
<td>UMBRELLA LIABILITY OCCUR CLAIMS-MADE</td>
<td></td>
</tr>
<tr>
<td>EXCESS LIABILITY OCCUR CLAIMS-MADE</td>
<td></td>
</tr>
<tr>
<td>WORKERS' COMPENSATION AND EMPLOYEES' LIABILITY</td>
<td></td>
</tr>
</tbody>
</table>

**Policy Information:**

- **Policy Number:** 204 172536
- **Effective Date:** 4/1/2012
- **Expiration Date:** 4/1/2013

**Description of Operations/Locations/Vehicles:**

Whatcom County is named as additional insured to the general liability policy as respects to work performed on their behalf by the named insured per the attached form LGL 4037 07 03.

**Certificate Holder:**

- **Name:** WHATCOM COUNTY
- **Address:** 311 GRAND AVE
- **City:** BELLINGHAM, WA
- **Zip:** 98225

**Cancellation:**

- **Notice:**
  
  Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

**Authorized Representative:**

[Signature]

**ACORD 25 (2010/05)**

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# CERTIFICATE OF LIABILITY INSURANCE

**DATE (MM/DD/YYYY)**
3/15/2013

**THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.**

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

**PRODUCER**
Wycoff Insurance Agency Inc.
501 South 2nd Street
P. O. Box 1010
Mount Vernon WA 98273

**INSURED**
Edge Analytical
1620 S. Walnut Street
Burlington WA 98233

**CONTACT NAME:** Greta Perales
**PHONE:** (360) 336-2112
**FAX:** (360) 336-5241
**E-MAIL:** greta@wycoffinsurance.com
**NAIC #**

**INSURER A:** LIBERTY NORTHWEST INS. CORP.

**COVERAGES**

<table>
<thead>
<tr>
<th>INSURABLE LIMIT</th>
<th>TYPE OF INSURANCE</th>
<th>ADDED LIMIT</th>
<th>INSURABLE LIMIT</th>
<th>POLICY NUMBER</th>
<th>LIMIT</th>
</tr>
</thead>
<tbody>
<tr>
<td>GENERAL LIABILITY</td>
<td>COMMERCIAL GENERAL LIABILITY CLAIMS-MADE OCCUR</td>
<td></td>
<td></td>
<td>205 172536</td>
<td>4/1/2013 4/1/2014</td>
</tr>
<tr>
<td>AUTOMOBILE LIABILITY</td>
<td>ANY AUTO ALL OWNED SCHEDULED AUTOS NON-OWNED AUTOS</td>
<td></td>
<td></td>
<td>205 172536</td>
<td>4/1/2013 4/1/2014</td>
</tr>
<tr>
<td>UMBRELLA LIABILITY</td>
<td>EXCESS LIABILITY CLAIMS-MADE</td>
<td></td>
<td></td>
<td>205 172536</td>
<td>4/1/2013 4/1/2014</td>
</tr>
<tr>
<td>WORKERS COMPENSATION AND EMPLOYER LIABILITY</td>
<td>ANY PROPRIETOR/OWNER EXECUTIVE OFFICER/MEMBER EXCLUDED (Mandatory in NH)</td>
<td></td>
<td></td>
<td>205 172536</td>
<td>4/1/2013 4/1/2014</td>
</tr>
</tbody>
</table>

**POLICY LIMITS**
- EACH OCCURRENCE
- DAMAGE TO RENTED PREMISES (Insurer's loss)
- MED EXP (Any person)
- PERSONAL & ADJ INJURY
- GENERAL AGRGGRATE
- PRODUCTS - COMPOP AGG

**LIMITS**
- $1,000,000
- $100,000
- $5,000
- $1,000,000
- $2,000,000
- $2,000,000
- $1,000,000
- $1,000,000
- $1,000,000

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES**
Whatcom County is named as additional insured to the general liability policy as respects to work performed on their behalf by the named insured per the attached form LCL 4037 07 03.

**CERTIFICATE HOLDER**
Whatcom County
311 Grand Ave
Bellingham, WA 98225

**CANCELLATION**
Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

Authorized Representative

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ACORD 25 (2010/05)
INS025 (2010/05) 01

232
WHATCOM COUNTY COUNCIL AGENDA BILL

CLEARANCES | Initial | Date | Date Received in Council Office | Agenda Date | Assigned to:
---|---|---|---|---|---
Originator: |  |  |  | 3/26/2013 | Finance/Council
Division Head: | DRE | 3/15/2013 |  |  | 
Dept. Head: |  |  |  |  | 
Prosecutor: | KNE | 3/18/13 |  |  | 
Purchasing/Budget: | GB | 3/18/13 |  |  | 
Executive: |  | 3/18/13 |  |  | 

**TITLE OF DOCUMENT:**

Professional services from CDW-G to complete the countywide e-mail system upgrade.

**ATTACHMENTS:**

1. Background Memo
2. Whatcom County Contract Information Sheet
3. Contract Amendment #1 between CDW Government LLC and Whatcom County

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

**Should Clerk schedule a hearing?** ( ) Yes ( x ) 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.)

Request authorization for the County Executive to amend the agreement between Whatcom County and CDW Government LLC in the amount of $50,825.00 for professional services to complete the countywide e-mail system upgrade and to provide post-implementation support.

**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](http://www.co.whatcom.wa.us/council).
TO: Jack Louws, County Executive
FROM: Perry L. Rice, IT Manager
RE: Amendment to Professional Services Contract for Exchange Online
DATE: March 15, 2013

Enclosed are two (2) originals of Amendment No. 1 with CDW Government LLC (CDW-G) and Whatcom County for your review and signature.

- **Background and Purpose**

Whatcom County entered into Contract #2012-1324 with CDW-G for professional consulting services to assist staff with the implementation of a Microsoft Outlook/Exchange e-mail system and associated spam filtering for approximately 1,000 county e-mail boxes. To date the planning, design, core setup and pilot of the new e-mail system has been completed. In addition, 10 departments representing approximately 350 mailboxes have been migrated to the new e-mail system. The migration process is moving forward at a rapid pace, but it is taking more consultant time than originally forecasted. In addition, it has also been determined that post-implementation support will be needed to efficiently resolve any technical issues.

The purpose of this amendment is for the following change orders:

- Change Order #1: Complete e-mail migrations for remaining departments ($34,225.00)
- Change Order #2: Provide post migration support ($16,600.00)

- **Funding Amount and Source**

The total amount of this amendment is $50,825.00 and the source would the 2013 Information Technology base budget.

Please contact Perry Rice at extension 52511 or Denise Toth Banyan at extension 50639, if you have any questions or concerns regarding the terms of this agreement.

Encl.
# WHATCOM COUNTY CONTRACT INFORMATION SHEET

<table>
<thead>
<tr>
<th>Originating Department:</th>
<th>Administrative Services Department – Division of Information Technology</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract Administrator:</td>
<td>Perry L. Rice</td>
</tr>
<tr>
<td>Contractor’s / Agency Name:</td>
<td>CDW Government LLC</td>
</tr>
</tbody>
</table>

**Is this a New Contract?** Yes [X] No [ ]

If not, is this an Amendment or Renewal to an Existing Contract?

Yes [X] No [ ]

If yes, previous number(s): 201211011

**Is this a grant agreement?**

Yes [X] No [ ]

If yes, grantor agency contract number(s) ________________

CFDA number ________________

**Is this contract funded?**

Yes [X] No [ ]

If yes, associated Whatcom County grant contract number(s) ________________

**Is this contract the result of a RFP or Bid process?**

Yes [X] No [ ]

If yes, RFP and Bid number(s) ________________

Cost Center: 507110

**Is this contract excluded from E-Verify?** No [ ] Yes [X]

If excluded, include Attachment D Contractor Declaration Form

If yes, indicate qualified exclusion(s) below:

- Contract less than $100,000.
- Work is for less than 120 days.
- Interlocal Agreement (between Govt.)
- Professional services agreement for certified/licensed professional
- Contract for Commercial off the shelf items (COTS)
- Public Works Dept. - Local Agency/Federally Funded FHWA

**Contract Amount:** (sum of orig contract amt and any prior amendments)

$ 72,280.00

This Amendment Amount: $ 50,825.00

Total Amended Amount: $ 123,105.00

**Scope of Services:**

Request authorization for the County Executive to amend the agreement between Whatcom County and CDW Government LLC in the amount of $50,825.00 for professional services to complete the countywide e-mail system upgrade and to provide post-implementation support.

**Term of Contract:** 6-Months

**Expiration Date:** 05/31/2013

**Contract Routing Steps & Signoff:** [sign or initial] [indicate date transmitted]

1. Prepared by: [Signature] Date 3/15/2013 [electronic]
2. Attorney reviewed: [Signature] Date 3/18/2013 [electronic]
3. AS Finance reviewed: [Signature] Date 3/19/2013 [electronic]
4. IT reviewed if IT related: [Signature] Date 3/13/2013 [electronic]
5. Corrections made: [Date] [electronic] hard copy pristed
6. Attorney signoff: [Signature] Date 3/18/13
7. Contractor signed: [Date]
8. Submitted to Exec Office: [Date] [summary via electronic; hardcopies]
9. Reviewed by DCA: [Date]
10. Council approved (if necessary): [Date]
11. Executive signed: [Date]
12. Contractor Original Returned to dept: [Date]
13. County Original to Council: [Date]
Amendment No. #1
Whatcom County Contract No. 201211011
CONTRACT BETWEEN WHATCOM COUNTY AND
CDW Government LLC (CDW-G)

THIS AMENDMENT is to the Contract between Whatcom County and CDW-G, dated November 12, 2012 and designated "Whatcom County Contract No. 201211011." In consideration of the mutual benefits to be derived, the parties agree to the following:

The following attached documents are additions to the original contract Scope of Work hereby referenced and made as part of this Agreement:

  Change Order ID 01: Complete e-mail migrations for remaining departments ($34,225.00)
  Change Order ID 02: Provide post migration support ($16,600.00)

This Amendment increases the maximum consideration by $50,825.00 to a total consideration of $123,105.00.

Unless specifically amended by this agreement, all other terms and conditions of the original contract shall remain in full force and effect.

This Amendment takes effect: March 18, 2013, regardless of the date of signature.

IN WITNESS WHEREOF, Whatcom County and CDW-G have executed this Amendment on the date and year below written.

DATED this __________ day of _______________, 20__.

CONTRACTOR:

CDW-G

By ________________________________
(Signature)

Name: ________________________________

Title: ________________________________

STATE OF WASHINGTON )
COUNTY OF WHATCOM ) ss.

On this __ day of ____, 20__, before me personally appeared ____________________ to me known to be the __________________ of CDW-G and who executed 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 ________________.
WHATCOM COUNTY:

Recommended:

[Signature]
Information Technology Manager Date

Approved as to form:

[Signature]
Prosecuting Attorney Date

Approved:
Accepted for Whatcom County:

By: __________________________
Jack Louws, Whatcom County Executive

STATE OF WASHINGTON )
COUNTY OF WHATCOM ) ss

On this ______ day of ________________, 20____, before me personally appeared Jack Louws, to me known to be the Executive of Whatcom County, who executed 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 __________________.
CHANGE ORDER

Customer Name: Whatcom County

Project Name: Whatcom County-12Nov-Exchange Online Migration

Requesting Party: Whatcom County  Date of Request: 03/12/2013

Project Manager: Suji Lakshminarayanan  PM's Email: sujilak@cdw.com

Change ID: 01

What is the nature of the change?  □ Scope  □ Schedule  □ Budget  □ Quality

CHANGE DESCRIPTION

CDW engineers completing all Whatcom County migrations over the next weeks. Additional assumptions include:

1) CDW engineers will run the 1st and 2nd pass migrations weekday eve/night and provide initial updates of migration for the 2nd pass and hand off to What County team for monitoring progress until completion. CDW engineer will provide Whatcom County troubleshooting support during 2nd pass.

2) Migration strategy will include 2 migration passes.

REASON FOR CHANGE

Initial estimated hours not adequate.

IMPACT ON SCOPE

No change to scope.

IMPACT ON SCHEDULE

No change to schedule.

IMPACT ON BUDGET

CDW estimates the migration support for all Whatcom County users to Exchange Online will take 185 hours by the Microsoft Consultant. Hourly rate for a Microsoft Consultant is $185.00 per hour, billed on a time and material basis. This Project Change Request will increase the budget by an estimated $34,225.00 (not including any applicable taxes).

IMPACT ON QUALITY

n.a

RISKS

n.a
REQUIRED APPROVAL
In acknowledgement that the parties below have read and understood this Change Order and agree to be bound by it, each party has caused this Change Order to be signed and delivered by its respective authorized representative.

**Whatcom County**
By: ________________________________

*Signature*

Date: ________________________________

Name: Click here to enter name.

*Printed*

Title: Click here to enter title.

☐ A purchase order for payment is attached.

☐ A purchase order is not required for payment.

**CDW Government, Inc.**
By: ________________________________

*Signature*

Date: ________________________________

Name: Mike Mooney

*Printed*

Title: Professional Services Manager
CHANGE ORDER

Customer Name: Whatcom County

Project Name: Whatcom County-12Nov-Exchange Online Migration

Requesting Party: Whatcom County  Date of Request: 03/12/2013

Project Manager: Suji Lakshminarayanan  PM’s Email: sujilak@cdw.com

Change ID: 02

What is the nature of the change?  □ Scope  □ Schedule  □ Budget  □ Quality

CHANGE DESCRIPTION

CDW engineer (Jim Coan) to provide onsite and remote post-migration support to Whatcom County.

REASON FOR CHANGE

Post migration support added to scope.

IMPACT ON SCOPE

Post migration support added scope.

IMPACT ON SCHEDULE

Schedule extends to May 2013 (based on CDW engineer availability).

IMPACT ON BUDGET

CDW estimates the post migration support for Whatcom County will take 80 hours (40 hours onsite with billable travel expenses up to $1800 / week) during the week of May 13th, followed by 40 hours until the end of May) by the Microsoft Consultant.

Hourly rate for a Microsoft Consultant is $185.00 per hour, billed on a time and material basis. This Project Change Request will increase the budget by an estimated $14,800.00 (not including any applicable taxes).

IMPACT ON QUALITY

n.a

RISKS

n.a

REQUIRED APPROVAL

In acknowledgement that the parties below have read and understood this Change Order and agree to be bound by it, each party has caused this Change Order to be signed and delivered by its respective authorized representative.

Whatcom County  CDW Government, Inc.

CDW – Proprietary and Confidential  Ver2012-0323
By: _____________________________  By: _____________________________
Signature
Date: _____________________________  Date: _____________________________

Name: _____________________________  Name: Mike Mooney
Printed
Title: _____________________________  Title: Professional Services Manager

☐ A purchase order for payment is attached.
☐ A purchase order is not required for payment.
**WHATCOM COUNTY COUNCIL AGENDA BILL**

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<th>CLEARANCES</th>
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<th>Date Received in Council Office</th>
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**TITLE OF DOCUMENT:**

Birch Bay Right-of-Way Presentation

**ATTACHMENTS:**

1. Memo to County Executive and Council
2. Memo from Whatcom County Engineer
3. Right of Way Determination Report
4. Memo from County Prosecuting Attorney
5. Memo from County Senior Land Surveyor

**SEPA review required?** ( ) Yes ( ) 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.)

Presentation on 60-foot wide Right-of-Way Corridor along Birch Bay Drive, County Road No. 46.

**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](http://www.co.whatcom.wa.us/council).
Memorandum

To: The Honorable Jack Louws, County Executive, and Honorable Members of the Whatcom County Council

Through: Frank M. Abart, Director

From: Joseph P. Rutan, P.E., County Engineer/Assistant Director

Date: March 13, 2013

Re: Birch Bay Drive Right of Way

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Requested Action:
Public Works requests that a County Council Public Works Committee work session be scheduled for an informational presentation on the 60-foot wide Right of Way (ROW) corridor along portions of Birch Bay Drive. This presentation is being made at the request of the County Executive.

Background and Purpose:
Project number 3, as shown on the 2013-2018 Six Year Transportation Program is "Birch Bay Drive and Pedestrian Facility". This project will remove the existing seawall and revetments protecting the roadway and will replace them with a soft shore beach profile. The project will also include the reconstruction of Birch Bay Drive to include enhanced pedestrian and bicycle facilities. This construction will occur within the existing ROW or within portions that will be acquired for the project. The County currently has at least a 60-foot wide ROW corridor throughout the entire length of the proposed project. The portion of the project west of the Willamette Meridian, which is the section line at Harborview Road, has been the subject of a few citizens' concerns in that they dispute our records of a 60-foot width ROW corridor.

This presentation is to provide the documents and information necessary to identify the public's established 60-foot wide ROW corridor. This is also intended to alert the abutting landowners of the existing conditions and provide them an opportunity to understand, question, or challenge the public's ownership of this ROW corridor.

Information:
See attachments

cc: File
Memorandum

To: The Honorable Jack Louws, County Executive, and Honorable Members of the Whatcom County Council
From: Joseph P. Rutan, P.E., County Engineer/Assistant Director
Date: March 13, 2013
Re: Birch Bay Drive Right of Way

This memorandum is provided as documentation of the public Right of Way (ROW) for County Road No. 46, aka Birch Bay Drive, from Alderson Road northward and westerly to Birch Point Road.

Whatcom County currently has at least a 60-foot wide ROW corridor from Alderson Road to Birch Point Road. The record shows that there are two portions of this ROW that must be considered.

The portion of Birch Bay Drive north and west of the Willamette Meridan, Harborview Road, was originally established as County Road No. 22, in 1877. This original ROW was established as a 30-foot width corridor.

This was subsequently re-established and overlapped in 1884 as County Road No. 46 from Alderson Road northward and westerly to Birch Point Road.

This established a lawful county road and public highway which, by territorial statute, established a 60-foot wide corridor unless otherwise petitioned for. This is reflected by the February 1884 legal public notice in the publication of record at the time, The Whatcom Reveille. This ROW was mapped and declared by the County Engineer in 1916. It was subsequently reconstructed and monumented as lateral Highway 2 in 1930. These monuments were subsequently recovered and re-established in 1974 and 2012. Whatcom County has continually and openly operated, maintained, reconstructed, and provided public utility installation throughout the width and length of this 60-foot ROW corridor since 1884. Moreover, all records of surveys and legal subdivisions on file with the County Engineer’s office identify a 60-foot ROW as established by County Road No. 46.

In 1984 Whatcom County commissioned local Professional Land Surveyor Larry Steele and Associates, Inc. to prepare a ROW determination report. This was done in order to provide a neutral third party review of the ROW record. This is attached along with a memorandum from Whatcom County Prosecuting Attorney, Dan Gibson, addressing the legal issue raised in the report. Also attached, is a review and analysis of the records on file with the County Engineer’s Office, by Ty Whitcomb P.L.S., County Senior Land Surveyor.

cc: File
RIGHT-OF-WAY DETERMINATION REPORT

FOR

BIRCH BAY DRIVE

(WHATCOM COUNTY ROAD NOS. 22 & 46)

Prepared By

Lawrence W. Steele, P.L.S.
805 Dupont Street
Bellingham, Washington

Submitted To

Jim Kresge, Project Engineer
Bureau of Engineering
Whatcom County, Washington

October 1, 1984
DESCRIPTION

The portion of the road in question commences at the intersection of Alderson Road and Birch Bay Drive in the Northwest Quarter of Section 31, Township 40 North, Range 1 East; thence continues Northwesterly along the bay through Sections 31 & 30, Township 40 North, Range 1 East and Sections 25 & 24, Township 40 North, Range 1 West, to its intersection with Shintaffer Road in the Southwest Quarter of said Section 24.

HISTORY

A portion of the Right-of-Way in question is covered by County Road No. 22, and all of the R/W in question is covered by County Road No. 46.

Listed below is the sequential history of each road with the Appropriate Commissions Proceedings and Road Record Book noted.

**County Road No. 22**

<table>
<thead>
<tr>
<th>DATE</th>
<th>ITEM</th>
<th>COMM. PROC.</th>
<th>ROAD RECORD BOOK</th>
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<tr>
<td>Oct. 2, 1877</td>
<td>Notice of Petition</td>
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<tr>
<td>Nov. 6, 1877</td>
<td>Petition Filed</td>
<td></td>
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<td>Nov. 7, 1877</td>
<td>Petition Presented</td>
<td>3/153</td>
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<tr>
<td>Nov. 7, 1877</td>
<td>Viewers Appointed</td>
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<td>2/44</td>
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<tr>
<td>Feb. 7, 1878</td>
<td>Viewers Report Filed</td>
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<tr>
<td>Feb. 7, 1878</td>
<td>Hearing Continued</td>
<td>3/169</td>
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<tr>
<td>May 9, 1878</td>
<td>&quot;</td>
<td></td>
<td></td>
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<tr>
<td>Aug. 6, 1878</td>
<td>Order of Establishment</td>
<td>3/219</td>
<td>2/45</td>
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**County Road No. 46**

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<tr>
<td>Feb. 14, 1876</td>
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<td>Feb. 14, 1876</td>
<td>Viewers Report for Private Rd.</td>
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<td>Aug. 8, 1883</td>
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<td>Feb. 6, 1884</td>
<td>Surveyors Report, Field Notes</td>
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<td>2/242-245</td>
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<tr>
<td>Feb. 6, 1884</td>
<td>Order of Establishment</td>
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</table>
For County Road No. 22 the width is set out at 30 feet, both in the Road Record Book and the Commissions Proceedings.

However, for County Road No. 46, nowhere in the Road Record Book or the Commissions Proceedings is a R/W width mentioned. There were several laws in effect at the time of the Order of Establishment on February 6, 1884 that seem to pertain directly to this situation. There are:

1) Sec. 8, Act of Jan. 11, 1859 (Territorial Law) - "County roads shall be 60 feet in width unless the county commissioners shall, upon prayer of the petitioners for same, determine a less number of feet in point of width."

2) Sec. 2979, Chapter CCXXIX, Acts of 1881 - "All county roads shall be sixty feet in width unless the county commissioners shall, upon the prayer of the petitioners for the same, determine a less number of feet in width."

3) Sec. 2980, Chapter CCXXIX, Acts of 1881 - "When the place of beginning or true course of any public road shall become uncertain by reason of the removal of any marked tree or monument by which such road is designated, or from any other cause, the county commissioners of the proper county may appoint two disinterested freeholders of the county to review and if they deem it necessary to straighten such road; and the re-viewers shall cause the said road to be correctly surveyed and marked throughout, as in case of a new road, and shall make a return of the survey and plat of such road to the county commissioners of the proper county; the commissioners shall cause the same, if approved, to be recorded as in other cases; and from thenceforth such road surveyed as aforesaid shall be considered as a public highway."

4) Sec. 3119, Acts of 1881
5) Chapter CCXXXVI, Acts of 1881

Sixty feet of R/W appears to be correct since the laws clearly stated 60 feet unless explicitly stated otherwise.

The Commissioners Proceedings for County Road No. 46 statement, "no objections having been made in writing or otherwise to the legalization of said Road", coincides with the laws which allowed for objections and claims for damages, etc.

From the record there was no survey made for County Road No. 22, although one had been called for by the Commissioners. The petitioners apparently prevailed after two continuances, and the Order of Establishment given without a Surveyors Report or Field Notes.

OBSERVATIONS

From the record again, a portion of County Road No. 46 appears to overlay a portion of County Road No. 22. The general descriptions given for the roads indicate this. Specifically, the overlay is from the intersection of Birch Bay Drive and County Road No. 8 on the Willamette Meridian Northwesterly to the
Southeast Quarter of Section 23, Township 40 North, Range 1 West. Our concern for this report ends at the intersection of Birch Bay Drive and Shمنتarfer Road in the Southwest Quarter of Section 24, Township 40 North, Range 1 West.

From the record the portion of Birch Bay Drive R/W within Sections 30 & 31 (from its intersection with Alderson in the Northwest Quarter of Section 31 to the Willamette Meridian) I believe to be 60 feet in width.

The overlayment area presents a question and the need for a legal opinion. The question is: did County Road No. 46 and its 60 foot of width supersede the County Road No. 22 and its 30 feet of width? As a licensed Land Surveyor, I am not in a position to answer a question of law; however, the implication for 60 feet is there.

I believe I can back up that implication with the following data from the County Engineering records, in which it is believed, assumed and noted that a 60 foot width of R/W is correct.

1) 1916 map and Field Notes of the overlayment area.
   a) map in road packet titled, "Map Showing Resurvey of Part of County Roads No. 22-46."
   b) Field Book 188, page 27-33.

2) 1921 Field Notes of overlayment area.
   a) Field Book 224, page 33.

3) 1930 map of Lateral Highway No. 2, including overlay area.
   a) plan and profile.

Also in support of 60 feet of R/W through this stretch of road are the following:

1) E. C. Lyle, well known Civil Engineer & Land Surveyor in the 1920's and 1930's wrote descriptions and drew a map for tracts in Section 25, Township 40 North, Range 1 West. While the legal descriptions only state "Less Road", the map clearly shows a 60 foot R/W width. This section is part of the overlay area.

2) The plat of Cottonwood Beach Park, in Section 24, Township 40 North, Range 1 West, shows the County Road (Birch Bay Drive) to be 60 feet in width. No additional R/W was shown as dedicated in order to achieve this width - 60 feet was believed to be there. The date of the recording of this plat is May 9, 1922.

3) The plat of Cottonwood Beach, again in Section 24, Township 40 North, Range 1 West, was recorded September 9, 1925. This plat shows Birch Bay Drive as 60 feet within the plat boundaries. Outside of its boundaries it appears to show 40 feet (by scaling), not 30 feet or 60 feet.

4) The map of Morgan Cottonwood Beach Plat is adjacent to and surrounds Cottonwood Beach. It was filed for record May 29, 1939. This plat clearly shows 60 feet of R/W adjacent to the platted area, as well as either side of the intersecting plat boundaries.
Private surveying records, and Record of Survey & Short Plat filings for the area in question since the 1950's indicate a general acceptance, by the surveying community, of the County's belief in the 60 foot R/W width.

One observation as to title and use of the R/W. The book put out by the Municipal Research and Services Center of Washington titled "Surveys, Subdivision and Platting, and Boundaries", Report No. 4, May 1977, on page 141 in the last paragraph states, "When an easement is taken as a public highway, the soil and freehold remain in the owner of the land encumbered only with the right of passage in the public; and upon a discontinuance of the highway, the soil and freehold revert to the owner." Additionally, in Chapter XI, Compilation of Selected Laws of the State of Washington Relating to Surveys, Subdivision and Platting and Boundaries, at page 234 in the second paragraph, it states, "The public control of streets and highways in this state does not amount to an ownership of the fee under this section and RCW 58.08.015, supra, ...." Paragraph three on that same page states, in part, "The owner of property abutting on a street may use the street area, to which he holds the fee, in any manner not inconsistent with the easement in the public for street purposes." From these it appears that the County's control is in the form of an easement and that the property owner can use the R/W as long as the public use for street is not thwarted.

CONCLUSION

I believe that the portion of Birch Bay Drive R/W within Sections 30 and 31 (from its intersection with Alderson Road in the Northwest Quarter of Section 31 to the Willamette Meridian) is 60 feet in width.

I believe that a legal opinion is necessary for the remaining portion of the R/W stretch in question (from the Willamette Meridian to the intersection with Shintafer Road). Did County Road No. 46 and its 60 foot wide width automatically supersede the stated width of 30 feet for County Road No. 22?

It appears to me that the intent of the 1884 Survey and Order of Establishment was to redo County Road No. 22 R/W overlapped by the establishment of County Road No. 46. (See Commissioners Proceedings, Volume 4, p. 101, paragraph 1, "be surveyed. . . . and platted and report returned." See also Commissioners Proceedings, Volume 4, p. 142, paragraph 2, "resurvey of portions of travelled road . . . . ordered that the Plat & Field Notes . . . be recorded and accepted.") Based on this, the R/W would be 60 feet in width.

Signed: Lawrence W. Steele, P.L.S. No. 13138
MEMORANDUM

TO: Joe Rutan, County Engineer
FROM: Daniel Gibson, Asst. Chief Civil Deputy Prosecuting Attorney
DATE: February 21, 2013

Re: Status of Birch Bay Drive Right-of-Way

Joe, you requested that I examine the records and provide my legal opinion on the legal status of Birch Bay Drive, in light of claims by some adjacent property owners that the road right-of-way is only thirty (30) feet wide in the pertinent area. I have examined the entirety of the materials provided to me and can confirm that the opinion offered by licensed surveyor Larry Steele a number of years ago, when he compiled and examined the relevant information, is indeed correct. At the location in issue, the right-of-way for Birch Bay Drive is sixty feet in width.

Based upon the establishment of County Road No. 46 in conjunction with state law on the width of public roads when no width is specified, and with subsequent surveys that were filed, it is clear to me that County Road No. 46 with a width of 60 feet superseded County Road No. 22 and its width of 30 feet where they overlapped. I leave unanswered the question whether there remains, in any area where they did not entirely overlap, additional right-of-way beyond the 60 feet of right-of-way width for County Road No. 46. In other words, the road right-of-way is at least 60 feet in width to account for County Road No. 46 as both established and as continuously occupied for decades, and possibly more to account for County Road No. 22 if and where it does not entirely coincide with No. 46. I understand that it is not our intent in the present context, however, to assert a claim beyond the 60 feet of width for No. 46.
Memorandum

To: Joseph P. Rutan, P. E., County Engineer/Assistant Director

From: Ty Whitcomb, PLS

Date: March 13, 2013

Re: Right of Way for Birch Bay Drive

The Larry Steele report commissioned by the County in 1984 was in response to concern by the Landowners about the right of way for the construction of the existing Birch Bay Berm. It comprehensively covers the record related to the establishment of County Roads 22 and 46. Mr. Steele was the representative for some of the concerned Landowners. The County thought we would completely eliminate any question of an appearance of fairness or prejudice with his selection as the consultant. Let me emphasize, the argument of whether it is 60’ or 30’ wide only applies to the establishment of the portion lying northwest of Harborview. County Road 46 which runs from Alderson north only overlaps County Road 22 west of the Willamette Meridian, which is the section line at Harborview. There is no evidence to support anything but a 60 foot corridor from Alderson to Harborview.

The Petition and Establishment process for the creation of County Roads was originally drafted by the Territorial Legislature incorporated into RCW and was the common way to establish road right of way in early Washington. It did not commonly involve deeds and unless upon prey of the petitioners for a different width, all lawful county roads were 60 feet wide. County Road 22 requested or in the specified manner, granted the County 30 feet above high water. The subsequent overlying Establishment, over this portion of County Road 22, by County Road 46, did not specify a width and it has been well established in law that this means the right of way is 60’wide. It has been argued that since the original petitioners only granted or preyed for 30 that the overlying establishment did not have the proper foundation by new petition to establish more than 30. Please note that C. Donovan, for the County, published notice in the Whatcom Reveille, to the specific landowners that in February of 1884 that the County was establishing County Road 46 as a Lawful County road and Public highway, based on use for ten years and they were surveying and platting it and to file any claims or objections. Based on this, it would appear that the resultant 60 foot Lawful County Road was not dependent on the original Petition.

The real question at hand is, over the last 130 years, has the County been clear enough in their notice of position and intent related to the width of this right of way, to have provided sufficient opportunity
to object, seek damages or sue for resolution? The 1916 map of County Engineer, C.M. Adams declares the subject portion to be 60 feet. Our present 60 foot wide alignment and a majority of the improvements were built, mapped and monumented as Lateral Highway No. 2, in 1930, with extensive Public involvement and notice. We have recovered all but two of the original monuments from this re-construction and are using them for our right of way. These same monuments were re-surveyed and used for the original installation in the 70’s and all subsequent installations, of Birch Bay water and Sewer. Based on this it would appear sufficient notice of intent has been provided.

Upholding any argument for an original 30 foot corridor above high water would have to take into account our occupation and maintenance, for the sufficient statutory period, to have already perfected the right of Way, by operation of law, over all the present improved area. The addition of the thirty feet above high water from County Road 22 would result in the Public owning the beach and with the said improved area, probably more than 60 feet with an adverse effect on the adjoiners. Even though this might be advantageous to the County in some respects, it is not a fair or correct position. It is only being addressed in response to arguments being made from Landowners.

County Right of Way is a Boundary between adjoiner’s, just like any other in Washington State. This boundary is a legal relationship between the parties based on history, evidence, mutual recognition and the actions of the parties. The County’s position is well documented and has been of record with the Auditor and in the County Engineer’s office of record that the Birch Bay Drive right of way was established 60 feet in width. We have operated the corridor and constructed facilities within it based on this position.

Ty Whitcomb, PLS
NOTICE.

Notice is hereby given to H. Shields, J. Aitkin, T. Murphy, H. Roessell, Eunice Stevens, D. Rogers, George Windust, Abram Green, L. Martinson, G. McHeffy, J. Gisher, C. Vogt, H. Henspeter, and E. H. Bruns, residents on those portions of the county road used and traveled as such for 10 years, from the Ferndale Ferry to Semiahmoo, and that portion of the county road used and traveled as such for 10 years, from the quarter post of Secs. 31 and 32, Tp 3 N., R 1 east; thence to and around Birch Bay, to the house of B. H. Bruns, in the County of Whatcom, has been reserved and platted, and the Board of County Commissioners of Whatcom County, W. T., will at its February term, A.D. 1884, hear and determine whether the roads herein described and included in said survey shall be ordained lawful county roads and public highways, and objectionable thereto or claims for damages must be filed in the Auditor's office on or before the first day of said February term, 1884, or the roads herein above described will be declared county roads and public highways.

C. DONOVAN,
County Auditor.
### WHATCOM COUNTY COUNCIL AGENDA BILL

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**TITLE OF DOCUMENT**
Whatcom County Public Works Ferry Operations Report

**ATTACHMENTS:**
Whatcom County Public Works Ferry Operations Report

**SEPA review required?** ( ) Yes ( x ) NO
**SEPA review completed?** ( ) Yes ( x ) 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.)

Report and Discussion on the Whatcom County Ferry Operations

**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](http://www.co.whatcom.wa.us/council).
Presentation Content

* 2012 Financial "snap shot" (page 3)
* Summary of Revenues (page 4)
* Summary of Expenditures (page 5)
* Overview of Ferry Fund Status (page 6)
* Summary of Surcharge Impact (page 7)
* Summary of Ridership Statistics (page 8)
* Summary of 45%/55% Expenditure Split (page 9-10)
* Additional Road Fund Subsidies (page 11)
* Road Fund Subsidy Impact (page 12)
* General Information / Comments (page 13-14)
* Recommendations from Public Works (page 15)
2012 Financial "snap shot"

Operating Revenues:

- Fares $1,447,131
- Ferry Deficit Reimbursement $181,433
- Interest and other income $6,668
- Road Fund Subsidy (45%) $1,119,611 (current calc)

Total 2012 Revenue $2,754,843

- Less 2012 Operating Expenditures (2,488,023)

2012 Operating GAIN = $266,820

Note: All figures reflect 2012 activity as of 3-7-13. The year is not closed and additional adjustments may be recorded after the preparation date of this presentation.
## Summary of Revenues

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<th>2010</th>
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1/23/11: $3 surcharge implemented  
4/26/12: Free passenger and pedestrian travel for all children under age 19.
## Summary of Expenditures

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<td>11,077</td>
<td>15,104</td>
<td>15,152</td>
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<tr>
<td>Equipment &amp; Space Rental</td>
<td>834,025</td>
<td>822,893</td>
<td>825,460</td>
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<td>Ferry Insurance</td>
<td>62,429</td>
<td>55,695</td>
<td>36,686</td>
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<td>Utilities</td>
<td>7,274</td>
<td>6,798</td>
<td>9,467</td>
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<tr>
<td>Repairs &amp; Maintenance</td>
<td>135,249</td>
<td>136,154</td>
<td>130,886</td>
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<tr>
<td>Miscellaneous - include cost alloc.</td>
<td>216,192</td>
<td>242,172</td>
<td>273,391</td>
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<tr>
<td><strong>Total Expenditures</strong></td>
<td><strong>$2,593,833</strong></td>
<td><strong>$2,445,720</strong></td>
<td><strong>$2,488,023</strong></td>
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</table>

### Total Expenditures

![Bar Chart](chart.png)
Overview of Ferry Fund Status

<table>
<thead>
<tr>
<th>Date</th>
<th>Fund Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>1/1/2006</td>
<td>$1,587,137</td>
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<tr>
<td>1/1/2007</td>
<td>$1,193,231</td>
</tr>
<tr>
<td>1/1/2008</td>
<td>$941,920</td>
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<td>1/1/2009</td>
<td>$1,072,545</td>
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<td>1/1/2010</td>
<td>$939,711</td>
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<tr>
<td>1/1/2011</td>
<td>$658,286</td>
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<tr>
<td>1/1/2012</td>
<td>$1,031,177</td>
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<tr>
<td>1/1/2013</td>
<td>$1,297,997</td>
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Note: Beginning fund balance on 1/01/06 was transferred in from the Road fund.
Summary of Surcharge Impact

<table>
<thead>
<tr>
<th></th>
<th>2011</th>
<th>2012</th>
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</thead>
<tbody>
<tr>
<td>Surcharge Revenue</td>
<td>$557,343</td>
<td>$489,816</td>
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</table>

Percent Decrease: 12.1%
Dollar Decrease: $67,527

Note: $3 per trip surcharge began on 1/23/11.
Summary of Ridership Statistics

<table>
<thead>
<tr>
<th></th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Passengers</td>
<td>197,980</td>
<td>185,801</td>
<td>182,484</td>
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<tr>
<td>Vehicles</td>
<td>110,405</td>
<td>108,164</td>
<td>109,336</td>
</tr>
</tbody>
</table>
Summary of 2012 45/55 Expenditure Split Between Road and Ferry Funds

- **Total Operating Cost** $2,488,023
- Less Ferry Deficit Reimb. (181,433)
- Less Interest/Other Income (6,668)
- Less County Vehicle Trip Credit (5,510)

- *Adjusted Total Operating Cost* $2,294,412
Summary of 2012 45/55 Expenditure Split -Continued

- Adjusted Total Operating Cost $2,294,412
- Road Fund 45% Subsidy (of total operating costs) $1,119,610*
- Fare Goal 55% of adjusted total operating costs (actually 50.7% of total operating costs) $1,261,927*
- Actual Fares Collected (58.3% of total operating costs) $1,447,131
- Operating Gain from Fares $185,204

*Calculation Discussion, +$87,125 Road Fund
# Additional Road Fund Subsidies

<table>
<thead>
<tr>
<th></th>
<th>2010</th>
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<tr>
<td>Subsidy</td>
<td>$ 61,735</td>
<td>$ 80,028</td>
<td>$ 87,125</td>
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</table>

![Bar Chart for Additional Subsidy](chart.png)
Road Fund Subsidy Impact

- Ferry Lease And Operation Subsidy (15 years)

  - Year 1 $2.0 million
  - Year 5 $2.0 million
  - Year 15 $3.0 million (estimated)
  - 15 years @ $2.5M/year x 45% Road Fund Subsidy Rate $16.875 million (estimated)

Total Road Fund Subsidy over this period = $23.875 million (estimated)

Note: The estimate is for Ferry Lease obligations and Ferry Operations ONLY. The estimated costs do not include the Road Fund expenditures associated with any Lummi Island roadway maintenance or improvements.
General Information/Comments

- Road Fund:
- Pays 100% Capital Costs of docks & Ferry.
- Pays 45% of total operating costs.
- Pays 100% of Lummi Nation lease expenses related to improvements.
- Pays several indirect costs not captured.
- Pays for maintenance of 19.90 miles of roads on Lummi Island.
General Information/Comments

- Road Fund collections from Lummi Island:
  Assessment for 2012 = $366,016

- Total 2012 Road Fund expenditures that are Ferry related
  = $1,119,610*

($366,016/$1,119,610 = 32.7%)

*Does not include any road related expenses on Lummi Island

Note: In summary, approximately 1% of the population in unincorporated Whatcom County (Lummi Island) contributes approximately 2% to the total Road Fund assessment and is directly linked to over 6.6% of the Road Fund expenditures for Ferry Operations.
Recommendations From Public Works

- Do not alter current fares or structure unless clearly reducing costs to offset any loss of revenue.

- Alter the Ordinance to make the 45%/55% calculation based on the same expenditure figure. Originally introduced to Council for review in 2012.

- Pursue a review in 2013 to determine the appropriate amount of reserves that should be targeted in the Ferry Fund. Current target is $1.587 million.
Conclusion of Presentation

Questions and Discussion
**TITLE OF DOCUMENT:**
Resolution endorsing labeling of genetically engineered food products

**ATTACHMENTS:**

**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.)
Resolution endorsing labeling of genetically engineered food products

**COMMITTEE 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.
RESOLUTION NO. 2013-____

ENDORsing WASHINGTON STATE INITIATIVE 522 REQUIREING LABELING OF GENETICALLY ENGINEERED FOOD PRODUCTS

WHEREAS, consumers have the right to know whether the foods they purchase were produced with genetic engineering (GE); and

WHEREAS, the genetic engineering of plants and animals is an imprecise process and can cause unintended consequences; and

WHEREAS, mixing plant, animal, bacterial, and viral genes in combinations that cannot occur in nature produces results that are not always predictable or controllable, and can lead to adverse health or environmental consequences; and

WHEREAS, GE food is a seed, plant, fish, or animal that has had its DNA artificially altered in a lab by genes from other plants, fish, animals, viruses, or bacteria to produce foreign compounds; and

WHEREAS, GE foods are not the same as those created through traditional breeding techniques or hybridization; and

WHEREAS, mandatory identification of foods produced with GE can provide a critical method for tracking the potential health effects of consuming foods produced through GE; and

WHEREAS, sixty-three countries, including Japan, South Korea, China, Australia, New Zealand, Thailand, Russia, the European Union member states, and other key United States trading partners, have laws mandating disclosure of GE foods on food labels; and

WHEREAS, numerous foreign markets with restrictions against foods produced through GE have restricted imports of United States crops due to concerns about GE and trade losses are estimated at billions of dollars; and

WHEREAS, mandatory identification of foods produced with GE can be a critical method for preserving the economic value of exports to markets with restrictions and prohibitions against GE; and

WHEREAS, agriculture is Washington’s number one employer; and

WHEREAS, preserving the identity, quality, and reliability of Washington’s agricultural products is of prime importance to our state’s fiscal health; and

WHEREAS, Washington’s seafood industry employs more than 67,000 people, ranking fourth in the nation; and

WHEREAS, GE salmon marketed without accurate labeling may cause public health problems, would undercut the value of wild fish, and cause economic harm to Washington’s fishing families; and

WHEREAS, the FDA has not conducted an independent assessment of the allergenicity of GE salmon, relying on only data provided by the company producing the fish, and based on testing of only six fish; and
WHEREAS, there are concerns about human health risks associated with GE salmon that may contain the hormone IGF-1 (insulin-like growth factor) linked to prostate, breast, and colon cancers; and

WHEREAS, GE salmon may contain lower levels of nutrients, including omega-3 fatty acids, the "good" fats which have important health benefits; and

WHEREAS, more than 400 health organizations, nationally and in Washington State, have endorsed mandatory GMO/GE (Genetically Modified Organism/Genetically Engineered) labeling, including the American Nurses Association, the American Public Health Association, the Washington State Nursing Association, and Washington Physicians for Social Responsibility; and

WHEREAS, the American Medical Association has called for mandatory safety testing of GE foods; and

WHEREAS, many people want to know if their food was produced using GE and without disclosure, consumers of GE food unknowingly may violate their own dietary and/or religious restrictions; and

WHEREAS, conventional farmers have a right to choose what crops they grow and many conventional farmers want to grow traditional crops developed without GE; and

WHEREAS, identifying seeds and seed stock produced with GE would protect farmers' rights to know what they are purchasing and protect their right to choose what they grow; and

WHEREAS, organic farmers are prohibited from using GE seeds or livestock feed; and

WHEREAS, the purpose of this resolution is to support regulations that ensure people are fully informed about whether the food they purchase and eat was produced through genetic engineering so they may choose for themselves whether to purchase and eat such food; and

WHEREAS, identifying foods produced through GE will also help protect our state's export market; and

WHEREAS, consumers have a right to an informed choice at the point of sale.

NOW, THEREFORE, BE IT RESOLVED that the Whatcom County Council endorses Washington State Initiative 522, which will mandate the labeling of genetically engineered food products.

APPROVED this ____ day of __________, 2013.

ATTEST: WHATCOM COUNTY COUNCIL

WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Clerk of the Council

Kathy Kershner, Council Chair

APPROVED AS TO FORM:

__________________________

Civil Deputy Prosecutor
**WHATCOM COUNTY COUNCIL AGENDA BILL**  
**NO.** AB2012-272B  

<table>
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<tr>
<th>CLEARANCES</th>
<th>Initial</th>
<th>Date</th>
<th>Date Received in Council Office</th>
<th>Agenda Date</th>
<th>Assigned to:</th>
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<td><em>RECEIVED</em></td>
<td>3-26-13</td>
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<td>Prosecutor:</td>
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**TITLE OF DOCUMENT:** A Resolution Vacating a Portion of Bridgewater Street (Shipyard Road) and Dearborn Avenue

**ATTACHMENTS:** 1. Cover Memo  
2. Resolution  
3. Right of Way Deed  
4. Neighboring Land Owner’s Petition  
5. Map of Site  
6. Engineer’s Report  
7. Comparative Market Analysis

<table>
<thead>
<tr>
<th>SEPA review required?</th>
<th>( ) Yes</th>
<th>(X) NO</th>
<th>Should Clerk schedule a hearing?</th>
<th>( ) Yes</th>
<th>( ) NO</th>
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<tr>
<td>SEPA review completed?</td>
<td>( ) Yes</td>
<td>( ) NO</td>
<td>Requested Date:</td>
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<td></td>
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</table>

**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 attached Resolution Vacating a Portion of Bridgewater Street (Shipyard Road) and Dearborn Avenue is submitted per RCW 58.17 & 36.87 and WCC 12-20.

The County Engineer has examined the petition for vacation and determined that the Public will not benefit from approval of petition and is not in favor of this vacation petition. County Engineer does not recommend approval of this resolution.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

<table>
<thead>
<tr>
<th>Related County Contract #:</th>
<th>Related File Numbers:</th>
<th>Ordinance or Resolution Number:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<td></td>
</tr>
</tbody>
</table>

**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.
MEMORANDUM

To: The Honorable County Executive Jack Louws and Honorable Members of the County Council

Through: Frank M. Abart, Director

From: Andrew Hester, Public Works Real Estate Coordinator

Date: March 11, 2013

Re: A Resolution Vacating a Portion of Bridgewater Street (Shipyard Road) and Dearborn Avenue

The attached revised petition asks for vacation of approximately 1,587 square feet of right of way, more or less, of Bridgewater Street (Shipyard Road) and Dearborn Avenue. As part of this vacation the petitioners would be required to dedicate approximately 214 square feet of right of way resulting in a net square footage vacated of 1,373 square feet.

Based on a Fair Market Valuation (FMV) of surrounding comparable properties, the estimated value of the area to be vacated is approximately $3,762.00.

- **Recommended Action**
  The County Engineer’s report has been prepared and is being submitted not in favor of this road vacation. It is recommended that the County Council set a hearing date for the requested vacation.

Please contact me at extension 50571 if you have any questions regarding this action.

Encl.
A RESOLUTION VACATING A PORTION OF BRIDGEWATER STREET (SHIPYARD ROAD) AND DEARBORN AVENUE

WHEREAS, on June 5, 2012, Jayme Gilday and Jean Allen, et al., submitted a petition for the vacation of a portion of Bridgewater Street (Shipyard Road) and Dearborn Avenue lying within the unincorporated area of Whatcom County near the City of Blaine, accompanied by the penal sum of $682.00, and,

WHEREAS, as described in RCW 36.87.010, when a county road or any part thereof is considered useless the Whatcom County Council may declare its intention to formally consider vacation, by resolution.

WHEREAS, the County Council voted 7-0 on August 7, 2012, to consider this vacation request and directed the County Engineer’s office to report; and

WHEREAS, the County Engineer’s office has reviewed the portion of the street which is a Class B-2 right-of-way, wherein no public expenditures were made or they are non-ascertainable from records, and part or all lies within a platted subdivision, and in the exercise of his judgment has determined the public will not benefit from said vacation; and

WHEREAS, public utilities are located within the portion of the right-of-way to be vacated and an easement for said utilities will be retained by the County; and

WHEREAS, the City of Blaine stated that it would support the road vacation if the area to be vacated was revised and if a portion of the petitioners’ property was dedicated as right of way; and

WHEREAS, the revised road vacation area is 1,587 square feet and the right of way dedication area is 214 square feet; and

WHEREAS, the net square footage vacated from Bridgewater Street (Shipyard Road) and Dearborn Avenue is 1,373 square feet; and

WHEREAS, the fair market value has been determined to be $2.74 per square foot for the net square footage of 1,373 included within this portion of Bridgewater Street (Shipyard Road) and Dearborn Avenue, making the total value of the area to be vacated $3,762.00; and

WHEREAS, the County Engineer has reviewed said compensation and determined it to be fair value; and
WHEREAS, the petitioner has met all of the petition requirements, as set forth by Chapter 12.20 Whatcom County Code, and all other applicable laws; and

WHEREAS, the applicant has six calendar months from the date of the Preliminary Order of Vacation to pay any remaining fees to the Whatcom County Council office, which checks should be made payable to the Whatcom County Treasurer, prior to the vacation becoming effective, including but not limited to the appraised value of the area sought to be vacated; and

WHEREAS, this vacation does not become effective until the fees are paid, and until applicant executes a Right of Way Deed for the required right of way dedication area, and the Final Order and Resolution are recorded with the County Auditor;

NOW, THEREFORE, BE IT RESOLVED that it is the intention of Whatcom County Council to vacate the following described right of way:

Commencing at the common northerly corner of Lots 106 and 107, of the plat, “Plymouth City, Whatcom County, Washington”, as per the map thereof, recorded in Book 2 of Plats, Page 56, in the Auditor’s Office of said County and State more particularly described as follows:

Thence south 89°59’22” west along a projection of Bridgewater Street (commonly known as Shipyard Road), 96.18 feet; thence south 15°11’01” west, 67.59 feet to a point on a curve concave to the southeast and having a radius of 132.00 feet; thence along a curve to the right through a central angle of 59°37’21” for an arc distance of 137.36 feet to the point of curvature and point of beginning.

Containing 1,373 square feet more or less.

SUBJECT TO and/or together with all easements, covenants, restrictions, and/or agreements of record or otherwise; and

SUBJECT TO an easement retained by the County in respect to the vacated portion of right-of-way for the construction, repair, and maintenance of any and all public utilities and services, now located on or in the vacated portion, or planned for the future.

BE IT FURTHER RESOLVED that upon applicants’ completion of payment for the property and of all other fees, and execution of a right-of-way deed for the area required by the County to be dedicated, a Final Order of Vacation shall be prepared by Council Staff, signed by the appropriate parties, and recorded with the County Auditor; and
BE IT FURTHER RESOLVED that upon applicants’ completion of payment for the property and of all other fees, and execution of a right-of-way deed for the area required by the County to be dedicated, the Right of Way Deed for that portion to be dedicated by applicant will be recorded with the County Auditor; and

BE IT FURTHER RESOLVED that if the conditions set forth above are not fulfilled within six months from the date of the passage of this Resolution, the Preliminary Order of Vacation which is hereby authorized shall be withdrawn, and the right-of-way shall not be deemed to have been vacated.

APPROVED this _____ day of ____________, 2013

ATTEST: WHATCOM COUNTY COUNCIL
WASHINGTON

______________________________
Dana Brown-Davis, County Clerk

______________________________
Kathy Kershner, Council Chair

APPROVED AS TO FORM:

Daniel L. Wilson
Senior Civil Deputy Prosecuting Attorney
After recording return document to:

Whatcom County Public Works
Real Estate Coordinator
322 N. Commercial, Suite 210
Bellingham, WA 98225

Document Title: RIGHT-OF-WAY DEED
Reference Number of Related Documents: None
Grantors: Jayme S. Gilday and Jean A. Allen
Grantee: Whatcom County
Legal Description: Plymouth City all lots 106-107 W ¼ lot 108, S7, T40N, R1E
Additional Legal Description is on Page 3 of Document.
Assessor’s Tax Parcel Number: 400107 401230 0000

RIGHT-OF-WAY DEED

The Grantors, JAYME S. GILDAY AND JEAN A. ALLEN, as Joint Tenants with Right of Survivorship, for and in consideration of a requirement imposed for County Road Vacation of other property, do grant, bargain, sell and convey as right-of-way, and for all purposes and uses consistent therewith, to WHATCOM COUNTY, A WASHINGTON MUNICIPAL CORPORATION, the following described real property, and any after acquired interest therein, situated in Whatcom County, in the State of Washington:

For legal description and additional conditions
See Exhibit A attached hereto and made a part hereof.

Also, the undersigned hereby request the Assessor and Treasurer of said County to set-over to the remainder of the herein described Parcel "A" the lien of all unpaid taxes, if any, affecting the property hereby conveyed, as provided by RCW 84.60.070.

The undersigned hereby agree to surrender possession of the lands or rights herein conveyed, granted, transferred, and/or released upon receipt of payment.

It is understood and agreed that delivery of this deed is hereby tendered and that the terms and obligations hereof shall not become binding upon Whatcom County unless and

Page 1 of 3 Pages
RIGHT-OF-WAY DEED

until accepted and approved hereon in writing for the County by the County Executive.

Grantors:

__________________________________________
Jayme S. Gilday

__________________________________________
Jean A. Allen

Date: _____________

Accepted and Approved

WHATCOM COUNTY

By: ________________________
Jack Louws, County Executive

Date: _____________

Approved as to form:
Prosecuting Attorney's Office

Daniel Gibson, Assistant Chief Deputy/Civil

Date: 03/13/13

STATE OF WASHINGTON )
 County of ________________ ) ss

On this __________________________ day of _____________ 2013, before
me personally appeared Jayme S. Gilday and Jean A. Allen, to me known to be the
individuals described herein and who executed the foregoing instrument, and
acknowledged that they signed the same as their free and voluntary act and deed for the
uses and purposes therein mentioned.

GIVEN under my hand and official seal the day and year last above written.

__________________________________________
Notary Public in and for the State of
Washington,
residing at __________________________
My commission expires __________________________
EXHIBIT A

All of the hereinafter described real property being a parcel of land for right-of-way purposes, being a portion of Parcel “A,” and lying within Section 7, Township 40 North, Range 1 East, W.M. in Whatcom County, Washington, more particularly described as follows:

That portion of a tract of land conveyed to Jayme S. Gilday under Whatcom County Auditor’s File Number 2011203587 more particularly described as follows:

Commencing at a point of curvature on the west line of Lot 106, Plat of “Plymouth City, Whatcom County, Washington”, as per the map thereof, recorded in Book 2 of Plats, Page 56, in the Auditor’s Office of said County and State; thence northerly along a curve to the right having a radius of 132.00 feet, the center of which bears north 90°00’00” east through a central angle of 30°23’17” for an arc distance of 70.01 feet to a point; thence south 15°11’01” west, 69.19 feet to the point of beginning.

Containing 214 square feet more or less.

Situate in Whatcom County, Washington.

PARCEL “A”

Lots 106 & 107 and the west half of Lot 108, “Plymouth City, Whatcom County, Washington,” as per the map thereof, recorded in Book 2 of Plats, Page 56, in the Auditor’s Office of said County and State.

Situate in Whatcom County, Washington.
BEFORE THE WHATCOM COUNTY COUNCIL

IN THE MATTER OF VACATION OF
THE COUNTY ROAD KNOWN AS

Bridgewater St / Shipyard Rd

Petitioned for by:
Jayme Gilday and Jean Allen
4607 Shipyard Rd
Blaine WA 98230
et al.

PETITION FOR VACATION
OF PLATTED ROAD

(RCW 58.17 AND 36.87)

Pursuant to Whatcom County Ordinance No. 1-72, dated February 14, 1972, the undersigned and those
signing attached petition, which bears signatures and property descriptions of five land owners residing in
the vicinity of said road, request vacation of the county road hereinafter described, and agree with the
statements below:

1. Petitioners are residents of Whatcom County and owners of real property in the vicinity of the road
sought to be vacated.

2. The road sought to be vacated is legally described as follows: SEE SITE MAP

3. The pertinent facts in support of this petition are: SEE ATTACHED

4. The road to be vacated is useless as a part of the County road system and the public will benefit by its
vacation and abandonment.

5. Petitioners will pay all costs and expenses incurred by the County in examination, report, notice and
proceedings pertaining to this petition.

6. A bond in the penal sum of $682.00, payable to Whatcom County Treasurer, accompanies this petition.

7. The application fee accompanies this petition.

WHEREFORE, petitioners request the County Road Engineer to report upon this petition, that a
hearing take place on this report, and that an order be entered vacating and abandoning said road.

CONTACT PERSON:

Jayme Gilday
4607 Shipyard Rd
Blaine WA 98230
860-332-5093
jtwo4@frontier.com

Signed this 5th day of June, 2012

Page 1 of 2

285
WHEREFORE, petitioners request the County Road Engineer to report upon this petition, that a hearing take place on this report, and an order be entered vacating and abandoning said road. (NOTE: A minimum of five signatures is required by law; see statement near the beginning of page 1).

PETITIONERS' NAMES: Property owned by petitioner (part of sec. or name of plat, see (lot), TWP. (Blk) Range):

<table>
<thead>
<tr>
<th>Name</th>
<th>Signature</th>
<th>Address</th>
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<tbody>
<tr>
<td>Bill Hunsinger</td>
<td></td>
<td>9547 Dearborn Ave.</td>
</tr>
<tr>
<td>Kurt Cain</td>
<td></td>
<td>9042 Dearborn Ave.</td>
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<tr>
<td>J. Dale Vander Giezen</td>
<td></td>
<td>9075 Dearborn Ave.</td>
</tr>
<tr>
<td>Hal Hutchins</td>
<td></td>
<td>9076 Shipyard Lane</td>
</tr>
<tr>
<td>Paul Berg</td>
<td></td>
<td>9022 Dearborn</td>
</tr>
</tbody>
</table>

ALL ADDRESSES: BLAINE, WA 98230

LOCATE BY SIGNATURE # ON MAP WHICH FOLLOWS

A map of the road proposed to be vacated and surrounding properties, with each of the above signed petitioners properties indicated thereon, shall be attached to this petition in order for it to be accepted in the County Council Office.
WHEREFORE, petitioners request the County Road Engineer to report upon this petition, that a hearing take place on this report, and an order be entered vacating and abandoning said road. (NOTE: A minimum of five signatures is required by law; see statement near the beginning of page 1).

PETITIONERS' NAMES: Property owned by petitioner (part of sec. or name of plat, see (lot), TWP., (Blk) Range):

1. STEVE WHITE, 4029 SHIPYARD RD, 360-383-2934
2. [Signature]
3. [Signature]
4. [Signature]

A map of the road proposed to be vacated and surrounding properties, with each of the above signed petitioners properties indicated thereon, shall be attached to this petition in order for it to be accepted in the County Council Office.
3. Pertinent facts pertaining to Petition for Vacation:

The area petitioned for vacation lies adjacent to a garage (no set back) which was built sometime in the mid 1900s. The house which is situated ON a portion of the road right of way in question was built in 1910 and remodeled (in footprint with all county permits) in 2005. We, the petitioners, were made aware of this anomaly in 2006 when a survey was completed at our request. In large part, we are seeking the peace of mind of knowing that our home is not on a county road right of way. We are concerned that in the future, should we wish to sell the property, the lot lines could become a very negative issue. This property has changed hands only within the original family that has owned it since around 1918 or this matter would perhaps have come to light earlier. Also, the portion of the area not occupied by our house has been maintained and improved by the same family for around 90 years and consists of shade and fruit trees, lawn, flower beds and birdlife all maintained by the property owners and adding value to the entire neighborhood.

Also possibly pertinent to this petition is the fact that in this neighborhood only Shipyard Road has a 75 foot right of way. The other streets in our neighborhood (Dearborn, Elmwood and Hall) all have 60 foot rights of way. None of these roads is much more than a lane and traveled pretty much only by the people who live here. By contrast, Blaine Road which also has a 75 foot right of way is a main thoroughfare, highly traveled with maintained shoulders and striping.

The historical photos show the road location (same as now) and the house location before the remodel (same location). The new photos show the existing right of way which extends through the north side of our house and the maintained trees, lawns and beds which make up the proposed vacated area.

We are asking only to vacate enough right of way to establish setbacks for the house and garage and to include a small area of maintained land which follows the curve of the road.
PERTINENT FACTS OFFERED BY PETITIONERS

"The area petitioned for vacation lies adjacent to a garage (no set back) which was built sometime in the mid 1900's. The house which is situated ON a portion of the road right of way in question was built in 1910 and remodeled (in footprint with all county permits) in 2005. We, the petitioners, were made aware of this anomaly in 2006 when a survey was completed at our request. In large part, we are seeking the peace of mind of knowing that our home is not on a county road right of way. We are concerned that in the future, should we wish to sell the property, the lot lines could become a very negative issue. This property has changed hands only within the original family that has owned it since around 1918 or this matter would perhaps have come to light earlier. Also, the portion of the area not occupied by our house has been maintained and improved by the same family for around 90 years and consists of shade and fruit trees, lawn, flower beds and birdlife all maintained by the property owners and adding value to the entire neighborhood. Also possibly pertinent to this petition is the fact that in this neighborhood only Shipyard Road has 75 foot right of way. The other streets in our neighborhood (Dearborn, Elmwood and Hall) all have 60 foot rights of way. None of these roads is much more than a lane and traveled pretty much only by the people who live here. By contrast, Blaine Road which also has a 75 foot right of way is a main thoroughfare, highly traveled with maintained shoulders and striping. The historical photos show the road location (same as now) and the house location before the remodel (same location). The new photos show the existing right of way which extends through the north side of our house and the maintained trees, lawns and beds which make up the proposed vacated area. We are asking only to vacate enough right of way to establish setbacks for the house and garage and to include a small area of maintained land which follows the curve of the road."
January 14, 2013

Whatcom County Council
Whatcom County, Washington
RE: Petition to Vacate Shipyard Rd Blaine

Dear Council members,

My great grandparents immigrated to Whatcom County; the Gildays to Blaine in the 1800s and the Olsons to Ferndale at around the same time. Robert Gilday was mayor of Blaine in the mid 1800s and co-owner of Gilday Montfort Feed Store and the Olsons farmed on the Olson Road which bears their name. Both sets of my grandparents lived in Bellingham, on Park Street and Roland Street. They were business owners, active members of service groups, employees, good neighbors and active church members. Both my parents were born and raised in Bellingham, going to BHS and Western. My Dad played for the Bellingham Bells and went on to be a respected teacher and coach at Meridian High School. My Mom was active in PTA, March of Dimes, local politics and worked for Whatcom County Engineering for 20 years in the 60s, 70s and 80s. I work for the Whatcom County Library System, which, as you know, has an ethic of service to the community. I make mention of this family history not to suggest worthiness of consideration beyond what you would afford to any resident. I am, however, proud of my roots in Whatcom County and my family’s stewardship and service to our community.

I am the fourth generation of my family to live on the Shipyard Road property. It was left to me in 2001. The existing house was barely habitable and in 2004 we undertook to remodel it in the existing footprint, tearing down all the added-on structures - bedrooms, kitchen and laundry porch and rebuilding them to code, with all county permits, creating a small (1400 sq ft) energy efficient home. In 2006 we had a survey done to establish the borders NOT on the Shipyard or Dearborn rights of way and were given the shocking news that the newly remodeled house was on the right of way by several feet running at an arc through the entire home. At that time we talked to the Engineering Department and were told that it was not too uncommon an anomaly. We were advised that we could petition for a vacation, but that it probably wasn’t necessary.

At this point in time, it seems crucial to petition for vacation of enough area to create a small set-back from the house. We may have to sell the property in the foreseeable future and the obvious negative impact of the property lines would be a detrimental factor. Moving the house would be prohibitively expensive and perhaps impossible due to the melding of old and new foundations. The official petition shows the proposed new lot lines slightly missing the garage and house and mimicking the current curve of the road from Shipyard into Dearborn. At no point is the right of way less than 60 feet, which is the existing right of way for Dearborn Ave. Shipyard Rd has an existing 75 foot right of way which at no point is reduced by more than 7.5 feet. We would be amenable to negotiation on the actual new lot lines, reducing the square footage, or trading for area
elsewhere (i.e., Dearborn Ave). We are concerned only that the right of way not extend under our home. The "grandfathering" of a structure that has existed on the same footprint for over 100 years (since 1910) is a fuzzy area not well understood. Why the house was built on the right of way we will never truly know. While ignorance is no excuse, the remodel was undertaken without our being aware of the problem and I wonder how many people would think to survey before remodeling an existing home. Would you?

I have spoken to County Engineer Joe Rutan who, because of Engineering guidelines cannot recommend this vacation. He did say, however, that if the petition were granted "no one would lose any sleep over it". I know that giving up any county land is not lightly considered. Shipyard Road, however, already HAS a 75 foot right of way. The house is 30 feet from the edge of Shipyard Rd so there is ample room for widening the road although it is not a thoroughfare and is used mainly by the few residents in my neighborhood and essentially dead ends at Dearborn Ave.

As a taxpayer, fourth generation citizen, and steward of Whatcom County I would appreciate your careful consideration of this Petition to Vacate. I believe that no one would be harmed by granting it.

Sincerely,
Jayme Gilday
Jean Allen
Co-petitioners
4607 Shipyard Road
Blaine, Washington
VACATION – LEGAL DESCRIPTION

COMMENCING AT THE COMMON NORTHERLY CORNER OF LOTS 106 AND 107, OF THE PLAT, "PLYMOUTH CITY, WHATCOM COUNTY, WASHINGTON", AS PER THE MAP THEREOF, RECORDED IN BOOK 2 OF PLATS, PAGE 56, IN THE AUDITOR’S OFFICE OF SAID COUNTY AND STATE MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THENCE SOUTH 89°59’22" WEST ALONG A PROJECTION OF BRIDGEWATER STREET (COMMONLY KNOWN AS SHIPYARD ROAD), 96.18 FEET; THENCE SOUTH 15°11’01" WEST, 67.59 FEET TO A POINT ON A CURVE CONCAVE TO THE SOUTHEAST AND HAVING A RADIUS OF 132.00 FEET; THENCE ALONG A CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 59°37’21" FOR AN ARC DISTANCE OF 137.36 FEET TO THE POINT OF CURVATURE AND POINT OF BEGINNING.

CONTAINING 1,587 SQUARE FEET MORE OR LESS.
DEDICATION – LEGAL DESCRIPTION:

THAT PORTION OF A TRACT OF LAND CONVEYED TO JAYME S. GILDAY UNDER WHATCOM COUNTY AUDITOR’S FILE NUMBER 2011203587 MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT OF CURVATURE ON THE WEST LINE OF LOT 106, PLAT OF "PLYMOUTH CITY, WHATCOM COUNTY, WASHINGTON", AS PER THE MAP THEREOF, RECORDED IN BOOK 2 OF PLATS, PAGE 56, IN THE AUDITOR’S OFFICE OF SAID COUNTY AND STATE; THENCE NORTHERLY ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 132.00 FEET, THE CENTER OF WHICH BEARS NORTH 90°00’00” EAST THROUGH A CENTRAL ANGLE OF 30°23’17” FOR AN ARC DISTANCE OF 70.01 FEET TO A POINT; THENCE SOUTH 15°11’01” WEST, 69.19 FEET TO THE POINT OF BEGINNING.

CONTAINING 214 SQUARE FEET MORE OR LESS.
corner of Dearborn & Shipyard Rd
a. 1930s

original house
a. 1950s
Right of way through house from front.
REPORT OF THE COUNTY ENGINEER
(Whatcom County Code 12.20.050)

IN THE MATTER OF THE VACATION OF A COUNTY

ROAD A portion of Bridgewater Street (Shipyard Road) and Dearborn Avenue

PETITIONED BY Jayme Gilday and Jean Allen et al.

I, the undersigned County Engineer of Whatcom County, State of Washington, being duly directed by the Whatcom County Council to examine and report on County Road Bridgewater Street (Shipyard Road) and Dearborn Avenue, Blaine, Washington, proposed for vacation by the petition of Jayme Gilday and Jean Allen et al., did examine said road and report as follows:

IN FAVOR ___

Said road should be vacated.

NOT IN FAVOR XX

Said road should not be vacated.

Fair Market Value (12.20.060 E)

0.03 acres (1,373 sq ft) @ $3,762.00

Classification (12.20.060 F)

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<tr>
<td>A</td>
<td>Public expenditures made</td>
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<tr>
<td>B</td>
<td>No public expenditures made or non-ascertainable from records</td>
</tr>
<tr>
<td>1</td>
<td>No part thereof lies in any plat</td>
</tr>
<tr>
<td>2</td>
<td>Part or all lies within a platted subdivision</td>
</tr>
<tr>
<td>3</td>
<td>Did not remain unopened for public use for five or more years after the order made or authority granted for opening it.</td>
</tr>
<tr>
<td>4</td>
<td>Remained unopened for public use for five or more years after the order made or authority granted for opening it.</td>
</tr>
<tr>
<td>5</td>
<td>Is contained within that portion of a plat which is to be replatted</td>
</tr>
<tr>
<td>6</td>
<td>Abandoned in fact due to relocation of right-of-way</td>
</tr>
<tr>
<td>7</td>
<td>Informalities exist in the records of title which are construed to invalidate and divest the public of any right, title, or interest in the right-of-way.</td>
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</table>

The public will be benefited by this vacation. yes ___ no XX

Whatcom County Engineer

February 2, 2013
Date
COMPARATIVE MARKET ANALYSIS – BRIDGEmARkET STREET(SHIPLEY ROAD)
AND DEARBORN AVENUE ROAD VACATION PETITION

PETITIONER: Jayme Gilday and Jean Allen et. al
PROPERTY LOCATION: Bridgewater Street and Dearborn Avenue, South of Blaine
OWNER NAME: Whatcom County
CURRENT USE: Road Right-of-way
AREA ZONING: Urban Residential 4 units/acre (UR4)

BACKGROUND:
Pursuant to Whatcom County Ordinance No. 1-72, dated February 14, 1972, Jayme Gilday and Jean Allen et. al. are petitioning the County to vacate an area of approximately 1,587 square feet, more or less, of Bridgewater Street (Shipyard Road) and Dearborn Avenue right-of-way. As a condition to this vacation request the petitioners are required to execute a Right of Way Deed granting Whatcom County an additional 214 square feet of their property for Dearborn Avenue. The net square footage vacated from Bridgewater Street (Shipyard Road) and Dearborn Avenue is 1,373 square feet.

SALES RELIED ON:
Four comparable land sale were use to prepare this market evaluation of the subject property and they sold between September 2011 to July 2012. Sale prices ranged from $2.19 to $3.41 per square foot.

Comparable #1 is located at 4527 Shipyard Road, approximately 1,000 feet east of the subject property. It is approximately 0.95 acres and currently has a 3 bedroom manufactured home on it. It sold on July 24, 2012 for $189,000 with the land contributing approximately 60% of the value of the property or $2.74 per square foot.

Comparable #2 is located on Crest Drive, approximately 2 miles northeast of the subject property. It is approximately 0.34 acres and is vacant land. It sold on May 23, 2012 for $32,500 or $2.19 per square foot.

Comparable #3 is located at 9668 Harbor Court, approximately 2 miles northeast of the subject property. It is approximately 0.35 acres and is vacant land. It sold on September 26, 2011 for $35,000 or $2.30 per square foot.

Comparable #4 is located at 987 Hughes Avenue, approximately ½ a mile northwest of the subject property. It is approximately 0.42 acres and currently has a small structure with little value. It sold on May 4, 2012 for $65,000 with the land contributing approximately 96% of the value of the property or $3.41 per square foot.

Comparables 2 and 3 represent recent sales of vacant land outside of the city limits of Blaine. However, the geographic location of the comps is slightly inferior to the subject. Comparable 4 represents the values of nearby land inside the city limits of Blaine. However, because it is located within the city limits its location is slightly superior to the subject. Comparable 1 is most similar to the subject property in geographic location, condition, and is the most recent sale and is relied on most heavily for the Fair Market Value.

RECOMMENDED COMPENSATION TO COUNTY for 1,373 net square feet X $2.74 PSF = $3,762.00

Prepared By: Andrew Hester, Real Estate Coordinator
Whatcom County Public Works

Date: 2-20-13

This market analysis does not constitute an appraisal as defined by USPAP.

322 N. Commercial Avenue, Suite 110, Bellingham, WA 98225
MEMORANDUM

TO: Marina Engles
   Deputy Clerk of the Council

THROUGH: Sam Ryan
         Director

FROM: Nick Smith
      Planner

DATE: January 4, 2013

RE: Petition to Vacate Shipyard Road and Dearborn Avenue

SUMMARY: Planning and Development Services received a request to provide a recommendation on a petition to vacate Bridgewater Street (Shipyard Road) and Dearborn Avenue. The petition was filed by Jayme Dilday and Jean Allen, property owners of 4607 Shipyard Road Blaine, WA 98230; APN # 400107 401230.

BACKGROUND: Planning and Development Services records indicate the following information:

- In 1910, according to the Whatcom County Assessor records, a single-family residence and detached garage is constructed on the subject property.

- On May 6, 2004, Planning and Development Services receives an application to remodel and enlarge the existing single-family residence. The site plan submitted indicates that the existing single-family residence, including the proposed addition, is setback approximately 40 feet from the property line fronting Shipyard Road and 70 feet from the property line fronting Dearborn Avenue.

- On June 10, 2004, Planning and Development Services issues a building permit for a remodel and addition. The addition includes 1,041 square feet of living space and 216 square feet of decking on the eastern and southern portions of the existing single-family residence. According to the permit, the development was approved with a minimum setback of 25 feet from the property line fronting Dearborn Avenue and 5 feet from all other property lines (including the property line fronting Shipyard Road). The submitted site plan indicates that the development is located outside of those setbacks.

As part of the permit approval, the applicant was required to install two
stormwater dispersion trenches on the western and northern sides of the subject single-family residence. The dispersion trench located on the western side of the residence (Dearborn Ave) is 2 feet wide by 10 feet long. The dispersion trench located on the northern side of the residence (Shipyard Road) is 2 feet wide by 20 feet long. Both trenches are a minimum 18 inches deep and contain a 4 inch perforated pipe and ½ - 1 inch washed rock.

- On July 13, 2005, final occupancy of the structure is granted by Planning and Development Services.

- On December 12, 2006 a survey of the subject property is recorded. The survey indicates that the structure, including the 2004/2005 addition, encroaches over the property line and into the county road right-of-way.

**CONCERNS:** Planning and Development Services would have the following concerns if the petition to vacate were to be **denied:**

1. Any redevelopment or future expansions of the structure within the county road right-of-way would not be permitted. A zoning variance would be required for any expansions of the existing structure outside of the road right-of-way, but within the prerequisite setback.

2. The two stormwater dispersion trenches and catch basins are located within the rights-of-way of both Dearborn Avenue and Shipyard Road. Any future expansion of utility lines or other road frontage improvements could disrupt the stormwater dispersion system.

Thank you.

Enc.: Site Plan
Stormwater Dispersion Plan
Building Permit & Inspection Record

c: Jack Louws, County Executive
Frank Abart, Public Works Director
Joe Rutan, Assistant Director of Public Works/County Road Engineer
RESIDENTIAL BUILDING PERMIT

PERMIT NO: SFR2004-00426
COPY SITE ADDRESS: 4607 DEARBORN AVE

APPLICANT
JEAN ALLEN
PO BOX 151-87 SWINOMISH
LA CONNER WA 98257

PROPERTY OWNER
JEAN ALLEN
PO BOX 151
LACONNER, WA 98257

CONTRACTOR
OWNER

ISSUED: June 10, 2004

PARCEL: 4001074012300000
ZONE: UR4
SUBAREA: BB
HEIGHT: 35.00 Ft
PARKING: 2 Req

ZONING

FRONT: 25.00 Ft P/L DEARBORN AVE
REAR: 5.00 Ft P/L
SIDE 1: 5.00 Ft P/L
SIDE 2: 5.00 Ft P/L

SETBACKS

SHORELINE
NO
DISTANCE: Ft
FROM: N/A

SHORELINE

BUILDING INFORMATION

PROJECT: REMODEL EXISTING SFR - REMODEL KITCHEN, BEDROOM, LAUNDRY RM, BATHROOM, DINING AND LIVING AREA 1041 SF, COVERED PORCH 18 SF, DECK 200 SF.

CONSTRUCTION VN
1. BATH Tub
1. CLOTHES DRYER
1. CLOTHES WASHER
1. FURNACE<100K BTU
HEAT SOURCE: ELECTRIC
1. DISHWASHER
1. RES-KITCHEN RANGE / HOOD SYS
STORIES: 1
1. HOSE BIBBS
1. VENT FANS
BEDROOMS: 1
1. KITCHEN SINK & DISP
1. LAUNDRY TRAY
BASEMENT: NO
1. LAVATORY (Wash Basin)
SPRINKLER: NO
1. WATER CLOSET (Toilet)
BLDG AREA: SF
1. HOT WATER HEATER
PROJ VALUE: $ 79,982

ISSUING STATEMENTS

CONFORMANCE WITH SITE PLAN: All activities on site shall be done in accordance with the site plan approved by the Whatcom County Planning and Development, Land Use Division. Any alterations from the approved site plan will require further review by Planning and Development Services.

CONSTRUCTION APPROVAL: Approved to construct, subject to field inspections, special inspections, corrections, and provisions of plan review. The issuing of this permit shall not be construed as approval of any violation of any applicable code or ordinance. The issuance of this permit is based upon review and approval of plans submitted and shall not prevent the Building Official or appointed deputies from thereupon requiring the correction of errors.

DEVIA TION FROM APPROVED PLANS: Any deviation in construction from approved plans requires prior review and approval by Whatcom County Planning and Development Building Services Division.

INSPECTIONS

PLANS AND INSPECTION RECORD: Approved plans shall be kept on building work site at all times during which the work authorized herein is in progress. Work requiring a permit shall not be commenced until the inspection Record is posted or otherwise made available in a convenient location. (UBC Sec 108 4.2 and 108.2)

INSPECTION REQUESTS: Request for inspections are to be filed with Whatcom County Planning and Development Building Services Division at least one working day before such inspection is desired. (UBC Sec 108.3)

24-HOUR INSPECTION LINE: 360-738-2520

EXPIRATION

PERMIT EXPIRES: If work or construction authorized herein has not commenced within 180 days or if 180 days has lapsed since last inspection.

OCCUPANCY CANNOT OCCUR PRIOR TO FINAL INSPECTION

SIGNATURE 

DATE 6/10/04

Whatcom County Planning and Development Services
5280 Northwest Ave., Bellingham, WA 98226
Phone: 360-670-6967

285
### BUILDING INSPECTION RECORD

**SFR2004-00426**

FOR INSPECTION CALL: 24-HOUR INSPECTION HOT LINE: (360-738-2520)

INSPECTION REQUEST REQUIRE A 24 HOUR NOTICE

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ALL WORK AND SYSTEMS ARE TO REMAIN ACCESSIBLE UNTIL APPROVED FOR COVER

### IMPORTANT NOTICE

Occupancy of this building before all final inspections are made is a violation of the Uniform Building Code and is subject to penalties.

### FINAL INSPECTIONS

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### COMMENTS

- "Site address is 4607 Dearborn St."
  - Return to site for 2nd floor OS & S.
- "Not Home 4/13/05" BGren

286
**WHATCOM COUNTY COUNCIL AGENDA BILL**

**CLEARANCES**

<table>
<thead>
<tr>
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**TITLE OF DOCUMENT:** Agricultural Parcel Reconfiguration Code amendments as recommended in the Agricultural Strategic Plan (RES2011-023)

**ATTACHMENTS:**

1. Staff memo to Council
2. Proposed Ordinance

<table>
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<tr>
<th>SEPA review required?</th>
<th>( X ) Yes</th>
<th>( ) NO</th>
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<tbody>
<tr>
<td>SEPA review completed?</td>
<td>( X ) Yes</td>
<td>( ) NO</td>
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**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.)

Proposed amendments to portions of the Official Whatcom County Zoning (Title 20) and Subdivision (Title 21) Ordinances for categorical changes related to the Parcel Reconfiguration task as recommended in the Ag Strategic Plan File. Changes include: Change to Ag Farmstead Parcel creation, a new Ag Parcel Reconfiguration Tool, Ag Siting Criteria, and Procedurally treating Ag Parcel Reconfigurations similar to Boundary Line Adjustments.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

**Related County Contract #:**

**Related File Numbers:**

**RES2011-023**

**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](http://www.co.whatcom.wa.us/council).
MEMORANDUM

TO: Honorable Whatcom County Council Members

CC: The Honorable Jack Louws, County Executive

FROM: Samya Lutz, Planner

THROUGH: Mark Personius, Long Range Planning Manager

DATE: March 12, 2013

SUBJECT: Whatcom County Agricultural Strategic Plan Implementation (PLN2012-00007): Agricultural Parcel Reconfiguration

The Planning Commission passed a recommendation to approve proposed code amendments related to Agricultural Parcel Reconfiguration at their meeting on February 28, 2013, after a public hearing on the same day. The draft amendments relate to portions of the Official Whatcom County Zoning (Title 20) and Subdivision (Title 21) Ordinance for categorical changes related to the Parcel Reconfiguration task as recommended in the Ag Strategic Plan File. Changes include: Change to Ag Farmstead Parcel creation, a new Ag Parcel Reconfiguration Tool, Ag Siting Criteria, and Procedurally treating Ag Parcel Reconfigurations similar to Boundary Line Adjustments. These changes are included as Exhibit 1 to both the Planning Commission staff report, and the draft ordinance included with your materials.

BACKGROUND

Resolution 2011-023 was approved by the County Council on July 26, 2011 declaring support for the Whatcom County Agricultural Strategic Plan developed by the county Agricultural Advisory Committee (AAC). An immediate priority articulated in this plan is to review the Rural Study Areas as listed in the 2007 Rural Land Study and make recommendations for possible changes in accordance with RES2009-040 (100,000 acre target), RES2011-023 (the Agricultural Strategic Plan), and RCW 36.70A.170 and .177. The AAC is in the midst of this process now.

Other immediate and short-term priorities articulated in the plan include developing tools that can be incentives for agricultural operators within the priority agricultural areas, including parcel reconfiguration. The Agricultural Parcel Reconfiguration tool is the first to come forward for consideration by the County Council. County staff, members of the AAC, BERK consulting, members of the interested public, and Planning Commissioners have been working for over a year to frame this task, consider the legal and technical context, and engage the broader public.

BERK Consulting prepared a “Supplemental Analysis and Recommendations” document on August 31, 2012 to provide updated information following the publication of the “Situation Assessment: Incentives for Commercial Agriculture: Parcel Reconfiguration,” also prepared by BERK Consulting on May 31, 2012. Both of these documents contain important background information and legal analysis related to the draft ordinance under consideration.

In brief, the process has included:

- Research and Analysis February-May 2012; Situation Assessment: May 2012
ISSUES

The issues under consideration focus on the following changes to existing code:

1. Farmstead Parcel AG (40) zone – allowed in advance of home being developed.
2. Ag Boundary Line Adjustment allowed in advance of a home being developed.
3. Parcel Reconfiguration – Add as a tool in AG (40) zone.
4. Require siting criteria for lot configuration.
5. Add exemption for divisions for only ag purposes.
6. Allow parcel reconfiguration as a boundary line adjustment process.

The above issues began as the focus, and have remained so throughout the process. Nonetheless, the proposed amendments before you reflect changes made between the time of introduction to the Planning Commission in August, and final recommendation in February. These changes were in response to both public comments and Planning Commissioner comments, and include:

- **Re-organization of the code** pertaining to the various agricultural division/modification types. Because of the degree of red-lining and confusion, staff has prepared a ‘clean’ copy of 20.40 and 20.97 only; please refer to the document entitled “Ag Parcel Reconfiguration WCC 20.40 “Clean” Re-organization,” and focus on pages 2-7 in particular, which reflect a reorganization of 20.40.250-.256 in response to the Commission’s request, including the addition of a table depicting allowed lot sizes, similar to that included with other zoning chapters.

- **Clarified plat and deed restriction** expectations (20.40.250(4)and(5));

- **Added tracking and management language** for ongoing review of the parcel reconfiguration procedure (20.40.254(4)(d));

- **Language related to divisions only for agricultural purposes** to apply to both divisions and boundary line adjustments was changed to include residential development only if property is over 40 acres (20.40.254(6)), and an exempt procedure was added for processing these divisions (21.01.040(2)(l));

- **Increased the number of reconfigured lots that can be together in a single development area** to four, while maintaining a maximum number of six reconfigured lots in a single application (20.40.650(2)(a));

- **Other code text changes**, including
  
  o clarification of the 1-to-3 acre allowance (20.40.251 table, .253, .254),
  
  o increasing the required number of ag-related purposes which parcel reconfigurations must achieve from two to four,
• Siting criteria changes (.650(2)(c)) to eliminate language “in the corners of the parent properties.”

- **Housekeeping:** subheadings, reference changes, grammatical and other language clarification

Additional comments were received and discussion engaged on other issues that were not in the end incorporated into the proposal before you:

- **Transfer of Development Rights** – Staff recommended changing the Official Whatcom County Zoning & Comprehensive Plan Map to add “and the Agriculture zone” to the text under TDR Sending Areas in lower right area of map. AAC members recommended including a TDR component allowing Ag-to-Ag or Ag-to-Rural transfers. Futurewise Whatcom recommended holding this Parcel Reconfiguration proposal until the existing county TDR program could be modified acceptably. In the end, none of these TDR components ended up being included with the Parcel Reconfiguration proposal. Staff sees value in the TDR approach as a mechanism that has the potential to move development away from our prime, commercial agricultural areas.

**NEXT STEPS**

The following materials are included with this memo:

- Planning Commission Staff Report
- Draft Ordinance
- Exhibit 1 (to both of the above) with the recommended code amendments
- "Clean" version of effected portions of WCC 20.40 (Ag zone) and WCC 20.97 (definitions) WITHOUT tracked changes shown

Please note that additional materials discussed with the Planning Commission may still be helpful references when considering the draft amendments before you, including the Situation Assessment and Supplemental Analysis from BERK mentioned above, and the draft application for Ag Parcel Reconfiguration distributed in November. These are all available through the ‘current initiatives’ link on the Agricultural Program website, located here: [http://www.whatcomcounty.us/pds/plan/lr/projects/agprogram/index.jsp](http://www.whatcomcounty.us/pds/plan/lr/projects/agprogram/index.jsp)

Staff looks forward to discussing these issues with you during the Planning Committee meeting on March 26, after which we hope to better understand your concerns, and also how you would like to proceed with scheduling further work sessions or public hearings.

Feel free to contact me (x51072) or Amy Keenan (x50264) with any questions.
Ag Parcel Reconfiguration WCC 20.40 “Clean” Re-organization
AGRICULTURE (AG) DISTRICT
with DEFINITIONS from WCC 20.97.132 and .133

Re-organization of chapter showing clean (non-tracked) code changes through Jan 23, and tracked code changes made on Jan 24 for selected chapters that are subject of the Ag Parcel Reconfiguration proposed changes.

Existing Ag District Sections:

20.40.010 Purpose.
20.40.050 Permitted uses.
20.40.100 Accessory uses.
20.40.130 Administrative approval uses.
20.40.150 Conditional uses.
20.40.200 Prohibited uses.
20.40.250 Minimum lot size and land subdivision.
20.40.350 Building setbacks.
20.40.450 Lot coverage.
20.40.650 Development criteria.
20.40.651 Landscaping.
20.40.652 Drainage.
20.40.662 Use of natural resources.

Table of Contents:

20.40.010 Purpose. ....................................................................................................................................... 2
20.40.250 Division or Modification of Substandard Parcels. ........................................................................ 2
  20.40.251 Minimum Lot Size..................................................................................................................... 3
  20.40.252 Minimum lot width and depth. ................................................................................................ 4
  20.40.253 Farmstead or Reconfigured Parcel Minimum Lot Size Exceptions ..................................... 4
  20.40.254 Separation of the Farmstead Parcel Criteria: ......................................................................... 5
  20.40.255 Consolidation of Adjacent Tracts. ............................................................................................ 7
  20.40.256 Establishing Intent................................................................................................................... 8
20.40.350 Building setbacks. ....................................................................................................................... 8
20.40.450 Lot coverage. ................................................................................................................................ 8
20.40.650 New or Modified Parcel Siting Criteria ...................................................................................... 8
20.97 Definitions .......................................................................................................................................... 9
20.40.010 Purpose.
The primary purposes of this district are to implement the agricultural designation of the Comprehensive Plan, established pursuant to RCW 36.70A.170, preserve, enhance and support the production of food and fiber in Whatcom County, to maintain a sufficiently large agricultural land base to ensure a viable agriculture industry and to maintain the economic feasibility of supporting services. Whatcom County supports agricultural activities as the highest priority use in the Agriculture District, with all other uses being subordinate to agricultural activities. Whatcom County seeks to minimize conflict with surrounding zoning districts, in conjunction with Chapter 14.02 WCC, Right to Farm. In order to limit the further fragmentation of the commercial agricultural land base, the Agriculture District includes smaller areas of land with poorer quality soils or nonagricultural uses, which do not meet the definition of agriculture lands of long-term commercial significance.

A secondary purpose of this district is to serve as a holding district when located within the urban growth area Comprehensive Plan designation to allow agricultural uses in the near term while protecting the area from suburban sprawl and preserving the potential for future urban development consistent with the protection of the resource land. (Ord. 2009-071 § 2 (Exh. B), 2009; Ord. 2005-079 § 1, 2005; Ord. 2001-020 § 1 (Exh. 1 § 1), 2001).

20.40.250 Division or Modification of Parcels
It is the intent of this section to allow divisions which benefit the long-term viability of agriculture. This section describes the requirements for division or modification of parcels within the agricultural district that are either consistent with the minimum lots size or would result in substandard parcels or make existing substandard parcels further substandard.

Requests for land division, boundary line adjustment, or agricultural parcel reconfiguration in the Agriculture District shall be made on forms provided by the department and will be reviewed administratively. All divisions must comply with the following provisions:

(1) Agricultural Divisions. All divisions of land in the Agriculture District shall proceed in accordance with the local and state subdivision laws.

(2) Allowable Density. No division, boundary line adjustment, or agricultural parcel reconfiguration shall result in an increase in allowable density.

(3) Additional Acreage. Additional acreage gained through a boundary line adjustment or agricultural parcel reconfiguration shall not be considered in the total acreage calculations for determining density.

(4) Plat Restrictions. The following plat restriction is required, prior to recording, on the nonresidential lot of all divisions of land provided for in WCC 20.40.254(2):

No further division or residential structure shall be allowed on this parcel unless and until changes in the zoning of this property occur consistent with State and local laws which would result in additional development density, in which case this restriction shall be null and void, and density and uses of the new zone shall apply to the property upon review by the Whatcom County zoning administrator.

(5) Deed Restrictions. Deed restrictions are required for all boundary line adjustments or agricultural parcel reconfigurations allowed under WCC 20.40.254(3) and (4).
(a) The following language must be recorded separately and placed by reference of auditors file number on the deed, and placed on the tract map of the nonresidential portion of the adjusted parent parcels prior to recording:

The development density of the original parcel (parent parcel) remains with legal description _______. The _______ (# of acres) appended through boundary line adjustment [or agricultural parcel reconfiguration] to legal description __________ (receiving parcel) shall not be included in calculations to determine total development density for the receiving parcel.

(b) The following deed restriction language must be recorded separately and placed by reference of auditors file number on the deed, and is required when there is no additional means to further subdivide the property due to the parcel sizes and density standards of this zone:

No further division or residential structure shall be allowed on this parcel unless and until changes in the zoning of this property occur consistent with State and local laws which would result in additional development density, in which case this restriction shall be null and void, and density and uses of the new zone shall apply to the property upon review by the Whatcom County zoning administrator.

**20.40.251 Minimum Lot Size.**

The minimum lot size in the Agriculture District is 40 acres, except as provided for in WCC 20.40.253 and .254. The creation of a lot less than the minimum size is permitted only when the subject application meets the standards contained in WCC 20.40.253, .254 and .650 as applicable.

<table>
<thead>
<tr>
<th>Parcel</th>
<th>Minimum Lot Size</th>
<th>Minimum Lot Size Exceptions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conventional Parcel</td>
<td>40 acres</td>
<td>Reconfiguring existing nonconforming parcels</td>
</tr>
</tbody>
</table>

**Farmstead Parcels Created through Agricultural Short Subdivision or Agricultural Boundary Line Adjustment**

<table>
<thead>
<tr>
<th>Parcel</th>
<th>Minimum Lot Size</th>
<th>Minimum Lot Size Exceptions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Farmstead Parcel – Parent Parcel with Existing Farmstead with public water</td>
<td>1 acres</td>
<td>Up to 3 acres pursuant to WCC 20.40.253 (1),(2) &amp; (4)</td>
</tr>
<tr>
<td>Farmstead Parcel – Parcel with Existing Farmstead without public water</td>
<td>2 acres</td>
<td>Up to 3 acres pursuant to WCC 20.40.253 (1)-(4)</td>
</tr>
<tr>
<td>Farmstead Parcel – Parent Parcel without Existing Farmstead with public water</td>
<td>1 acre</td>
<td>Up to 2 acres pursuant to WCC 20.40.253 (1) &amp; (2)</td>
</tr>
<tr>
<td>Farmstead Parcel – Parcel without Existing Farmstead without public water</td>
<td>2 acres</td>
<td>Up to 3 acres pursuant to WCC 20.40.253 (1),(2) &amp; (3)</td>
</tr>
</tbody>
</table>
### Parcels Created Through Agricultural Parcel Reconfiguration

<table>
<thead>
<tr>
<th>Reconfigured Parcel - reconfiguration with public water</th>
<th>1 acre</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reconfigured Parcel - reconfiguration without public water</td>
<td>1 acre</td>
<td>Up to 2 acres pursuant to WCC 20.40.253 (1),(2) &amp; (3)</td>
</tr>
</tbody>
</table>

### Parcel Created for Agricultural Purposes Only

| Created Parcel with deed restriction for no residential buildings | 10 acres | N/A |

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### 20.40.252 Minimum lot width and depth.

1. For parcels created consistent with the minimum lot size the: The minimum length to width ratio is 1/5. The terms “length” and “width” refer to the average length and average width of the parcel.

2. For lots created or rearranged pursuant to WCC 20.40.254, the following lot width and depth shall apply:

<table>
<thead>
<tr>
<th>Minimum Width at Street Line</th>
<th>Minimum Width at Bldg. Line</th>
<th>Minimum Mean Depth</th>
</tr>
</thead>
<tbody>
<tr>
<td>70' [A]</td>
<td>80’</td>
<td>100’</td>
</tr>
</tbody>
</table>

[A] Applies only to land divisions or parcel reconfigurations where the parcel(s) does not contain a farmstead homesite at the time of the application.

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### 20.40.253 Farmstead or Reconfigured Parcel Minimum Lot Size Exceptions

The base maximum for the farmstead parcel shall be consistent with the minimum lots size in 20.40.251, except as follows:

1. A greater area is determined necessary by the health officer pursuant to Chapter 24.05 On-Site Sewage System Regulations;

2. A greater area is determined necessary by the responsible official to accommodate a driveway or other access necessary for the farmstead parcel;

3. For farmstead parcels without public water: Unless substantial evidence is provided by the responsible official indicating the location is not feasible, wells and wellhead protection zones shall also be located within farmstead parcel. Wells located outside of the farmstead parcel area shall be sited to minimize potential impacts on agricultural activities.

4. For farmstead parcels with existing farmstead homesites: There is an existing agricultural structure(s) within the farmstead parcel and any of the following criteria are met:

   a. The separation between the agricultural structure(s) and the primary residential structure is less than 150 feet; or

   b. Current use of the agricultural structure(s) is not related to an agricultural activity; or
(c) There is a low potential for future use of the agricultural structure(s) to be associated with an agricultural activity due to physical condition or compatibility with agricultural practices; or

(d) Water is not available for use at the agricultural structure(s).

20.40.254 Separation of the Farmstead Parcel Criteria:

(1) The criteria for approval for the farmstead parcel and remainder parcel created through Agricultural Boundary Line Adjustment, Agricultural Short Subdivision and Agricultural Parcel Reconfiguration shall be the following:

(a) The area of the parcel containing the farmstead home site, whether the home exists or is to be added, is limited to the minimum amount required to encapsulate structures, parking areas, driveways, septic systems, wells, and landscaping required setbacks; and

(b) The farmstead parcel size shall be as stated in WCC 20.40.251, unless the existing residential structure(s) and/or well and septic constraints require a larger parcel, but shall not exceed the maximum lot size consistent with the exceptions in WCC 20.40.253; and

(c) The farmstead parcel and farmstead home site meet the siting criteria contained in WCC 20.40.650; and

(d) A remainder parcel shall be created equal to or greater than 10 nominal acres; and

(e) The remainder parcel shall have no existing residential development and no development rights, and a condition containing the language as provided in WCC 20.40.250(4) or (5) shall be included on the short plat, boundary line adjustment, or agricultural parcel reconfiguration for the remainder parcel prior to final approval; and

(f) The applicant and his or her heirs provide right of first purchase for a period of not less than 60 days through deed restriction to the original purchaser and subsequent purchasers of the remainder parcel for purchase of the farmstead parcel before they are offered on the open market; and

(g) A right to farm disclosure statement as provided for in WCC 14.02.040(B) will be signed by the farmstead parcel owner and subsequent purchasers of the farmstead parcel, and recorded as per WCC 14.02.040(A)(1) and 14.02.050; and

(h) All land division shall comply with the appropriate map and recording provisions of WCC Title 21; and

(i) The overall submittal shall comply with WCC 20.40.250 et seq.

(2) Agricultural Short Subdivisions. Agricultural Short subdivisions for the purpose of reducing the acreage below the minimum lot size as provided by WCC 20.40.251 for a farmstead homesite shall comply with the following provisions:

(a) The minimum parcel size is the area necessary to accommodate a house site which meets the applicable dimensional requirements of all applicable code and provides a remainder (appended) parcel equal to or greater than 10 nominal acres; and

(b) The short subdivision application shall meet the size and performance standards of WCC 20.40.650.
(3) **Boundary Line Adjustments.** Boundary line adjustments for the purpose of reducing the acreage below the minimum lot size as provided by WCC 20.40.251 of an existing or proposed farmstead parcel if such boundary line adjustment complies with the following provisions:

(a) Boundary line adjustments shall not make a lot substandard or further substandard, except as provided for in WCC 20.40.251.

(b) The minimum parcel size is the area necessary to accommodate a house site which meets the applicable dimensional requirements of all applicable codes and provides a remainder (appended) parcel equal to or greater than 10 nominal acres; and

(c) The farmstead parcel and boundary line adjustment application shall meet the size and performance standards of WCC 20.40.250 and .251, and the siting criteria of WCC 20.40.650.

(4) **Agricultural Parcel Reconfiguration:** Parcels are reconfigured and finalized according to the agricultural parcel reconfiguration process established in Chapter 21.03, Exempt Land Divisions, Boundary Line Adjustments, and Agricultural Parcel Reconfigurations, and when meeting the following performance standards:

(a) Existing parcels to be reconfigured are:

(i) Smaller than the minimum lot size established for new lots in the Agriculture district. Parcels which meet the minimum lot size may be adjusted as a part of this process, provided the reconfiguration meets the provisions of (4)(b) below;

(ii) Determined to be legally created and buildable pursuant to WCC Title 21.01.180.

(b) Proposed parcel(s) results in the following:

(i) No additional parcels; and

(ii) A remainder parcel shall be created equal to or greater than 10 nominal acres; and

(iii) The siting criteria of WCC 20.40.650 are met and development standards of WCC 20.40.252 et seq. are met; and

(iv) The reconfiguration shall result in achieving four (4) or more of the identified agricultural-related purposes as follows:

(A) Expand the amount of commercially viable resource land under contiguous single ownership; and/or

(B) Protect and buffer designated resource lands; and/or

(C) Reduce impervious surfaces, such as by reducing the amount of road and utility construction required to serve reconfigured lots, or by reducing the amount impervious area for nonagricultural uses that could otherwise occur without parcel reconfiguration; and/or

(D) Reduce the total number of lots of record through voluntary consolidation; and/or

(E) Produce a farm management plan approved through the Whatcom Conservation District or WA Department of Agriculture that demonstrates increased viability of the agricultural operation through the agricultural parcel reconfiguration; and/or

(F) Enable improved floodplain management in cooperation with Whatcom County Public Works; and
(viii) Reconfigured lots shall not be further adjusted by boundary line adjustment without approval under this section.

(c) The responsible official may impose conditions, consistent with Whatcom County Code, on the agricultural parcel reconfiguration to further the purposes of this section.

(d) Parcel reconfigurations will be tracked by County Planning and Development Services so the procedure can be adaptively managed by review of all projects passed per this code in year 2017.

(5) Public Facility. The division is for the purpose of public facilities for health and safety use or expansion of such uses; provided, that:

(a) The division or boundary line adjustment will not adversely affect the surrounding agricultural activities; and

(b) The applicant has demonstrated to the administrator’s satisfaction that the siting of the proposed use cannot be located in an adjacent zoning district or alternative site, if the area is intensively farmed.

(6) Division or Boundary Line Adjustment for Agricultural Purposes Only. Lots smaller than the minimum lot size of WCC 20.40.251 may be created through land division or re-arranged through a boundary line adjustment provided the following:

(a) The parent parcel does not contain an existing residence, or said existing residence will remain on a parcel larger than 40 acres in size; and

(b) The parcel created is greater than 10 acres or is appended to another parcel; and

(c) There is a properly executed deed restriction which runs with the land on lots which have been created through the division or modified by the boundary line adjustment, except those lots at or over 40 acres in size that maintain an associated development density. Such deed restriction shall be substantially similar to that listed under 20.40.250(5), approved by the zoning administrator and recorded with the County Auditor specifying:

(i) All land divided or parcels adjusted are to be used exclusively for agricultural or flood management purposes and specifically not for a dwelling(s), and

(ii) All land divided or parcels adjusted shall have no residential density, and

(iii) For land divisions, the acreage of the newly created parcels shall not be included in calculations to determine total development density in the future, and

(iv) For boundary line adjustments, the acreage of the newly created parcel and appended portion shall not be included in calculations to determine total development density in the future.

20.40.255 Consolidation of Adjacent Tracts.

Consolidation of adjacent tracts in the same ownership shall be required in accordance with 20.83.070 in approval of any subdivision, short subdivision, agricultural parcel reconfiguration, or boundary line adjustment in the Agricultural District. The County may waive the permit fee for a boundary line adjustment or agricultural parcel reconfiguration where adjacent lots of record are not in the same ownership and are consolidated voluntarily for purposes of the agricultural parcel reconfiguration, or boundary line adjustment.
20.40.256 Establishing Intent.

The burden of establishing intent in and legal proceeding relating to a transaction accomplished or proposed under the authority of this section shall be upon the land owner or purchaser.

20.40.350 Building setbacks.

Building setbacks shall be administered pursuant to WCC 20.80.200 (Setback Requirements). Building setbacks for parcels of less than five nominal acres shall be administered pursuant to WCC 20.80.250.

20.40.450 Lot coverage.

No structure or combination of structures, including accessory buildings, shall occupy or cover more than 25 percent of the total area of the subject parcel. Exceptions to the maximum lot coverage may be allowed when any of the following can be demonstrated:

1) Proposed structures, in excess of the allowed maximum lot coverage, are located on lesser quality soils.

2) Proposed structures in excess of the allowed maximum lot coverage support additional agricultural production on parcels other than the subject parcel.

3) Expansion of facilities that were in operation prior to the adoption of the ordinance codified in this section if it can be demonstrated that substantial on-site investment has been made and location of additional structures off-site would cause an economic hardship to the farm operation.

20.40.650 New or Modified Parcel Siting Criteria

The location of vacant farmstead parcels or parcels arranged through agricultural parcel reconfiguration (which may or may not be vacant) shall be consistent with the following siting criteria and standards:

1) Minimum Lot Size. Parcels shall be consistent with WCC 20.40.251.

2) Parcel Design. Parcels shall be located and arranged to provide the maximum protection of agricultural land located both on and off-site. Parcel design and development shall be as follows:

   a) The residential parcels shall be configured so that property lines are immediately adjacent and physically contiguous to each other. A maximum of two development areas containing no more than four (4) lots may be allowed. The two development areas shall contain no more than a total of six lots, and shall be separated by a minimum of 500 feet to minimize the visibility of the future development and reinforce the purposes of the zone; provided that reductions in the separation standard by up to 10% are allowed if an applicant can demonstrate that the future development visibility from the public right of way or from neighboring properties is minimized and the purposes of the parcel reconfiguration in WCC 20.40.254(4)(b)(iv) are met; and

   b) Residential parcels shall be located as close as possible to existing public roads, or if none abut the property then to existing access roads. New road or driveway development shall be avoided to the maximum extent feasible; and

   c) Except for parcels that recognize existing farmsteads, residential parcels shall be located to the extent feasible to maximize the remainder lot configuration and farmable area; and
(d) Except for reconfigured parcels that recognize existing farmsteads, each reconfigured parcel shall be limited to one single family residence and residential accessory structures; and

(e) Residential building sites shall maintain sufficient separation from on-site and off-site agricultural resources and exterior property lines. The setback, lot coverage, and height standards for reconfigured lots shall be as established in WCC 20.40.350 to 450; and

(f) Applicants shall verify that reconfigured parcels or farmstead parcels do not prohibit access to a point of withdrawal for any irrigation water rights certificates, claims, permits, or applications on the affected parcels; and

(g) All development shall be consistent with WCC Chapter 16.16; and

(h) The farmstead parcel or reconfigured parcels avoid prime soils to the extent feasible. Where the site is predominantly in prime soils and such cannot be avoided, the applicant shall demonstrate that:

(i) the parcels are sized to be as small as feasible pursuant to WCC 20.40.251; and

(ii) located to maximize the agricultural use of the remainder lot; and

(iii) achieve the most suitable locations for parcels in terms of minimizing roads, allowing for water availability, and septic suitability.

(3) Substitute Parcel Design Standards. Applicants proposing a farmstead parcel or agricultural parcel reconfiguration may propose a substitute performance standard in place of a listed standard in .650 (New or Modified Parcel Siting Criteria) provided that the applicant submits a written justification demonstrating the substitute standard better or equally meets the purposes of the zone in WCC 20.40.010 and the agricultural-related purposes described in WCC 20.40.254(4)(b)(iv); except under no condition shall more than the maximum of six (6) residential parcels with no more than four (4) lots in one development area be allowed. Such substitution shall be considered at the Administrator's discretion.

Chapter 20.97 DEFINITIONS

Zoning Definitions

20.97.132 Farmstead parcel.
The “farmstead parcel” is the legally subdivided portion of the parent parcel containing an existing or planned farmstead home site. (Ord. 2005-073 § 1, 2005; Ord. 2001-020 § 1 (Exh. 1 § 3), 2001).

20.97.133 Farmstead home site.
The “farmstead home site” includes that portion of the parent parcel used for existing or planned residential buildings, uses accessory to residential buildings, drainfields, wells, wellhead protection area(s), established landscaped areas contiguous with the non-agricultural built area, and structures as allowed in WCC 20.40.253. (Ord. 2005-073 § 1, 2005).
WHATCOM COUNTY
PLANNING & DEVELOPMENT SERVICES
STAFF REPORT

I. BACKGROUND INFORMATION

File # PLN2012-00007

File Name: Agricultural Strategic Plan Implementation: Parcel Reconfiguration

Applicant: Whatcom County Planning & Development Services

Summary of Request:
Amend the Official Whatcom County Zoning (Title 20) and Subdivision (Title 21) Ordinances to address the Parcel Reconfiguration task as recommended in the Ag Strategic Plan by:

1. Modifying the Agriculture Farmstead division and boundary line adjustment policies to allow for a parcel to be created in advance of a home being built,
2. Creating a new Agricultural Parcel Reconfiguration Tool that is procedurally treated similar to Boundary Line Adjustments, and
3. Adding agricultural siting criteria for new or modified parcels.

The above are reflected in the attached amendments to:
Chapter 20.40 Agricultural District (AG);
Chapter 20.80 Supplementary Requirements;
Chapter 20.83 Nonconforming Uses and Parcels;
Chapter 20.97 Definitions;
Chapter 21.01 General Provisions;
Chapter 21.03 Exempt Land Divisions, Boundary Line Adjustments; and
Chapter 21.04 Short Subdivisions

Location:
This is a zoning text amendment. All areas within the Agriculture (AG) District would be affected.

Staff Recommendation:
Staff recommends approval of the proposed amendment.

II. ANALYSIS OF THE PROPOSED AMENDMENT

Through Resolution 2009-040, the Whatcom County Council confirmed that 100,000 acres of land available for agricultural use is the minimum goal for ensuring a land base necessary to support a viable agriculture industry in Whatcom County. The Council also endorsed the identified tools and strategies presented by the
Agricultural Land Program Technical Review Committee and the Agricultural Advisory Committee for further development and consideration, requesting that the County Executive authorize County Planning and Development Services staff to work with Council staff and the Agricultural Advisory Committee to develop and recommend appropriate code changes and comprehensive plan amendments enabling implementation of policies to strengthen the protection of agricultural land for agricultural use to include further defining the relationship between protecting agricultural land and critical areas.

Through Resolution 2011-023, the Whatcom County Council endorsed the Whatcom County Agricultural Strategic Plan, developed by the Agricultural Advisory Committee and Planning and Development Services Department Staff. The plan describes “the role Whatcom County Planning and Development Services will play in implementing an agricultural program consistent with County Council Resolution 2009-040 and Comprehensive Plan goals.” A short-term priority in the strategic plan is to develop recommendations on parcel reconfiguration to “allow reconfiguration of parcels (within and across ownership) to place the existing development potential in areas that are the least valuable as farm land.”

These proposed code changes come forward as a result of Agricultural Advisory Committee recommendations, consistent with Council resolutions 2009-040 and 2011-023, and with the benefit of broad public input.

Proposed zoning amendments must be consistent with applicable provisions of the Growth Management Act. Additionally, pursuant to the Growth Management Act and WCC 20.90.050(4), zoning amendments must be consistent with and implement the Whatcom County Comprehensive Plan. Finally, the staff report must consider environmental implications as identified by the Whatcom County SEPA Official.

A. The amendment conforms to applicable requirements of Growth Management Act (GMA).

GMA Planning Goal (RCW 36.70A.020) 8 is to “Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses.”

Goal 8 is one of thirteen planning goals to guide the development and adoption of comprehensive plans and development regulations. Because the proposed amendments affect agricultural lands of long term commercial significance, Goal 8 is a driver behind the amendments, though the proposed amendments reflect a balance of these GMA goals; primarily: (2) Reduce sprawl, (6) Property rights, (7) Permits, (8) Natural resource industries, (10) Environment, and (11) Citizen participation and coordination.

The GMA and implementing state administrative rules guide the designation and regulation of resource lands including agricultural lands:
• The County is to designate resource lands consistent with minimum guidelines in chapter 365-190 WAC.

• The County is also required to adopt development regulations that assure the conservation of designated agricultural, forest, and mineral lands of long-term commercial significance (RCW 36.70A.060).

• Natural resource uses have preferred and primary status in designated natural resource lands. Counties and cities must determine if and to what extent other uses will be allowed. If other uses are allowed, counties and cities should consider using innovative land management techniques that minimize land use incompatibilities and most effectively maintain current and future natural resource lands (WAC 365-190-040).

• Regulations for the conservation of natural resource lands may not prohibit uses legally existing on any parcel prior to their adoption (RCW 36.70A.060).

• Development regulations must assure that the planned use of lands adjacent to natural resource lands will not interfere with the continued use, in the accustomed manner and in accordance with best management practices, of these designated lands (RCW 36.70A.060).

• Counties and cities are encouraged to use a coordinated program that includes non-regulatory programs and incentives to supplement development regulations to conserve natural resource lands (WAC 365-196-480).

• Counties may use innovative zoning techniques designed to conserve agricultural lands and encourage the agricultural economy (RCW 36.70A.177). Examples of innovative zoning techniques include:

  o Agricultural zoning, which limits the density of development and restricts or prohibits nonfarm uses of agricultural land and may allow accessory uses, including nonagricultural accessory uses and activities, that support, promote, or sustain agricultural operations and production;

  o Cluster zoning, which allows new development on one portion of the land, leaving the remainder in agricultural or open space uses;

  o Large lot zoning, which establishes as a minimum lot size the amount of land necessary to achieve a successful farming practice;

  o Quarter/quarter zoning, which permits one residential dwelling on a one-acre minimum lot for each one-sixteenth of a section of land;

  o Sliding scale zoning, which allows the number of lots for single-family residential purposes, with a minimum lot size of one acre, to increase inversely as the size of the total acreage increases; and
The transfer or purchase of development rights from agricultural lands, which can be used through cooperative agreements with cities, or counties with non-municipal urban growth areas, as receiving areas for the use of these development rights.

Innovative zoning techniques are under consideration as part of the subject agricultural parcel reconfiguration proposed amendment. The GMA provides some flexibility for the County to allow landowners to vary from minimum lot sizes, in individual cases, as long as:

- The County provides appropriate standards with reasonable limits that protect the area’s character and that conserve agricultural lands;
- The County does not allow the overall pattern of lot sizes and densities to be materially changed, to the detriment of rural character or agricultural conservation; and
- Where appropriate, the County requires compensating areas to be set aside and permanently dedicated to agricultural or open space uses.

B. The amendment is consistent with and implements the Whatcom County Comprehensive Plan.

The following goals and policies from the Comprehensive Plan are most directly relevant to the proposed amendment:

**Goal 8A – Conserve and enhance Whatcom County’s agricultural land base for the continued production of food and fiber.**

Policy 8A-4: Discourage conversion of productive agricultural land to incompatible nonagricultural uses.

Policy 8A-6: Prioritize agricultural activity in land use decisions when land is composed of prime and/or productive agricultural soils and agriculture is the highest value resource use.

Policy 8A-7: Establish flexibility in land use plans and regulations to encourage maintenance of the productive agricultural land base.

Policy 8A-12: The Agricultural Advisory Committee shall advise the Whatcom County Executive and Council on agricultural issues and agricultural land use. Whatcom County shall support the Agricultural Advisory Committee with staff and other resources.

**GOAL 8C: Preserve and enhance the cultural heritage that is related to agriculture.**
Policy 8C-1: Find ways for retiring farmers to pass their farms on to their children and for young farmers to be able to afford to buy productive farmland.

Policy 8C-2: Identify, preserve, and enhance community character, landscape, and buildings associated with agricultural activity.

Policy 8C-3: Involve those who actually are engaged in agricultural activities in the planning process. Utilize groups working effectively with the agricultural community to help preserve and/or create a sustainable economic agricultural base.

Policy 8C-4: Support the continuation of owner occupied/family owned farms.

**GOAL 8D: Reduce land use conflicts between Whatcom County's agriculture and non-agricultural landowners.**

Policy 8D-1: Work to reduce conflicts between incompatible agricultural activities by establishing zoning regulations which protect productive agricultural lands of long-term commercial significance from conversion to non-compatible uses. This zoning should recognize the diversity of agricultural landowners and agricultural land uses. This zoning should provide flexible regulations, which encourage all agricultural landowners to maintain the productive agricultural land base while protecting them from conflicting uses.

Policy 8D-6: Support agricultural activity in mixed farm/rural residential areas, with the understanding that certain farm practices may conflict with other neighboring rural land uses.

Whatcom County’s Comprehensive Plan Resource Lands Element contains a chapter devoted to Agricultural Lands. The proposed amendments are intended to allow for maximizing available land for farming operations, and minimize impacts of residential development on farm land and farming operations while continuing to allow legal existing uses. The amendments were developed through the recommendations of the County Agricultural Advisory Committee.

The proposed amendments respond to public input from farmers, agricultural land owners, and the public by providing opportunities for smaller lot sizes that may be easier to finance for farming purposes while allowing existing residential development potential in a way that is minimally disruptive to the agricultural activities. They prioritize agricultural activities while providing flexibility and recognizing existing legal lots. They are intended to provide a flexible alternative to larger-lot residential development in a manner that encourages the conservation of the productive agricultural lands.

**C. Consideration of environmental implications as identified by the Whatcom County SEPA Official.**

The SEPA Determination of Nonsignificance was issued on August 23, 2012.
III. PROPOSED FINDINGS OF FACT AND REASONS FOR ACTION

1. The Whatcom County Agricultural Strategic Plan was developed by the county’s Agricultural Advisory Committee made up of farmers and farming industry representatives appointed by the Whatcom County Executive and affirmed by the County Council.

2. The Agricultural Strategic Plan was supported by the County Executive and endorsed by the County Council on July 26, 2011 through Resolution 2011-023.

3. The Agricultural Strategic Plan built upon previous work within the agricultural community including the Rural Land Study (2007; endorsed through Council Resolution 2009-040), and an examination of the existing potential residential development within the agricultural areas of the county as described in four White Papers delivered to the WA State Office of Farmland Preservation in January 2009 and posted on the county’s Agricultural website since that time.

4. The examination of existing development potential was initiated in 2008 through a stakeholder and public process conducted by Whatcom Farm Friends (county contract number 200711051), wherein tools were identified with the goals of both retiring and accommodating existing development potential in ways that benefit agriculture. Tools that retire existing development potential were identified as options to reduce the overall development potential within the agricultural areas, assisting the farming industry by reducing the potential for uses that may conflict with agricultural activities. Accommodation tools were identified as potential options that assist the farming industry through various incentives that neither reduce nor add density to the agricultural areas.

5. The Agricultural Strategic Plan contains a number of priority tasks, one of which is “Parcel Reconfiguration tool development” which was intended to allow the reconfiguration of parcels within and across ownership, to place the existing development potential in areas that are the least valuable as farm land; accommodating existing development potential in a manner that better fits with the farming operation.

6. A Project Review Team consisting of County staff, Agricultural Advisory Committee (AAC) representatives, and a Whatcom Farm Friends representative met throughout the process with assistance from BERK Consulting to review objectives and draft documents. Meeting dates were: February 15, April 12, May 10, and July 26, 2012. This team continued to meet without the assistance from BERK Consulting as a subcommittee of the AAC.

7. A Determination of Nonsignificance (DNS) was issued under the State Environmental Policy Act (SEPA) on August 23, 2012.
8. The preliminary project plan was posted on the county website on March 6, 2012, updated periodically, with draft alternative code amendments added on March 27, 2012 and subsequently updated.

9. A Focus Group meeting conducted by BERK Consulting was held on March 5, 2012 with nine experts in Whatcom County agricultural land use, development, and financing to brainstorm how parcel reconfiguration could work to allow rearrangements of parcels (within and across ownership) to place the existing development potential in areas that are the least valuable as farmland, in a manner that benefits the County and the landowner and is consistent with other state and local priorities.

10. A Public Open House concerning the project and draft alternatives was held at Cornwall Church on May 3 at 6:30 PM, with notice posted on the County website and sent to citizen, media and other groups on the County’s e-mail list on April 19, 2012.

11. A document entitled “Situation Assessment: Incentives for Commercial Agriculture: Parcel Reconfiguration” (Situation Assessment) identifying the current conditions, parcel reconfiguration objectives, key issues, recommendations, public process, draft code amendments, and analyzing Growth Management Act and Hearings Board cases and other jurisdictional examples was published on May 31, 2012 by BERK Consulting and posted on the County website on June 8, 2012.

12. The Situation Assessment contains a list of principles used to help guide the parcel reconfiguration work program:
   • Increase the long-term viability of agriculture while recognizing underlying economic realities.
   • Provide more flexibility/incentives for homes, placed with the least impact to agricultural operations.
   • Reduce potential conflicts with neighbors.
   • Ensure parcel reconfiguration tools are “density neutral."
   • Overarching principles should drive the regulations (e.g. equal to or better than...).
   • Honor and protect property rights and values to help farmers stay in business.

13. Notice of the subject amendment was submitted to the Washington State Department of Commerce on June 7, 2012.

14. The Planning Commission held a work session on July 12, 2012 to discuss the Agricultural Strategic Plan, including background information and all priority tasks. Notice was posted on the County website, and was sent to citizen, media and other groups on the County’s e-mail list on June 27 and on July 5, 2012.

15. A Code Development Technical Workshop open to the public was held on July 16, 2012 to further discuss proposed code amendments, with notice posted on the
16. The Planning Commission held work sessions on August 9, 2012, November 15, 2012, January 24, 2013, and February 14, 2013, to discuss the Parcel Reconfiguration tool and draft code amendments. Notice of these meetings was posted on the County website, and was sent to citizen, media and other groups on the County’s e-mail list prior to the meetings in accordance with general practices.

17. A Supplemental Analysis and Recommendations document was published on August 31, 2012 to provide updated information following the publication of the “Situation Assessment: Incentives for Commercial Agriculture: Parcel Reconfiguration” prepared by BERK Consulting. The Supplemental Analysis was posted on the County website on September 20, 2012.

18. The Planning Commission held a public hearing on the subject amendment on October 25, 2012. Notice of the Planning Commission hearing was sent to the county email list which includes City representatives from Lynden, Ferndale, Everson, Nooksack and Sumas; citizens; media; and other group representatives on October 4, 2012. Notice of the Planning Commission hearing for the subject amendment was posted on the County website on October 17, 2012. Notice of the Planning Commission hearing for the subject amendment was published in the Bellingham Herald on October 12, 2012.

19. The Planning Commission held a second public hearing on the subject amendment on February 28, 2013. Notice of the Planning Commission hearing was sent to the county email list which includes City representatives from Lynden, Ferndale, Everson, Nooksack and Sumas; citizens; media; and other group representatives on February 20, 2013. Notice of the Planning Commission hearing for the subject amendment was posted on the County website on February 19, 2013. Notice of the Planning Commission hearing for the subject amendment was published in the Bellingham Herald on February 17, 2013.

20. In order to approve the zoning amendment, the County must find that it is consistent with the Growth Management Act (GMA). Additionally, the County must find that the zoning amendment is consistent with and implements the Whatcom County Comprehensive Plan.

21. The GMA (RCW 36.70A.020) lists thirteen planning goals to guide the development and adoption of comprehensive plans and development regulations. The proposed amendments reflect a balance of these planning goals; primarily: (2) Reduce sprawl, (6) Property rights, (7) Permits, (8) Natural resource industries, (10) Environment, and (11) Citizen participation and coordination.

22. The GMA (RCW 36.70A.030) contains a definition for “agricultural land” meaning “land primarily devoted to the commercial production of
horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by RCW 84.33.100 through 84.33.140, finfish in upland hatcheries, or livestock, and that has long-term commercial significance for agricultural production.”

23. The GMA guides the adoption of development regulations to assure the conservation of designated agricultural, forest, and mineral lands of long-term commercial significance. Both the GMA and Washington Administrative Code (WAC) offer specific guidance:

- Development regulations must assure the conservation of agricultural lands (RCW 36.70A.060).
- Natural resource uses have preferred and primary status in designated natural resource lands. Counties and cities must determine if and to what extent other uses will be allowed. If other uses are allowed, counties and cities should consider using innovative land management techniques that minimize land use incompatibilities and most effectively maintain current and future natural resource lands (WAC 365-190-040).
- Regulations for the conservation of natural resource lands may not prohibit uses legally existing on any parcel prior to their adoption (RCW 36.70A.060).
- Development regulations must assure that the planned use of lands adjacent to natural resource lands will not interfere with the continued use, in the accustomed manner and in accordance with best management practices, of these designated lands (RCW 36.70A.060).
- Counties and cities are encouraged to use a coordinated program that includes non-regulatory programs and incentives to supplement development regulations to conserve natural resource lands (WAC 365-196-480).

24. The GMA (RCW 36.70A.177) encourages counties to consider use of innovative zoning techniques designed to conserve agricultural lands and encourage the agricultural economy, and requires accessory uses to be limited according to the section.

25. Consultant attorney review concluded that the GMA provides some flexibility for the County to allow landowners to vary from minimum lot sizes in individual cases, as long as:

- The County provides appropriate standards with reasonable limits that protect rural character (such as siting criteria that are consistent with the County’s definition for “rural character”) and that conserve agricultural lands;
• The County does not allow the overall pattern of lot sizes and densities to be materially changed, to the detriment of rural character or agricultural conservation; and

• Where appropriate, the County requires compensating areas to be set aside and permanently dedicated to agricultural or open space uses.

26. Whatcom County Comprehensive Plan Goal 8A is to: **Conserve and enhance Whatcom County's agricultural land base for the continued production of food and fiber.** Additionally, the following policies are relevant to the proposed amendments:

   Policy 8A-4: Discourage conversion of productive agricultural land to incompatible nonagricultural uses.

   Policy 8A-6: Prioritize agricultural activity in land use decisions when land is composed of prime and/or productive agricultural soils and agriculture is the highest value resource use.

   Policy 8A-7: Establish flexibility in land use plans and regulations to encourage maintenance of the productive agricultural land base.

   Policy 8A-12: The Agricultural Advisory Committee shall advise the Whatcom County Executive and Council on agricultural issues and agricultural land use. Whatcom County shall support the Agricultural Advisory Committee with staff and other resources.

The proposed amendment developed through the recommendations of the County Agricultural Advisory Committee prioritizes agricultural activities while providing land owner flexibility and recognizing existing legal lots.

27. Whatcom County Comprehensive Plan GOAL 8C is to: **Preserve and enhance the cultural heritage that is related to agriculture.** Additionally, the following policies are relevant to the proposed amendments:

   Policy 8C-1: Find ways for retiring farmers to pass their farms on to their children and for young farmers to be able to afford to buy productive farmland.

   Policy 8C-2: Identify, preserve, and enhance community character, landscape, and buildings associated with agricultural activity.

   Policy 8C-3: Involve those who actually are engaged in agricultural activities in the planning process. Utilize groups working effectively with the agricultural community to help preserve and/or create a sustainable economic agricultural base.

   Policy 8C-4: Support the continuation of owner occupied/family owned farms.
The proposed amendment responds to public input from farmers, agricultural land owners, and the public by providing opportunities for smaller lot sizes that may be easier to finance for farming purposes while allowing existing residential development potential in a way that is minimally disruptive to the agricultural activities.

28. Whatcom County Comprehensive Plan GOAL 8D is to: **Reduce land use conflicts between Whatcom County's agriculture and non-agricultural landowners.** Additionally, the following policies are relevant to the proposed amendments:

   Policy 8D-1: Work to reduce conflicts between incompatible agricultural activities by establishing zoning regulations which protect productive agricultural lands of long-term commercial significance from conversion to non-compatible uses. This zoning should recognize the diversity of agricultural landowners and agricultural land uses. This zoning should provide flexible regulations, which encourage all agricultural landowners to maintain the productive agricultural land base while protecting them from conflicting uses.

   Policy 8D-6: Support agricultural activity in mixed farm/rural residential areas, with the understanding that certain farm practices may conflict with other neighboring rural land uses.

The proposed amendment provides a flexible alternative to larger-lot residential development in a manner that encourages the conservation of the productive agricultural lands.

**IV. PROPOSED CONCLUSIONS**

1. The subject zoning amendment complies with the Growth Management Act.

2. The subject zoning amendment is consistent and implements the Whatcom County Comprehensive Plan.

**V. RECOMMENDATION**

Based upon the above findings and conclusions, staff recommends approval of the proposed amendments as shown on Exhibit 1.
WHEREAS, the Whatcom County Agricultural Advisory Committee developed an Agricultural Strategic Plan adopted by County Council Resolution 2011-023; and

WHEREAS, the Agricultural Strategic Plan includes the recommendation to develop a Parcel Reconfiguration tool in the Agricultural areas, which has now been developed; and

WHEREAS, the proposed code amendments have been reviewed under the State Environmental Policy Act (SEPA); and

WHEREAS, In accordance with RCW 36.70A.106 Whatcom County Planning and Development Services notified the Department of Commerce of the proposed code amendments; and

WHEREAS, notices of the Whatcom County Planning Commission hearings on the proposed amendments were published in the Bellingham Herald; and

WHEREAS, the Whatcom County Planning Commission held two public hearings on the proposed amendments and considered all testimony; and

WHEREAS, the Whatcom County Planning Commission held five work sessions on the proposed amendments; and

WHEREAS, the Whatcom County Planning Commission forwarded its findings and reasons for action to the County Council; and

WHEREAS, the Whatcom County Council has reviewed the Planning Commission recommendation; and

WHEREAS, the Whatcom County Council hereby adopts the following findings of fact and conclusions:
FINDINGS

1. The Whatcom County Agricultural Strategic Plan was developed by the county’s Agricultural Advisory Committee made up of farmers and farming industry representatives appointed by the Whatcom County Executive and affirmed by the County Council.

2. The Agricultural Strategic Plan was supported by the County Executive and endorsed by the County Council on July 26, 2011 through Resolution 2011-023.

3. The Agricultural Strategic Plan built upon previous work within the agricultural community including the Rural Land Study (2007; endorsed through Council Resolution 2009-040), and an examination of the existing potential residential development within the agricultural areas of the county as described in four White Papers delivered to the WA State Office of Farmland Preservation in January 2009 and posted on the county’s Agricultural website since that time.

4. The examination of existing development potential was initiated in 2008 through a stakeholder and public process conducted by Whatcom Farm Friends (county contract number 200711051), wherein tools were identified with the goals of both retiring and accommodating existing development potential in ways that benefit agriculture. Tools that retire existing development potential were identified as options to reduce the overall development potential within the agricultural areas, assisting the farming industry by reducing the potential for uses that may conflict with agricultural activities. Accommodation tools were identified as potential options that assist the farming industry through various incentives that neither reduce nor add density to the agricultural areas.

5. The Agricultural Strategic Plan contains a number of priority tasks, one of which is “Parcel Reconfiguration tool development” which was intended to allow the reconfiguration of parcels within and across ownership, to place the existing development potential in areas that are the least valuable as farm land; accommodating existing development potential in a manner that better fits with the farming operation.

6. A Project Review Team consisting of County staff, Agricultural Advisory Committee (AAC) representatives, and a Whatcom Farm Friends representative met throughout the process with assistance from BERK Consulting to review objectives and draft documents. Meeting dates were: February 15, April 12, May 10, and July 26, 2012. This team continued to meet without the assistance from BERK Consulting as a subcommittee of the AAC.
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10. A Public Open House concerning the project and draft alternatives was held at Cornwall Church on May 3 at 6:30 PM, with notice posted on the County website and sent to citizen, media and other groups on the County’s e-mail list on April 19, 2012.

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12. The Situation Assessment contains a list of principles used to help guide the parcel reconfiguration work program:
   • Increase the long-term viability of agriculture while recognizing underlying economic realities.
   • Provide more flexibility/incentives for homes, placed with the least impact to agricultural operations.
   • Reduce potential conflicts with neighbors.
   • Ensure parcel reconfiguration tools are “density neutral.”
   • Overarching principles should drive the regulations (e.g. equal to or better than...).
   • Honor and protect property rights and values to help farmers stay in business.

13. Notice of the subject amendment was submitted to the Washington State Department of Commerce on June 7, 2012.
14. The Planning Commission held a work session on July 12, 2012 to discuss the Agricultural Strategic Plan, including background information and all priority tasks. Notice was posted on the County website, and was sent to citizen, media and other groups on the County’s e-mail list on June 27 and on July 5, 2012.

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16. The Planning Commission held work sessions on August 9, 2012, November 15, 2012, January 24, 2013, and February 14, 2013, to discuss the Parcel Reconfiguration tool and draft code amendments. Notice of these meetings was posted on the County website, and was sent to citizen, media and other groups on the County’s e-mail list prior to the meetings in accordance with general practices.

17. A Supplemental Analysis and Recommendations document was published on August 31, 2012 to provide updated information following the publication of the “Situation Assessment: Incentives for Commercial Agriculture: Parcel Reconfiguration” prepared by BERK Consulting. The Supplemental Analysis was posted on the County website on September 20, 2012.

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19. The Planning Commission held a second public hearing on the subject amendment on February 28, 2013. Notice of the Planning Commission hearing was sent to the county email list which includes City representatives from Lynden, Ferndale, Everson, Nooksack and Sumas; citizens; media; and other group representatives on February 20, 2013. Notice of the Planning Commission hearing for the subject amendment was posted on the County website on February 19, 2013. Notice of the Planning Commission hearing for the subject amendment was published in the Bellingham Herald on February 17, 2013.

20. [County Council work sessions and public hearing(s) to be listed here, with related information].
21. In order to approve the zoning amendment, the County must find that it is consistent with the Growth Management Act (GMA). Additionally, the County must find that the zoning amendment is consistent with and implements the Whatcom County Comprehensive Plan.

22. The GMA (RCW 36.70A.020) lists thirteen planning goals to guide the development and adoption of comprehensive plans and development regulations. The proposed amendments reflect a balance of these planning goals; primarily: (2) Reduce sprawl, (6) Property rights, (7) Permits, (8) Natural resource industries, (10) Environment, and (11) Citizen participation and coordination.

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24. The GMA guides the adoption of development regulations to assure the conservation of designated agricultural, forest, and mineral lands of long-term commercial significance. Both the GMA and Washington Administrative Code (WAC) offer specific guidance:

- Development regulations must assure the conservation of agricultural lands (RCW 36.70A.060).

- Natural resource uses have preferred and primary status in designated natural resource lands. Counties and cities must determine if and to what extent other uses will be allowed. If other uses are allowed, counties and cities should consider using innovative land management techniques that minimize land use incompatibilities and most effectively maintain current and future natural resource lands (WAC 365-190-040).

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- Development regulations must assure that the planned use of lands adjacent to natural resource lands will not interfere with the continued use, in the accustomed manner and in accordance with best management practices, of these designated lands (RCW 36.70A.060).
- Counties and cities are encouraged to use a coordinated program that includes non-regulatory programs and incentives to supplement development regulations to conserve natural resource lands (WAC 365-196-480).

25. The GMA (RCW 36.70A.177) encourages counties to consider use of innovative zoning techniques designed to conserve agricultural lands and encourage the agricultural economy, and requires accessory uses to be limited according to the section.

26. Consultant attorney review concluded that the GMA provides some flexibility for the County to allow landowners to vary from minimum lot sizes in individual cases, as long as:

- The County provides appropriate standards with reasonable limits that protect rural character (such as siting criteria that are consistent with the County’s definition for “rural character”) and that conserve agricultural lands;

- The County does not allow the overall pattern of lot sizes and densities to be materially changed, to the detriment of rural character or agricultural conservation; and

- Where appropriate, the County requires compensating areas to be set aside and permanently dedicated to agricultural or open space uses.

27. Whatcom County Comprehensive Plan Goal 8A is to: **Conserve and enhance Whatcom County’s agricultural land base for the continued production of food and fiber.** Additionally, the following policies are relevant to the proposed amendments:

   - **Policy 8A-4:** Discourage conversion of productive agricultural land to incompatible nonagricultural uses.

   - **Policy 8A-6:** Prioritize agricultural activity in land use decisions when land is composed of prime and/or productive agricultural soils and agriculture is the highest value resource use.

   - **Policy 8A-7:** Establish flexibility in land use plans and regulations to encourage maintenance of the productive agricultural land base.

   - **Policy 8A-12:** The Agricultural Advisory Committee shall advise the Whatcom County Executive and Council on agricultural issues and agricultural land use. Whatcom County shall support the Agricultural Advisory Committee with staff and other resources.
The proposed amendment developed through the recommendations of the County Agricultural Advisory Committee prioritizes agricultural activities while providing land owner flexibility and recognizing existing legal lots.

28. Whatcom County Comprehensive Plan GOAL 8C is to: **Preserve and enhance the cultural heritage that is related to agriculture.** Additionally, the following policies are relevant to the proposed amendments:

   Policy 8C-1: Find ways for retiring farmers to pass their farms on to their children and for young farmers to be able to afford to buy productive farmland.

   Policy 8C-2: Identify, preserve, and enhance community character, landscape, and buildings associated with agricultural activity.

   Policy 8C-3: Involve those who actually are engaged in agricultural activities in the planning process. Utilize groups working effectively with the agricultural community to help preserve and/or create a sustainable economic agricultural base.

   Policy 8C-4: Support the continuation of owner occupied/family owned farms.

The proposed amendment responds to public input from farmers, agricultural land owners, and the public by providing opportunities for smaller lot sizes that may be easier to finance for farming purposes while allowing existing residential development potential in a way that is minimally disruptive to the agricultural activities.

29. Whatcom County Comprehensive Plan GOAL 8D is to: **Reduce land use conflicts between Whatcom County’s agriculture and non-agricultural landowners.** Additionally, the following policies are relevant to the proposed amendments:

   Policy 8D-1: Work to reduce conflicts between incompatible agricultural activities by establishing zoning regulations which protect productive agricultural lands of long-term commercial significance from conversion to non-compatible uses. This zoning should recognize the diversity of agricultural landowners and agricultural land uses. This zoning should provide flexible regulations, which encourage all agricultural landowners to maintain the productive agricultural land base while protecting them from conflicting uses.
Policy 8D-6: Support agricultural activity in mixed farm/rural residential areas, with the understanding that certain farm practices may conflict with other neighboring rural land uses.

The proposed amendment provides a flexible alternative to larger-lot residential development in a manner that encourages the conservation of the productive agricultural lands.

CONCLUSIONS

1. The subject zoning amendment complies with the Growth Management Act.

2. The subject zoning amendment is consistent and implements the Whatcom County Comprehensive Plan.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that the Whatcom County Code is hereby amended as shown in Exhibit 1.
BE IT FURTHER ORDAINED that if any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional; such decision shall not affect the validity of the remaining portions of this ordinance. The Council hereby declares that it would have passed this code and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases has been declared invalid or unconstitutional, then the original ordinance or ordinances shall be in full force and effect.

ADOPTED this ____ day of __________, 20____.

ATTEST:

Dana Brown-Davis, Clerk of the Council
Kathy Kershner, Council Chair

APPROVED AS TO FORM:

Civil Deputy Prosecutor
Jack Louws, County Executive

( ) Approved  ( ) Denied

Date Signed:____________________
# EXHIBIT 1

PROPOSED CODE AMENDMENTS: PARCEL RECONFIGURATION

February 28, 2013

<table>
<thead>
<tr>
<th>Chapter 20.40 AGRICULTURE (AG) DISTRICT</th>
<th>3</th>
</tr>
</thead>
<tbody>
<tr>
<td>20.40.010 Purpose.</td>
<td>3</td>
</tr>
<tr>
<td>20.40.250 Division or Modification of Parcels.</td>
<td>3</td>
</tr>
<tr>
<td>20.40.251 Minimum Lot Size.</td>
<td>4</td>
</tr>
<tr>
<td>20.40.252 Minimum lot width and depth.</td>
<td>5</td>
</tr>
<tr>
<td>20.40.253 Farmstead or Reconfigured Parcel Minimum Lot Size Exceptions</td>
<td>6</td>
</tr>
<tr>
<td>20.40.254 Separation of the Farmstead Parcel Criteria:</td>
<td>6</td>
</tr>
<tr>
<td>20.40.255 Consolidation of Adjacent Tracts.</td>
<td>9</td>
</tr>
<tr>
<td>20.40.256 Establishing Intent.</td>
<td>9</td>
</tr>
<tr>
<td>20.40.350 Building setbacks.</td>
<td>9</td>
</tr>
<tr>
<td>20.40.450 Lot coverage</td>
<td>9</td>
</tr>
<tr>
<td>20.40.650 New or Modified Parcel Siting Criteria</td>
<td>10</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter 20.80 SUPPLEMENTARY REQUIREMENTS</th>
<th>12</th>
</tr>
</thead>
<tbody>
<tr>
<td>20.80.210 Minimum setbacks</td>
<td>12</td>
</tr>
<tr>
<td>20.80.255 Agriculture District</td>
<td>14</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter 20.83 NONCONFORMING USES AND PARCELS</th>
<th>15</th>
</tr>
</thead>
<tbody>
<tr>
<td>20.83.110 Reduction of area</td>
<td>15</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter 21.01 GENERAL PROVISIONS</th>
<th>16</th>
</tr>
</thead>
<tbody>
<tr>
<td>21.01.010 Title.</td>
<td>16</td>
</tr>
<tr>
<td>21.01.020 Purpose</td>
<td>16</td>
</tr>
<tr>
<td>21.01.030 Authority</td>
<td>16</td>
</tr>
<tr>
<td>21.01.040 Applicability and exemptions</td>
<td>16</td>
</tr>
<tr>
<td>21.01.100 Applications required</td>
<td>17</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter 21.03 EXEMPT LAND DIVISIONS, BOUNDARY LINE ADJUSTMENTS, AND AGRICULTURAL PARCEL RECONFIGURATIONS</th>
<th>18</th>
</tr>
</thead>
<tbody>
<tr>
<td>21.03.010 Purpose</td>
<td>18</td>
</tr>
<tr>
<td>21.03.020 Exemptions</td>
<td>18</td>
</tr>
</tbody>
</table>
21.03.030 Pre-approval. ................................................................................................................................. 18
21.03.040 Certificate of exemption. ............................................................................................................... 18
21.03.045 Required disclosures. ..................................................................................................................... 19
21.03.050 Access on state highways. ............................................................................................................. 19
21.03.060 Boundary line adjustments and Agricultural Parcel Reconfigurations. ....................................... 19
21.03.070 Inactive applications. ..................................................................................................................... 21
21.03.080 Requirements for a fully completed exempt land division application. ........................................ 22
21.03.085 Requirements for a fully completed boundary line adjustment or agricultural parcel
reconfiguration application. ........................................................................................................................... 22
21.03.090 Original drawing. ............................................................................................................................ 23

**Chapter 21.04 SHORT SUBDIVISIONS** .................................................................................................. 24

21.04.010 Purpose. ......................................................................................................................................... 24
21.04.180 Agricultural short plat. ................................................................................................................... 24

**Chapter 20.97 DEFINITIONS** ............................................................................................................... 26

20.97.132 Farmstead parcel. ........................................................................................................................ 26
20.97.133 Farmstead home site. ..................................................................................................................... 26
Chapter 20.40
AGRICULTURE (AG) DISTRICT

Sections:
20.40.010 Purpose.
20.40.050 Permitted uses.
20.40.100 Accessory uses.
20.40.130 Administrative approval uses.
20.40.150 Conditional uses.
20.40.200 Prohibited uses.
20.40.250 Division or modification of parcels
20.40.350 Building setbacks.
20.40.450 Lot coverage.
20.40.650 New or modified parcel siting criteria.
20.40.651 Landscaping.
20.40.652 Drainage.
20.40.662 Use of natural resources.

20.40.010 Purpose.

The primary purposes of this district are to implement the agricultural designation of the Comprehensive Plan, established pursuant to RCW 36.70A.170, preserve, enhance and support the production of food and fiber in Whatcom County, to maintain a sufficiently large agricultural land base to ensure a viable agriculture industry and to maintain the economic feasibility of supporting services. Whatcom County supports agricultural activities as the highest priority use in the Agriculture District, with all other uses being subordinate to agricultural activities. Whatcom County seeks to minimize conflict with surrounding zoning districts, in conjunction with Chapter 14.02 WCC, Right to Farm. In order to limit the further fragmentation of the commercial agricultural land base, the Agriculture District includes smaller areas of land with poorer quality soils or nonagricultural uses, which do not meet the definition of agriculture lands of long-term commercial significance.

A secondary purpose of this district is to serve as a holding district when located within the urban growth area Comprehensive Plan designation to allow agricultural uses in the near term while protecting the area from suburban sprawl and preserving the potential for future urban development consistent with the protection of the resource land. (Ord. 2009-071 § 2 (Exh. B), 2009; Ord. 2005-079 § 1, 2005; Ord. 2001-020 § 1 (Exh. 1 § 1), 2001).

20.40.250 Division or Modification of Parcels

It is the intent of this section to allow divisions which benefit the long-term viability of agriculture. This section describes the requirements for division or modification of parcels within the agricultural district that

Prepared by BERK & Whatcom County PDS staff

February 28, 2013
either are consistent with the minimum lot size, or would result in substandard parcels or make existing substandard parcels further substandard.

Requests for land division, boundary line adjustment, or agricultural parcel reconfiguration in the Agriculture District shall be made on forms provided by the department and will be reviewed administratively. All divisions must comply with the following provisions:

1. **Agricultural Divisions.** All divisions of land in the Agriculture District shall proceed in accordance with the local and state subdivision laws.

2. **Allowable Density.** No division, boundary line adjustment, or agricultural parcel reconfiguration shall result in an increase in allowable density.

3. **Additional Acreage.** Additional acreage gained through a boundary line adjustment or agricultural parcel reconfiguration shall not be considered in the total acreage calculations for determining density.

4. **Plat Restrictions.** The following plat restriction is required, prior to recording, on the nonresidential lot of all divisions of land provided for in WCC 20.40.254(2):

   No further division or residential structure shall be allowed on this parcel unless and until changes in the zoning of this property occur consistent with State and local laws which would result in additional development density, in which case this restriction shall be null and void, and density and uses of the new zone shall apply to the property upon review by the Whatcom County zoning administrator.

5. **Deed Restrictions.** Deed restrictions are required for all boundary line adjustments or agricultural parcel reconfigurations allowed under WCC 20.40.254(3) and (4).

   a. The following language must be recorded separately and placed by reference of auditors file number on the deed, and placed on the tract map of the nonresidential portion of the adjusted parent parcels prior to recording:

   The development density of the original parcel (parent parcel) remains with legal description _______. The _______ (# of acres) appended through boundary line adjustment [or agricultural parcel reconfiguration] to legal description _______ (receiving parcel) shall not be included in calculations to determine total development density for the receiving parcel.

   b. The following deed restriction language must be recorded separately and placed by reference of auditors file number on the deed, and is required when there is no additional means to further subdivide the property due to the parcel sizes and density standards of this zone:

   No further division or residential structure shall be allowed on this parcel unless and until changes in the zoning of this property occur consistent with State and local laws which would result in additional development density, in which case this restriction shall be null and void, and density and uses of the new zone shall apply to the property upon review by the Whatcom County zoning administrator.

**20.40.251 Minimum Lot Size.**

The minimum lot size in the Agriculture District is 40 acres, except as provided for in WCC 20.40.253 and 20.40.254. The creation of a lot less than the minimum size is permitted only when the subject application meets the standards contained in WCC 20.40.253, 254, and 650, as applicable.
## Parcel | Minimum Lot Size | Minimum Lot Size Exceptions
--- | --- | ---
Conventional Parcel | 40 acres | Reconfiguring existing nonconforming parcels

### Farmstead Parcels Created through Agricultural Short Subdivision or Agricultural Boundary Line Adjustment

<table>
<thead>
<tr>
<th>Farmstead Parcel – Parent Parcel with Existing Farmstead with public water</th>
<th>1 acre</th>
<th>Up to 3 acres pursuant to WCC 20.40.253 (1),(2) &amp; (4)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Farmstead Parcel – Parent Parcel with Existing Farmstead without public water</td>
<td>2 acres</td>
<td>Up to 3 acres pursuant to WCC 20.40.253 (1)-(4)</td>
</tr>
<tr>
<td>Farmstead Parcel – Parent Parcel without Existing Farmstead with public water</td>
<td>1 acre</td>
<td>Up to 2 acres pursuant to WCC 20.40.253 (1) &amp; (2)</td>
</tr>
<tr>
<td>Farmstead Parcel – Parent Parcel without Existing Farmstead without public water</td>
<td>2 acres</td>
<td>Up to 3 acres pursuant to WCC 20.40.253 (1),(2) &amp; (3)</td>
</tr>
</tbody>
</table>

### Parcels Created Through Agricultural Parcel Reconfiguration

<table>
<thead>
<tr>
<th>Reconfigured Parcel - reconfiguration with public water</th>
<th>1 acre</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reconfigured Parcel - reconfiguration without public water</td>
<td>1 acre</td>
<td>Up to 2 acres pursuant to WCC 20.40.253 (1),(2) &amp; (3)</td>
</tr>
</tbody>
</table>

### Parcels Created for Agricultural Purposes Only

| Created Parcel with deed restriction for no residential buildings | 10 acres | N/A |

#### 20.40.252 Minimum lot width and depth.

1. For parcels created consistent with the minimum lot size: The minimum length to width ratio is $1/5$. The terms “length” and “width” refer to the average length and average width of the parcel.

2. For lots created or rearranged pursuant to WCC 20.40.254, the following lot width and depth shall apply:
<table>
<thead>
<tr>
<th>Minimum Width at Street Line</th>
<th>Minimum Width at Bldg. Line</th>
<th>Minimum Mean Depth</th>
</tr>
</thead>
<tbody>
<tr>
<td>70’ (A)</td>
<td>80’</td>
<td>100’</td>
</tr>
</tbody>
</table>

(A) Applies only to land divisions or parcel reconfigurations where the parcel(s) does not contain a farmstead homesite at the time of the application.

**20.40.253 Farmstead or Reconfigured Parcel Minimum Lot Size Exceptions**

The base maximum for the farmstead parcel shall be consistent with the minimum lots size in 20.40.251, except as follows:

1. A greater area is determined necessary by the health officer pursuant to Chapter 24.05 On-Site Sewage System Regulations;
2. A greater area is determined necessary by the responsible official to accommodate a driveway or other access necessary for the farmstead parcel;
3. For farmstead parcels without public water: Unless substantial evidence is provided by the responsible official indicating the location is not feasible, wells and wellhead protection zones shall also be located within the farmstead parcel. Wells located outside of the farmstead parcel area shall be sited to minimize potential impacts on agricultural activities.
4. For farmstead parcels with existing farmstead homesites: There is an existing agricultural structure(s) within the farmstead parcel and any of the following criteria are met:
   a. The separation between the agricultural structure(s) and the primary residential structure is less than 150 feet; or
   b. Current use of the agricultural structure(s) is not related to an agricultural activity; or
   c. There is a low potential for future use of the agricultural structure(s) to be associated with an agricultural activity due to physical condition or compatibility with agricultural practices; or
   d. Water is not available for use at the agricultural structure(s).

**20.40.254 Separation of the Farmstead Parcel Criteria:**

1. The criteria for approval for the farmstead parcel and remainder parcel created through Agricultural Boundary Line Adjustment, Agricultural Short Subdivision and Agricultural Parcel Reconfiguration shall be the following:
   a. The area of the parcel containing the farmstead home site, whether the home exists or is to be added, is limited to the minimum amount required to encapsulate structures, parking areas, driveways, septic systems, wells, and landscaping required setbacks; and
   b. The farmstead parcel size shall be as stated in WCC 20.40.251, unless the existing residential structure(s) and/or well and septic constraints require a larger parcel, but shall not exceed the maximum lot size consistent with the exceptions in WCC 20.40.253; and
   c. The farmstead parcel and farmstead home site meet the siting criteria contained in WCC 20.40.650; and
   d. A remainder parcel shall be created equal to or greater than 10 nominal acres; and
(e) The remainder parcel shall have no existing residential development and no development rights, and a condition containing the language as provided in WCC 20.40.250(4) or (5) shall be included on the short plat, boundary line adjustment, or agricultural parcel reconfiguration for the remainder parcel prior to final approval; and

(f) The applicant and his or her heirs provide right of first purchase for a period of not less than 60 days through deed restriction to the original purchaser and subsequent purchasers of the remainder parcel for purchase of the farmstead parcel before they are offered on the open market; and

(g) A right to farm disclosure statement as provided for in WCC 14.02.040(B) will be signed by the farmstead parcel owner and subsequent purchasers of the farmstead parcel, and recorded as per WCC 14.02.040(A)(1) and 14.02.050; and

(h) All land division shall comply with the appropriate map and recording provisions of WCC Title 21; and

(i) The overall submittal shall comply with WCC 20.40.250 et seq.

(2) Agricultural Short Subdivisions. Agricultural Short subdivisions for the purpose of reducing the acreage below the minimum lot size as provided by WCC 20.40.251 for a farmstead homesite shall comply with the following provisions:

(a) The minimum parcel size is the area necessary to accommodate a house site which meets the applicable dimensional requirements of all applicable codes and provides a remainder (appended) parcel equal to or greater than 10 nominal acres; and

(b) The short subdivision application shall meet the size and performance standards of WCC 20.40.650.

(3) Boundary Line Adjustments. Boundary line adjustments for the purpose of reducing the acreage below the minimum lot size as provided by WCC 20.40.251 of an existing or proposed farmstead parcel if such boundary line adjustment complies with the following provisions:

(a) Boundary line adjustments shall not make a lot substandard or further substandard, except as provided for in WCC 20.40.251.

(b) The minimum parcel size is the area necessary to accommodate a house site which meets the applicable dimensional requirements of all applicable codes and provides a remainder (appended) parcel equal to or greater than 10 nominal acres; and

(c) The farmstead parcel and boundary line adjustment application shall meet the size and performance standards of WCC 20.40.250 and 251, and the siting criteria of WCC 20.40.650.

(4) Agricultural Parcel Reconfiguration: Parcels are reconfigured and finalized according to the agricultural parcel reconfiguration process established in Chapter 21.03, Exempt Land Divisions, Boundary Line Adjustments, and Agricultural Parcel Reconfigurations, and when meeting the following performance standards:

(a) Existing parcels to be reconfigured are:

(i) Smaller than the minimum lot size established for new lots in the Agriculture district. Parcels which meet the minimum lot size may be adjusted as a part of this process, provided the reconfiguration meets the provisions of (4)(b) below;
(ii) Determined to be legally created and buildable pursuant to WCC Title 21.01.180.

(b) Proposed parcel(s) results in the following:

(i) No additional parcels; and

(ii) A remainder parcel shall be created equal to or greater than 10 nominal acres; and

(iii) The siting criteria of WCC 20.40.650 are met and development standards of WCC 20.40.252 et seq. are met; and

(iv) The reconfiguration shall result in achieving four (4) or more of the identified agricultural-related purposes as follows:

(A) Expand the amount of commercially viable resource land under contiguous single ownership; and/or

(B) Protect and buffer designated resource lands; and/or

(C) Reduce impervious surfaces, such as by reducing the amount of road and utility construction required to serve reconfigured lots, or by reducing the amount of impervious area for nonagricultural uses that could otherwise occur without parcel reconfiguration; and/or

(D) Reduce the total number of lots of record through voluntary consolidation; and/or

(E) Produce a farm management plan approved through the Whatcom Conservation District or WA Department of Agriculture that demonstrates increased viability of the agricultural operation through the agricultural parcel reconfiguration; and/or

(F) Enable improved floodplain management in cooperation with Whatcom County Public Works; and

(viii) Reconfigured lots shall not be further adjusted by boundary line adjustment without approval under this section.

(c) The responsible official may impose conditions, consistent with Whatcom County Code, on the agricultural parcel reconfiguration to further the purposes of this section.

(d) Parcel reconfigurations will be tracked by County Planning and Development Services so the procedure can be adaptively managed by review of all projects passed per this code in year 2017.

(5) **Public Facility.** The division is for the purpose of public facilities for health and safety use or expansion of such uses, provided, that:

(a) The division or boundary line adjustment will not adversely affect the surrounding agricultural activities; and

(b) The applicant has demonstrated to the administrator's satisfaction that the siting of the proposed use cannot be located in an adjacent zoning district or alternative site, if the area is intensively farmed.

(6) **Division or Boundary Line Adjustment for Agricultural Purposes Only.** Lots smaller than the minimum lot size of WCC 20.40.251 may be created through land division or re-arranged through a boundary line adjustment provided the following:

(a) The parent parcel does not contain an existing residence, or said existing residence will remain on a parcel larger than 40 acres in size; and

Deleted: (c) The appended parcel shall have no development rights and a condition containing the language as provided in WCC 20.40.251(4) shall be included on the deed for the appended parcel prior to final approval; and

(d) The applicant and his or her heirs provide right of first purchase for a period of not less than 60 days through deed restriction to the original purchaser and subsequent purchasers of the remainder parcel for purchase of the farmland home site parcel before they are offered on the open market; and

(e) A right to farm disclosure statement as provided for in WCC 14.02.040B will be signed by the farmstead home site owner and subsequent purchasers of the farmstead home site parcel, and recorded as per WCC 14.02.040A(1) and 14.02.050; and

(g) The overall submittal shall comply with WCC 20.40.250 et seq.

(3) The division is to allow for the realization of a security interest entered into for the purpose of financing a new house; provided, that the divided parcel shall not be sold separately from the farm except in the event of foreclosure or forfeiture, pursuant to the criteria of subsection (1) of this section.

Deleted: pursuant to WCC 20.40.251

Deleted: .253

Prepared by BERK & Whatcom County PDS staff February 28, 2013
(b) The parcel created is greater than 10 acres or is appended to another parcel; and

(c) There is a properly executed deed restriction which runs with the land on lots which have been created through the division or modified by the boundary line adjustment, except those lots at or over 40 acres in size that maintain an associated development density. Such deed restriction shall be substantially similar to that listed under 20.40.250(5), approved by the zoning administrator and recorded with the County Auditor specifying:

(i) All land divided or parcels adjusted are to be used exclusively for agricultural or flood management purposes and specifically not for a dwelling(s), and

(ii) All land divided or parcels adjusted shall have no residential density, and

(iii) For land divisions, the acreage of the newly created parcels shall not be included in calculations to determine total development density in the future, and

(iv) For boundary line adjustments, the acreage of the newly created parcel and appended portion shall not be included in calculations to determine total development density in the future.

20.40.255 Consolidation of Adjacent Tracts.

Consolidation of adjacent tracts in the same ownership shall be required in accordance with 20.83.070 in approval of any subdivision, short subdivision, agricultural parcel reconfiguration, or boundary line adjustment in the Agricultural District. The County may waive the permit fee for a boundary line adjustment or agricultural parcel reconfiguration where adjacent lots of record are not in the same ownership and are consolidated voluntarily for purposes of the agricultural parcel reconfiguration, or boundary line adjustment.

20.40.256 Establishing Intent.

The burden of establishing intent in and legal proceeding relating to a transaction accomplished or proposed under the authority of this section shall be upon the land owner or purchaser.

20.40.350 Building setbacks.

Building setbacks shall be administered pursuant to WCC 20.80.200 (Setback Requirements). Building setbacks for parcels of less than five nominal acres shall be administered pursuant to WCC 20.80.250.

20.40.450 Lot coverage.

No structure or combination of structures, including accessory buildings, shall occupy or cover more than 25 percent of the total area of the subject parcel. Exceptions to the maximum lot coverage may be allowed when any of the following can be demonstrated:

(1) Proposed structures, in excess of the allowed maximum lot coverage, are located on lesser quality soils.

(2) Proposed structures in excess of the allowed maximum lot coverage support additional agricultural production on parcels other than the subject parcel.

(3) Expansion of facilities that were in operation prior to the adoption of the ordinance codified in this section if it can be demonstrated that substantial on-site investment has been made and location of additional structures off-site would cause an economic hardship to the farm operation.
20.40.650 New or Modified Parcel Siting Criteria

The location of vacant farmstead parcels or parcels arranged through agricultural parcel reconfiguration (which may or may not be vacant) shall be consistent with the following siting criteria and standards:

(1) Minimum Lot Size. Parcels shall be consistent with WCC 20.40.251.

(2) Parcel Design. Parcels shall be located and arranged to provide the maximum protection of agricultural land located both on and off-site. Parcel design and development shall be as follows:

(a) The residential parcels shall be configured so that property lines are immediately adjacent and physically contiguous to each other. A maximum of two development areas containing no more than four (4) lots may be allowed. The two development areas shall contain no more than a total of six lots, and shall be separated by a minimum of 500 feet to minimize the visibility of the future development and reinforce the purposes of the zone; provided that reductions in the separation standard by up to 10% are allowed if an applicant can demonstrate that the future development visibility from the public right of way or from neighboring properties is minimized and the purposes of the parcel reconfiguration in Section 254(4)(b)(iv) are met; and

(b) Residential parcels shall be located as close as possible to existing public roads, or if none abut the property then to existing access roads. New road or driveway development shall be avoided to the maximum extent feasible; and

(c) Except for parcels that recognize existing farmsteads, residential parcels shall be located to the extent feasible to maximize the remainder lot configuration and farmable area; and

(d) Except for reconfigured parcels that recognize existing farmsteads, each reconfigured parcel shall be limited to one single family residence and residential accessory structures; and

(e) Residential building sites shall maintain sufficient separation from on-site and off-site agricultural resources and exterior property lines. The setback, lot coverage, and height standards for reconfigured lots shall be as established in WCC 20.40.350 to 450; and

(f) Applicants shall verify that reconfigured parcels or farmstead parcels do not prohibit access to a point of withdrawal for any irrigation water rights certificates, claims, permits, or applications on the affected parcels; and

(g) All development shall be consistent with WCC Chapter 16.16; and

(h) The farmstead parcel or reconfigured parcels avoid prime soils to the extent feasible. Where the site is predominantly in prime soils and such cannot be avoided, the applicant shall demonstrate that:

(i) the parcels are sized to be as small as feasible pursuant to WCC 20.40.251; and

(ii) located to maximize the agricultural use of the remainder lot; and

(iii) achieve the most suitable locations for parcels in terms of minimizing roads, allowing for water availability, and septic suitability.

(3) Substitute Parcel Design Standards. Applicants proposing a farmstead parcel or agricultural parcel reconfiguration may propose a substitute performance standard in place of a listed standard in .650 (New or Modified Parcel Siting Criteria) provided that the applicant submits a written justification demonstrating the substitute standard better or equally meets the purposes of the zone in WCC 20.40.010 and the agricultural-
related purposes described in WCC 20.40.254(4)(b)(iv); except under no condition shall more than the maximum of six (6) residential parcels with no more than four (4) lots in one development area be allowed. Such substitution shall be considered at the Administrator’s discretion.
CHAPTER 20.80
SUPPLEMENTARY REQUIREMENTS

Sections:

20.80.210 Minimum setbacks.
20.80.230 Measurement of setbacks.
20.80.250 Special setbacks provisions by district.
20.80.252 Rural District.
20.80.255 Agriculture District.
20.80.258 All districts.

20.80.210 Minimum setbacks.

(5) Setbacks. For the purposes of this chapter, the road classification used to determine setback requirements shall be as set forth in this section. In the event a particular road is not listed in this section, the department of public works shall determine the classification, which classification shall be based on the Whatcom County Development Standards or such other local, state or federal roadway standards as the department of public works deems appropriate.

(a) Setback Requirements of All Districts.

(i) No manure lagoon or other open pit storage shall be located closer than 150 feet from any property line, or in a manner which creates any likelihood of ground water pollution or other health hazard.

(ii) All manure storage shall be protected from a 25-year flood and shall be located 50 feet from irrigation ditches and waterways, 50 feet from the ordinary high water line of any lake or waterway; provided, that best management practices as determined by the Whatcom County Conservation District are in place. If the best management practices are not in place, 300 feet shall be substituted for 50 feet.

(iii) In all districts where a single-family residence is a primary permitted use, a building permit may be issued for the construction of a replacement dwelling on the same lot; provided, that the owner agrees by filing a statement with the building official that the old dwelling will be demolished, removed or converted to another permitted use upon completion of the new dwelling.

(iv) A 10-foot setback from the international border between Canada and the United States shall be maintained as an open space vista. The 10-foot setback area may be used for landscaping, agriculture, and natural vegetation. Structures may only be built within the 10-foot setback area after approval from the International Boundary Commission.
(b) Setbacks Table.

***

<table>
<thead>
<tr>
<th>Resource Lands Setbacks</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Agricultural (AG)</strong></td>
</tr>
<tr>
<td><strong>Road Type</strong></td>
</tr>
<tr>
<td>Commercial, Industrial, I-5, State Hwys, Principal &amp; Minor Arterials</td>
</tr>
<tr>
<td>Collector Arterials or Major Collectors</td>
</tr>
<tr>
<td>50'</td>
</tr>
</tbody>
</table>

1. The 50-foot front yard setback requirement for new buildings or additions may be waived if the zoning administrator finds the new building or addition is located along the same building line(s) of existing structures and will result in no additional encroachment and the public interest, safety and health are protected; provided, that for a new building the applicant shall also demonstrate that the proposed location is necessary for the economic viability and the continued operation of the agricultural use.

2. The minimum separation between new residences not located on the same property and farm uses such as barns, pens, milking sheds, or areas used to contain, house or feed animals or store manure or feed shall be 300 feet. New farm uses such as barns, pens, milking sheds, or areas used to contain, house or feed animals or store manure or feed shall be situated at least 150 feet from existing residences not located on the same property. Expansion of existing facilities within the 150-foot buffer, providing such expansion is not closer to a neighbor’s residence, and pastures are excluded from this section’s requirements.

3. Parcels of less than five nominal acres shall have the following minimum setbacks:

   **Front yards:**
   - Primary arterials and secondary arterials: 45 feet.
   - Collector arterials: 35 feet.
   - Neighborhood collectors, local access streets: 25 feet.
   - Minor access streets: 20 feet.

   Minimum front yard requirements can be reduced by the zoning administrator for agricultural parcel reconfigurations, boundary line adjustments, or farmstead parcels established through WCC 20.40.253 - .254 if the proposed placement of the structures will result in a better fit with critical areas or prime soils and goes through the approval process in WCC 21.03. In no case shall front yard depth be less than 20 feet.

   **Side yards:** minimum side yard setbacks shall be five feet. For agricultural parcel reconfigurations, boundary line...
adjustments, or farmstead parcels established through WCC 20.40.253 - .254, the exterior side yard and exterior rear yard requirements of habitable structures shall be 30 feet.

Rear yards: minimum rear yard setbacks shall be five feet.

4. A 10-foot setback from the international border between Canada and the United States shall be maintained as an open space vista. The 10-foot setback area may be used for landscaping, agriculture, and natural vegetation. Structures may only be built within the 10-foot setback area after approval from the International Boundary Commission.

***

20.80.255 Agriculture District.

(1) The 50-foot front yard setback requirement for new buildings or additions may be waived if the zoning administrator finds the new building or addition is located along the same building line(s) of existing structures and will result in no additional encroachment, the public interest, safety and health are protected; provided, that for a new building the applicant shall also demonstrate that the proposed location is necessary for the economic viability and the continued operation of the agricultural use.

(2) The minimum separation between new residences not located on the same property and farm uses such as barns, pens, milking sheds, or areas used to contain, house or feed animals or store manure or feed, shall be 300 feet. New farm uses such as barns, pens, milking sheds, or areas used to contain, house or feed animals or store manure or feed, shall be situated at least 150 feet from existing residences not located on the same property. Expansion of existing facilities within the 150-foot buffer, providing such expansion is not closer to a neighbor’s residence, and pastures are excluded from this section’s requirements.

(3) Parcels of less than five nominal acres shall have the following minimum setbacks:

Front Yards:
- Primary arterials and secondary arterials: 45 feet.
- Collector arterials: 35 feet.
- Neighborhood collectors, local access streets: 25 feet.
- Minor access streets: 20 feet.

Minimum front yard requirements can be reduced by the zoning administrator for agricultural parcel reconfigurations, boundary line adjustments, or farmstead parcels established through WCC 20.40.253 - .254 if the applicant demonstrates better placement of the structures in relation to critical areas or prime soils and goes through the approval process in WCC 21.03, but in no case shall be less than 20 feet.

Side Yards: Minimum side yard setbacks shall be five feet. For agricultural parcel reconfigurations, boundary line adjustments, or farmstead parcels established through WCC 20.40.253 - .254, the exterior side yard and exterior rear yard requirements of habitable structures shall be 30 feet.

Rear Yards: Minimum rear yard setbacks shall be five feet. (Ord. 2001-020 § 1 (Exh. 1 § 2), 2001; Ord. 99-080, 1999).

...
CHAPTER 20.83
NONCONFORMING USES AND PARCELS

20.83.110 Reduction of area.

The administrator shall not cause or increase the nonconformity of lots that are substandard as to lot area and/or lot width requirements through boundary line adjustments; provided, however, that the administrator or hearing examiner may approve boundary line adjustments required to satisfy an unidentified or disputed property line or to identify the same in accordance with RCW 58.04.007. In addition, boundary line adjustments or agricultural parcel reconfigurations in the Agricultural zone in conformance with WCC 20.40.253-.254 shall be allowed. (Ord. 2009-031 § 1 (Exh. 1), 2009).

Deleted: 20.40.251 and 20.40.252
CHAPTER 21.01
GENERAL PROVISIONS

Sections:
21.01.010 Title.
21.01.020 Purpose.
21.01.030 Authority.
21.01.040 Applicability and exemptions.
21.01.050 Interpretation, conflict and severability.
21.01.060 Enforcement and penalties.
21.01.070 Fees.
21.01.080 Administrative responsibilities.
21.01.090 Pre-application meeting.
21.01.100 Applications required.
21.01.105 Consolidated application process.
21.01.110 Complete application.
21.01.120 Time frames.
21.01.130 Underground utilities.
21.01.140 Regulatory authority for development standards.
21.01.150 Repealed.
21.01.160 City urban growth areas.
21.01.170 Hearing examiner consultation with technical advisory committee.

21.01.010 Title.
This title shall be known and may be cited as the Whatcom County land division regulations. (Ord. 2009-007 § 1; Ord. 2000-056 § 1).

21.01.020 Purpose.
The purpose of this title is:
(1) To promote the public health, safety, and general welfare, and to protect the natural resources and the environment.
(2) To provide for proper application of Chapter 58.17 RCW.
(3) To facilitate efficient and cost-effective land division and to ensure orderly growth and development consistent with the Whatcom County Comprehensive Plan and the Whatcom County Code.
(4) To establish an orderly transition from existing land uses to urban development patterns in designated urban growth areas. (Ord. 2009-007 § 1; Ord. 2000-056 § 1).

21.01.030 Authority.
This title is authorized pursuant to the authority delegated to Whatcom County under Chapter 58.17 RCW, Plats – Subdivisions – Dedications. (Ord. 2009-007 § 1; Ord. 2000-056 § 1).

21.01.040 Applicability and exemptions.
(1) This title shall apply to property boundary actions as defined in this title.
(2) The subdivision and short subdivision provisions of this title shall not apply to:

....

(f) A division made for the purpose of alteration by adjusting boundary lines, between platted or unplatted lots or both, which does not create any additional lot, tract, parcel, site, or division nor create any lot, tract, parcel, site, or division which contains insufficient area and dimension to meet minimum requirements for width and area for a building site in accordance with the provisions of this title;

....

(l) Divisions of land into parcels of less than forty acres but greater than ten acres within the area zoned and designated as Agriculture in the Comprehensive Plan for Whatcom County proceeding in accordance with 20.40.254(6).

21.01.100 Applications required.

(1) The applicant is encouraged to seek assistance from the subdivision administrator as to which approvals are required for a particular proposal. One or more of the following applications may be required for a particular proposal:

(a) Exempt land division;

(b) Boundary line (lot line) adjustment or agricultural parcel reconfiguration;

(c) Short subdivision;

(d) Preliminary long subdivision;

(e) Final long subdivision;

(f) Subdivision vacations and alterations;

(g) Preliminary binding site plan;

(h) General binding site plan;

(i) Specific binding site plan;

(j) Agricultural short plat. (Ord. 2009-007 § 1; Ord. 2000-056 § 1).
CHAPTER 21.03  
EXEMPT LAND DIVISIONS, BOUNDARY LINE ADJUSTMENTS, AND AGRICULTURAL PARCEL RECONFIGURATIONS

Sections:

21.03.010 Purpose.
21.03.020 Repealed.
21.03.030 Pre-approval.
21.03.040 Certificate of exemption.
21.03.045 Required disclosures.
21.03.050 Access on state highways.
21.03.060 Boundary line adjustments and Agricultural Parcel Reconfigurations.
21.03.070 Inactive applications.
21.03.080 Requirements for a fully completed exempt land division application.
21.03.085 Requirements for a fully completed boundary line adjustment application.
21.03.090 Repealed.

21.03.010 Purpose.

The purpose of this chapter is to establish or reference the procedure and requirements for the application, review and approval of exempt land divisions, pursuant to WCC 21.01.040, boundary line adjustments, and agricultural parcel reconfigurations. The procedure is intended to provide orderly and expeditious processing of such applications. (Ord. 2009-007 § 1; Ord. 2000-056 § 1).

21.03.020 Exemptions.


21.03.030 Pre-approval.

Applicants may request that their proposed exempt land division be reviewed by the subdivision administrator and pre-approved using forms supplied by the planning and development services department. (Ord. 2009-007 § 1; Ord. 2000-056 § 1).

21.03.040 Certificate of exemption.

(1) A certificate of exempt land division shall be obtained from the planning and development services department for exempt land divisions under WCC 21.01.040(2)(b) and (k). A certificate of exempt land division shall consist of a suitably inscribed stamp on the instrument conveying land title and shall be certified prior to the recording of the instrument with the county auditor. County review and/or a county certificate of exemption stamp shall not be required for WCC 21.01.040(2)(a) and (c) through (j).

(2) A certificate of exempt land division shall be approved, approved with conditions, or denied as follows:

(a) Applications shall include information required by WCC 21.03.085.
(b) The exempt land division results in a lot(s) that qualifies as a valid land use pursuant to the Whatcom County Code, including but not limited to lot area, lot width, building setbacks, critical areas protection or shorelines protection.

(c) The exempt land division will not detrimentally affect access, access design, sight distance, grade, road geometry or other public safety and welfare concerns.

(3) An exempt land division is not considered approved until said instrument has been duly stamped as exempt and is filed for record concurrently with all applicable disclosures of WCC 21.03.045 within 12 months of pre-approval. Failure to record within 12 months of pre-approval means the exempt land division application is expired and must be resubmitted for review and approval. The time periods of this section do not include the time during which the exempt land division was not actually pursued due to the pendency of administrative appeals or legal actions or due to the need to obtain any other government permits and approvals for the development that authorize the development to proceed, including all reasonably related administrative or legal actions on any such permits or approvals. (Ord. 2009-007 § 1; Ord. 2004-031 § 1; Ord. 2002-017 § 1; Ord. 2000-056 § 1).

21.03.045 Required disclosures.

The following disclosures, if applicable, shall be recorded in the county auditor’s office and shall be filed concurrently with all conveyances of property subject to this title:

(1) Right to farm, right to practice forestry, or mineral resource disclosures.
(2) Boundary discrepancies.
(3) Protective covenants, conditions and restrictions.
(4) Latecomers’ agreements.
(5) Significant pipeline in vicinity disclosure when the subject property is within 660 feet of a pipeline shown on Map 12, Chapter 5 of the Whatcom County Comprehensive Plan. (Ord. 2009-007 § 1; Ord. 2004-031 § 1; Ord. 2002-017 § 1).

21.03.050 Access on state highways.

For parcels that will access onto a state highway, the applicant shall provide evidence of an approved access from the State Department of Transportation prior to approval of the exempt land division. (Ord. 2009-007 § 1; Ord. 2000-056 § 1).

21.03.060 Boundary line adjustments and Agricultural Parcel Reconfigurations.

The purpose of this section is to provide procedures for the review and approval of adjustments or alterations to boundary lines of existing lots of record which does not create any additional lot, tract, parcel, site or division nor create any lot, tract, parcel, site or division which contains insufficient area and dimension to meet minimum requirements for width and area for a building site.

(1) Procedures. Boundary line adjustments and agricultural parcel reconfigurations shall be approved, approved with conditions, or denied as follows:
(a) Applications shall include information required by WCC 21.03.085.

(b) Any adjustment of boundary lines must be approved by the subdivision administrator prior to the transfer of property ownership between adjacent lots.

(c) The subdivision administrator shall make a preliminary decision on boundary line or agricultural parcel reconfiguration applications within 45 days following submittal of a complete application or revision, unless the applicant consents to an extension of such time period.

(d) A title insurance certificate updated not more than 60 days prior to application, which includes all parcels within the adjustment, must be submitted to the subdivision administrator with boundary line adjustment or agricultural parcel reconfiguration applications.

(e) All persons having an ownership interest within the boundary line adjustment or agricultural parcel reconfiguration shall sign the final recording document in the presence of a notary public.

(2) Decision Criteria. In reviewing a proposed boundary line adjustment or agricultural parcel reconfiguration, the subdivision administrator or hearing examiner shall use the following criteria for approval:

(a) The boundary line adjustment shall not result in the creation of an additional lot.

(b) With the exception of those boundary line adjustments or lots within agricultural parcel reconfigurations that recognize an existing farmstead home site located within the agricultural zone, the boundary line adjustment or agricultural parcel reconfiguration shall result in lots which contain sufficient area and dimensions to meet minimum requirements for width and area for a building site pursuant to this title.

(c) The boundary line adjustment or agricultural parcel reconfiguration shall be consistent with any restrictions, depictions or conditions regarding the overall area in a plat or short plat devoted to open space, environmental mitigation or conservation.

(d) The boundary line adjustment or agricultural parcel reconfiguration shall be consistent with any restrictions or conditions of approval for a recorded plat, short plat, zoning permit, or development permit.

(e) The boundary line adjustment or agricultural parcel reconfiguration shall not cause boundary lines to cross on-site sewage disposal systems or their reserve areas, prevent suitable area for on-site sewage disposal systems, or prevent adequate access to water supplies unless suitable mitigation including, but not limited to, the granting of utility easements is provided to the satisfaction of Whatcom County; provided, however, in the agricultural zone only those lots with existing on-site sewage disposal systems or potable water supplies are subject to this provision.

(f) The boundary line adjustment or agricultural parcel reconfiguration will not create a new access which is unsafe or detrimental to the existing road system because of sight distance, grade, road...
geometry or other safety concerns, as specified in adopted Whatcom County road development standards.

(g) The boundary line adjustment or agricultural parcel reconfiguration on lots without an existing farmstead home site shall demonstrate adequate septic and potable water suitability. Applicants shall demonstrate adequate potable water availability per WCC 24.11. Applicants shall demonstrate septic suitability approval pursuant to WCC 24.05.

(3) Final Approval and Recording Required. To finalize an approved boundary line adjustment or agricultural parcel reconfiguration, the applicant must submit to the subdivision administrator within one year of preliminary approval final review documents meeting the requirements of approval.

(a) All persons having an ownership interest within the boundary line adjustment or agricultural parcel reconfiguration shall sign the final recording document in the presence of a notary public.

(b) Certified legal descriptions of the lots after the boundary line adjustment or agricultural parcel reconfiguration, together with conveyance document(s) and language clearly binding the property which is conveyed to the remainder portion of the property, shall be prepared by a title company or licensed surveyor for all lots affected by the boundary line adjustment or agricultural parcel reconfigurations.

(c) A title insurance certificate updated not more than 60 days prior to recording of the adjustment, which includes all parcels within the adjustment, submitted to the subdivision administrator with boundary line adjustment or agricultural parcel reconfiguration final review documents.

(d) A final boundary line or agricultural parcel reconfiguration map, prepared by a licensed surveyor, along with legal descriptions, shall be prepared and submitted for review and approval. Two map copies shall be provided for review demonstrating compliance with the preliminary boundary line adjustment or parcel reconfiguration approval.

(e) A boundary line adjustment or agricultural parcel reconfiguration is not considered approved until the conveyance documents have been duly stamped as exempt and is filed for record concurrently with all applicable disclosures of WCC 21.03.045 within 12 months of approval of final documents. Failure to record within 12 months of approval means the boundary line adjustment or agricultural parcel reconfiguration application is expired and must be resubmitted for review and approval. (Ord. 2009-030 § 1 (Exh. 1); Ord. 2009-007 § 1; Ord. 2000-056 § 1).

21.03.070 Inactive applications.

An applicant may place an exempt land division, boundary line adjustment, or agricultural parcel reconfiguration application, which has not yet received preliminary approval, on hold for a cumulative maximum of 180 days. This 180-day period shall not include time the applicant is performing studies required by the county when the study is provided within the time frame agreed to by the county and the applicant. Applications which fail to meet these time limits will be considered expired and void. The time periods of this

Prepared by BERK & Whatcom County PDS staff February 28, 2013
chapter do not include the time during which the exempt land division was not actually pursued due to the pendency of administrative appeals or legal actions or due to the need to obtain any other government permits and approvals for the development that authorize the development to proceed, including all reasonably related administrative or legal actions on any such permits or approvals. (Ord. 2009-007 § 1; Ord. 2000-056 § 1).

21.03.080 Requirements for a fully completed exempt land division application.

The following, and any other information on a form prescribed by the subdivision administrator, is required for a complete application for exempt land divisions under WCC 21.01.040(2)(b) and (k).

(1) Written Data and Fees.
   (a) Name, address and phone number of land owner, applicant, and contact person.
   (b) Intended uses.
   (c) A current title report or update of title report issued no more than 60 calendar days prior to application.
   (d) Assessor’s parcel number (of the parent parcel).
   (e) Fees as specified in the Unified Fee Schedule.
   (f) Signature of all owners as shown on title report, and authorization for any agent to act on behalf of owners.

(2) Map Data.
   (a) Name of land owner.
   (b) Name of proposed land division (if an original drawing is prepared).
   (c) General layout of proposed land division.
   (d) Common language description of the general location of the land division.
   (e) Approximate location and names of existing roads identified as either public or private.
   (f) Vicinity map.
   (g) Common engineering map scale/north arrow/sheet numbers (on each sheet containing a map).
   (h) Section, township, range, and municipal and county lines in the vicinity.
   (i) General boundaries of the site with general dimensions shown.
   (j) Legal description of the land. (Ord. 2009-007 § 1; Ord. 2000-056 § 1).

21.03.085 Requirements for a fully completed boundary line adjustment or agricultural parcel reconfiguration application.

The following, and any other information on a form prescribed by the subdivision administrator, is required for a complete application.

(1) Written Data and Fees.
   (a) Name, address and phone number of land owner, applicant, and contact person.
   (b) Intended uses.
   (c) A current title report or update of title report issued no more than 60 calendar days prior to application.
(d) Assessor’s parcel numbers of existing parcels.
(e) Fees as specified in the Unified Fee Schedule.
(f) Signature of all owners as shown on title report, and authorization for any agent to act on behalf of owners.

(2) Map Data.
   (a) Names of land owners.
   (b) Name of proposed boundary adjustment.
   (c) Common language description of the general location of the land division.
   (d) Map at a common engineering scale of boundaries of existing parcels that are contributing to or receiving land from the proposed adjustment.
   (e) Approximate location and labeling of any disputed or undetermined property lines proposing to be resolved by the adjustment.
   (f) Clear depiction of property lines proposed for adjustment which identifies existing property lines and proposed property lines.
   (g) Legal description and area of original parcels.
   (h) Legal description and area of proposed adjusted parcels.
   (i) Approximate location and names of existing roads identified as either public or private.
   (j) Approximate location of existing buildings and existing on-site septic systems.
   (k) Approximate locations of existing utilities and infrastructure.
   (l) Vicinity map.
   (m) Common engineering map scale/north arrow/sheet numbers (on each sheet containing a map).
   (n) Section, township, range, and municipal and county lines in the vicinity.
   (o) General boundaries of the site with general dimensions shown. (Ord. 2009-007 § 1).

21.03.090 Original drawing.

Repealed by Ord. 2009-007. (Ord. 2000-056 § 1).
CHAPTER 21.04 SHORT SUBDIVISIONS

Sections:
21.04.010 Purpose.
21.04.031 Pre-application meeting.
21.04.032 Short subdivision application submittal.
21.04.033 Determination of completeness and vesting.
21.04.034 Application procedures.
21.04.035 Final short subdivision review process.
21.04.038 Applications subject to time limits.
21.04.040 Restriction of further division.
21.04.050 Development requirements.
21.04.060 Roads.
21.04.070 Public dedications.
21.04.080 Easements.
21.04.090 Water supply.
21.04.100 Sewage disposal.
21.04.110 Fire protection.
21.04.120 Short subdivision vacation and alteration.
21.04.130 Land survey.
21.04.150 Requirements for a fully completed application for short subdivisions.
21.04.160 Final review and submittal.
21.04.170 Disclosures and notes.

21.04.010 Purpose.

The purpose of this chapter is to establish or reference the procedure and requirements for the application, review and approval of short subdivisions.


The provisions of WCC 20.40.253 - 254 provide for the segregation of a farmstead parcel with an existing residence(s) from a remainder parcel used for farming in the Agriculture Zone. The remainder parcel is restricted to agricultural use only. Because no further residential development can occur on the remainder parcel and an existing residential structure is already on the farmstead parcel, many of the standard short plat requirements are unnecessary. Therefore, a shortened review process has been established.

Agricultural short plats that qualify under WCC 20.40.253 - 254 shall be subject to the following:
(1) Agricultural short plats that recognize an existing farmstead homesite shall be processed pursuant to all the requirements of this chapter except that the short plat will not be reviewed for compliance with:

(a) WCC 21.04.060 (Roads);

(b) WCC 21.04.090 (Water supply), when the remainder parcel will not require potable water;

(c) WCC 21.04.100 (Sewage disposal);

(d) WCC 21.04.130 (Land survey);

(e) Chapter 16.16 WCC (Critical Areas); and

(f) Shoreline master program.

(2) Any subsequent development must comply with all applicable codes.

(3) Survey Requirements – Partial. A survey, prepared by a professional land survey in accordance with WCC 21.09.010 and 21.09.020, which provides the location of at least two corners of the farmstead parcel shall be submitted. A survey is not required for the remainder parcel that cannot have further residential development.
CHAPTER 20.97 DEFINITIONS

Zoning Definitions

20.97.132 Farmstead parcel.
The “farmstead parcel” is the legally subdivided portion of the parent parcel containing an existing or planned farmstead home site. (Ord. 2005-073 § 1, 2005; Ord. 2001-020 § 1 (Exh. 1 § 3), 2001).

20.97.133 Farmstead home site.
The “farmstead home site” includes that portion of the parent parcel used for existing or planned residential buildings, uses accessory to residential buildings, drainfields, wells, wellhead protection area(s), established landscaped areas contiguous with the non-agricultural built area, and structures as allowed in WCC 20.40.253, (Ord. 2005-073 § 1, 2005).

[Deleted: includes that property primary and secondary agricultural structures and the farmstead]

[Deleted: 2]

[Deleted: (a) through (d)]
Briefing on the 2016 urban growth area review process.

**ATTACHMENTS:**

1. Cover letter
2. Draft UGA Review Schedule

**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.)

Under the Growth Management Act, Whatcom County and the seven cities within the County must update their comprehensive plans and review their urban growth areas by June 30, 2016. The County and cities are coordinating these reviews. County Planning and Development Services would like to provide a quarterly update to the Council.

**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.
March 12, 2013

To: Jack Louws, The Honorable Whatcom County Executive
   The Honorable Whatcom County Council

From: Matt Aamot, Senior Planner
Through: Mark Personius, Long Range Planning Division Manager

RE: 2016 Urban Growth Area Review

Whatcom County is initiating a multi-year project to update the Whatcom County Comprehensive Plan and conduct the urban growth area (UGA) review by June 30, 2016, as required by the Growth Management Act. The Comp Plan update and UGA review will be conducted in close coordination with the seven cities in Whatcom County.

The County and cities have entered into a cost sharing agreement to provide funds for consultant services to assist with the planning process. Specifically, the scope of work contains several major tasks for the consultant, including assistance with:

- County-wide population projections and allocations to urban growth areas, rural areas and resource lands;
- County-wide employment projections and allocations to urban growth areas, rural areas and resource lands; and
- Environmental review under the State Environmental Policy Act.

The County and cities have developed a draft UGA review schedule (attached). In 2013, this schedule includes quarterly meetings of County and city elected officials, quarterly Planning Commission briefings & opportunity for public comment and quarterly County Council briefings. Additionally, the County Planning Commission will conduct a “town hall” meeting this July to obtain public input relating to population and employment projections and allocations. The Planning Commission will hold a hearing and make recommendations on these projections and allocations later in the year. It is anticipated that the County Council and city councils will consider a multi-jurisdictional resolution relating to preliminary population and employment allocations in early 2014.

Thank you for your consideration of this matter. We look forward to discussing the comp plan update and UGA review process with you.
### Draft UGA Review Schedule

#### 2013

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#### 1. Meetings of City/County Officials
- Letter to elected officials
  - Meetings of City/County Elected Officials
  - City Planning Commission Briefings and Opportunity for Public Comment
  - City Council Briefings
  - County Planning Commission Briefings and Opportunity for Public Comment
  - County Council Briefings

#### 2. Hire Consultant
- Issue RFP
- Screen proposals, conduct interviews, & select
- Finalize contract

#### 3. Population/Employment Recommendations
- Consultant - County-wide & UGA Allocations Report
  - Town Hall Meeting
  - City/County Planner Group Review & Recommendations
  - Planning Commission Hearing & Recommendations on allocations to UGAs

#### 4. City Development Regulation Review
- Minimum Densities
- Setbacks from Ag, Forestry & MRL Designations

#### 5. LCA Detailed Methodology
- Refinements by City/County Planners
  - Review by City Councils
  - Review by County Council

#### 6. UGA Alternatives
- City/County Planner Group alternatives

#### 7. LCA Results (Preliminary)
- Based upon UGA alternatives

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**Note:** Primary tasks that involve consultant work are shown in red. The time-frames in this 2013-2016 schedule are approximate and subject to change.
### Draft UGA Review Schedule

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<th>1. Meetings of City/County Officials</th>
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<th>2. Multi-jurisdictional Resolution</th>
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<td>Approval of multi-jurisdictional resolution regarding growth allocations to UGAs</td>
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<th>3. LCA Results (Preliminary)</th>
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<th>4. Population/Employment Allocations</th>
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<td>Consultant - Allocations to transportation analysis zones</td>
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<th>5. Transportation Model</th>
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<td>WCOG transportation modelling with the 2036 and other planning horizon years</td>
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<th>6. Draft Capital Facility Plans</th>
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<td>Develop draft Capital Facility Plans with the 2036 planning horizon year</td>
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<th>7. SEPA Review</th>
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## Draft UGA Review Schedule

### 2016

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1. **Meetings of City/County Officials**
   - Meetings of City/County Elected Officials

2. **City Councils**
   - City Council review and adoption of city comprehensive plans and capital facility plans

3. **County Council**
   - County Council review and adoption of County Comprehensive Plan and capital facility plans

4. **LCA Results (Final)**
   - Based upon County Comprehensive Plan, as adopted by the Whatcom County Council
**WHATCOM COUNTY COUNCIL AGENDA BILL**

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**TITLED OF DOCUMENT:**

**ATTACHMENTS:**

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

Strategy planning discussion and positions to be taken regarding collective bargaining. (per RCW 42.30.140(4)(a))

**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](http://www.co.whatcom.wa.us/council).
**REQUEST FOR EXECUTIVE SESSION**

- **Title:** Request Executive Session for discussion of possible property acquisition.

**Attachments:**

- SEPA review required? ( ) Yes ( x ) NO
- SEPA review completed? ( ) Yes ( x ) NO
- Should Clerk schedule a hearing? ( ) Yes ( x ) 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.

Discussion regarding a potential property acquisition with County Executive Jack Louws and Sheriff Bill Elfo (Discussion of this item may take place in executive session (closed to the public pursuant to RCW 42.30.110 (1) (b))

**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](http://www.co.whatcom.wa.us/council)
**WHATCOM COUNTY COUNCIL AGENDA BILL**

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**RECEIVED**

MAR 19 2013

WHATCOM COUNTY COUNCIL

**TITLE OF DOCUMENT:** Request Executive Session discussion of possible property acquisition.

**ATTACHMENTS:**

**SEPA review required?** ( ) Yes ( x ) NO

**SEPA review completed?** ( ) Yes ( x )

**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 County Executive requests an Executive Session to discuss a possible general government property acquisition

**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](http://www.co.whatcom.wa.us/council)
WHATCOM COUNTY COUNCIL AGENDA BILL

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Agenda Date: 3/12/2013
Assigned to: Council - Introduction

RECEIVED
MAR 05 2013
WHATCOM COUNTY COUNCIL

TITLE OF DOCUMENT:
Ordinance regarding changing the Speed Limits on Pacific Highway, Lincoln Road, Bass Street and Autumnwood Court.

ATTACHMENTS:
1. Memo to County Executive
2. Ordinance
3. Vicinity maps
4. Traffic Speed Reports

SEPA review required? ( ) Yes ( X ) NO
SEPA review completed? ( ) Yes ( X ) NO
Should Clerk schedule a hearing? ( X ) Yes ( ) NO
Requested Date: 3/26/2013

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.)

To comply with RCW 46.61.415, it is found necessary and expedient to modify the speed limits on Pacific Highway, Lincoln Road, Bass Street and Autumnwood Court.

COMMITTEE ACTION:

COUNCIL ACTION:
3/12/2013: Introduced

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.
MEMO TO: The Honorable Jack Louws, Whatcom County Executive, and Honorable Members of the Whatcom County Council

Through: Frank Abart, Public Works Director

FROM: Joseph P. Rutan, P.E., County Engineer/Assistant Director

DATE: 2/13/2013

RE: Ordinance Regarding Change of Speed Limits on Various Roads

Requested Action:
Recommend adoption of an ordinance for the change of speed limit on Pacific Highway, Lincoln Road, Bass Street, and Autumnwood Court.

Background and Purpose:
The County Engineer is recommending a change of speed limit from 35 miles per hour to 40 miles per hour on Pacific Highway from Bellingham City Limits to the Ferndale City Limits located in Sections 3, 10, and 11, Township 38 North, Range 2 East, W.M. and Section 34 Township 39 North Range 2 East, W.M.

The County Engineer is recommending a change of speed limit from 35 miles per hour to 45 miles per hour on Lincoln Road from Blaine City Limits to Harbor View Road located in Sections 13 and 24, Township 40 North, Range 1 West, W.M.

The County Engineer is recommending a change of speed limit from 35 miles per hour to 25 miles per hour on Bass Street the entire length located in Section 32 and 33, Township 38 North, Range 3 East and W.M. Sections 4 and 5, Township 37 North, Range 3 East, W.M.

The County Engineer is recommending a change of speed limit from 35 miles per hour to 25 miles per hour on Autumnwood Court the entire length located in Section 5, Township 37 North, Range 3 East, W.M.

Information:
This ordinance will allow change of speed limits on Pacific Highway, Lincoln Road, Bass Street, and Autumnwood Court. It is to comply with RCW 46.61.415.

Enc.
ORDINANCE NO.__________
TO ESTABLISH SPEED LIMITS ON CERTAIN COUNTY ROADS

WHEREAS, the Whatcom County Council is authorized under RCW 46.61.415 to establish speed limits on certain County roads; and

WHEREAS, a traffic study was conducted by the County Engineer’s office; and

NOW, THEREFORE, BE IT ORDAINED that the speed limits be established as follows:

35-mph 40 mph on Pacific Highway from Bellingham City Limits to the Ferndale City Limits located in Sections 3,10, and 11, Township 38 North, Range 2 East, W.M. and Section 34 Township 39 North Range 2 East, W.M.

35-mph 45 mph on Lincoln Road from Blaine City Limits to Harbor View Road located in Sections 13 and 24, Township 40 North, Range 1 West, W.M.

35-mph 25 mph on Bass Street entire length located in Sections 32 and 33, Township 38 North, Range 3 East and W.M. Sections 4 and 5, Township 37 North, Range 3 East, WM.

35-mph 25 mph on Autumnwood Court entire length located in Section 5, Township 37 North, Range 3 East, W.M.

BE IT FURTHER ORDAINED that the County Engineer is hereby directed to post the appropriate signs and that the Whatcom County Sheriff and the Washington State Patrol be notified by a copy of this ordinance.

Provisions of this ordinance are hereby added to Whatcom County Code, Sections 10.04.030, 10.04.060 and 10.04.070.

ADOPTED this ____ day of _____, 2013.

ATTEST: _______________________________ WHATCOM COUNTY COUNCIL

Dana Brown-Davis, Council Clerk WHATCOM COUNTY, WASHINGTON

Kathy Kershner, Council Chair

APPROVED AS TO FORM: _______________________________

( ) Approved ( ) Denied

Civil Deputy Prosecutor Jack Louws, Executive

Daniel J. Finley Date:
Vicinity Map: Proposed Speed Limit Change for Pacific Hwy
(35 mph to 40 mph)

Vicinity Map: Proposed Speed Limit Change for Lincoln Rd
(35 mph to 45 mph)
Vicinity Map: Proposed Speed Limit Change for Bass St. and Autumnwood Ct. (35 mph to 25 mph)
Pacific Highway Traffic Study MP 0.48 to 2.48

A request from a private citizen to raise the speed limit on a portion of Pacific Highway from the Bellingham City Limits north to Slater Road is the purpose of this study. A primary principle of traffic engineering is providing safe and quick as possible travel between destinations.

The traffic study consisted of a traffic count, review of collisions, review of signs and measurement of road and shoulder. Pacific Highway has a Federal Classification as local access road. The road has 12 foot driving lanes and 6-foot gravel shoulders with a speed limit of 35 mph. This road abuts the I-5 rights-of-way so all of the accesses are on the east side of the road.

Speeds and Volumes
A traffic speed count was taken at the approximate milepost of 2.18 and was taken from May 17th through May 23rd 2012. The count consists of volume, speed and percent trucks.
Counts: ADT 1717
Speed: 85th percentile 46.5 MPH (Speed Limit 35 mph)
Trucks: 3.7 %

Collisions
A review of collisions that we have received from the Washington State Patrol showed there have been ten collisions in the last four years (2008-2011) from Bellingham City limits to Slater Road. There were five injury collisions which three of these were single car collisions. Three of the ten collisions were caused by drivers that were under influence of alcohol. Five of the ten collisions were in the area of the only horizontal curve on the road.

Stopping Sight Distance
Stopping sight distance was measured for all hills in the study area. The stopping sight distance for 45 mph is 360 feet and all locations measured exceeded the minimum requirement.

Curve Evaluation
There is one horizontal curve in the study area at the approximate mp 2.33. The curve was banked and was within standard for a 40 mph curve but did not meet it at 45 mph.

Conclusion
Pacific Highway is a local access road and is a frontage road for Interstate 5. It only has accesses on the east side of the road and has no through roads that connect to it in the study area.

The 85th percentile speeds are much higher than would be expected for a 35 mph road. This road has the capability of having a speed limit of 40 mph or 45 mph. There is only one design feature that would limit it and that is the one curve that does not meets the 45 mph requirements.
9/11/12

Lincoln Road Traffic Study MP 0.00 to 1.18

A request from a citizen to raise the speed limit on a portion of Lincoln Road from 35 mph to 45 mph from Blaine City Limits to Harborview Road is the reason for this study. A primary principle of traffic engineering is providing safe and quick as possible travel between destinations.

The traffic study consisted of a single traffic count located between Shintaffer Road and Harborview Road on Lincoln Road, review of collisions, and measurement of road and shoulder. Lincoln Road has a Federal Classification as a Rural Minor Collector. The road was reconstructed in 2011 to 12 foot driving lanes and 8-foot plus paved shoulders. Speed limit is posted 35 mph but the new road reconstruction was designed for 45 mph.

Speeds and Volumes

Traffic counts and speeds were taken from August 3rd to August 9th 2012 and the following is the results;
Average daily trips (ADT) 2681
85% speeds 47.7 mph
Trucks 1.3 %

Collisions

The collision review was from the beginning of 2009 to present. There have been 5 collisions in the study area that we have received from Washington State DOT. All collisions were prior to or during the reconstruction of the road with two being at the intersection of Shintaffer Road. The other 3 collisions were single car with two hitting fixed objects and one collided with a deer.

Conclusion

There have been no collisions since the road was reconstructed and the road was constructed to handle the higher speed. The road is a Rural Minor Collector and is functioning at the higher speeds as shown by the 85% speeds.
WHATCOM COUNTY COUNCIL AGENDA BILL

CLEARANCES

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Dept. Head: [Blank]
Prosecutor: [Blank] 03/05/13
Purchasing/Budget: [Blank] 03/05/13
Executive: [Blank] 03/05/13

TITLE OF DOCUMENT: Resolution and Public Hearing regarding Community Development Block Grant funding application.

ATTACHMENTS: Memo from County Executive; CDBG Public Hearing handout; Resolution and Certification of Compliance.

SEPA review required? (  ) Yes ( X ) NO
SEPA review completed? (  ) Yes ( X ) NO
Should Clerk schedule a hearing? ( X ) Yes (  ) NO
Requested Date: March 26, 2013

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 Opportunity Council is on the state Community Development Block Grant (CDBG) list of 2013 Public Services Grant recipients, which is a State formula grant in the amount of $115,409 for distribution to the tri-county area of Whatcom, Skagit and Island Counties. In order to apply for the funding, the Community Action Agency (Opportunity Council) is required to submit an application through their local jurisdiction, Whatcom County. The grant funding is intended to fund new or expanded direct services for persons with low- and moderate- incomes in Island, San Juan and Whatcom Counties. The Opportunity Council will act as Subrecipient of the funding, and Whatcom County will be the lead agency in the grant application process.

Public Hearing Notice language:

NOTICE IS HEREBY GIVEN that a public hearing will be held by the Whatcom County Council in the Council Chambers, Whatcom County Courthouse, 311 Grand Avenue, Bellingham, on Tuesday, March 26, 2013 at 7:00 p.m. The purpose of the public hearing is to review community development and housing needs, inform citizens of the availability of funds and eligible uses of the state Community Development Block Grant (CDBG), and receive comments on proposed activities, particularly from low- and moderate-income persons and persons residing in Whatcom County. Up to $115,409 will be available to Whatcom, Skagit and Island Counties, through the Opportunity Council, to fund public service activities that principally benefit low- and moderate-income persons. A Resolution will be reviewed, which would authorize the County Executive to submit an application to the State of Washington for this funding. The draft grant application including an overview of the proposed public services will be available for review at the Whatcom County Executive’s office, Suite 108, 311 Grand Avenue, Bellingham, after April 1, 2013. Comments may also be submitted in writing to the Whatcom County Council until the public hearing has been closed.

COMMITTEE ACTION: 3/12/2013: Introduced

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.
MEMORANDUM

To: Whatcom County Council Members
From: Jack Louws, County Executive
Subject: CDBG Grant Application for 2013 Public Services Grant
Date: March 4, 2013

We have been contacted by the Opportunity Council regarding acting as the lead agency to apply for a 2013 Public Services Grant. This formula grant will support new or expanded direct services for persons with low and moderate incomes in the Whatcom, Skagit and Island County area.

They are requesting that Whatcom County act as the lead agency in the Community Development Block Grant application process. Through a subrecipient agreement with the County, they will administer the grant and oversee the distribution of services. The grant amount allocated to the tri-county area is $112,409, plus $3,000 for county administration costs. Attached is a breakdown of the 3-county distribution allocation. Also, the Opportunity Council has offered the county a match of an additional $3,000 to assist in covering administrative costs.

I am supporting this application and recommending to the Council its submission. As part of the application process, we are required to conduct a public hearing in order to receive public input on the use of CDBG funds and to inform the public on the nature of this funding opportunity. As lead agency for this pass-through grant, the County Council is required to sign a Resolution in support of the application. Please note the attached Resolution.

Thank you for your consideration of this matter. If you have any questions, please don’t hesitate to contact me.

/Enclosures
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More information from Dave...let’s discuss tomorrow.

Thanks!

Tawni Helms, PHR
Administrative Coordinator
Whatcom County Executive Office
311 Grand Avenue, Suite 108
Bellingham, WA 98225
360-676-6717

---

From: Dave Finet [mailto:dave_finet@oppco.org]
Sent: Wednesday, February 27, 2013 3:14 PM
To: Tawni Helms
Subject: Fwd: 2013 Public Services Grant Application Handbook

Tawni

Attached is the application handbook. I can get the application from last year from Island County if that would help in this process?

I know that the $3,000 provided for admin as part of the CDBG grant doesn’t cover the cost of administrating it. I talked it over with our CFO and we would like to offer up another $3,000 of OC discretionary funding to help cover County costs if that would help. We appreciate Whatcom County supporting the programs we deliver and want to do what we can to make this work. Let me know if this would be helpful and we can make it happen.

Thanks for all your support in helping us access these funds.

Dave

---

Dave Finet
Executive Director
Opportunity Council
1111 Cornwall Ave.
Bellingham WA 98225
360-734-9121 ext 346

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THE PROMISE OF COMMUNITY ACTION

Community Action changes people’s lives, embodies the spirit of hope, improves communities, and makes America better place to live. We care about the entire community, and we are dedicated to helping people help themselves and each other.
Community Development Block Grant Program

For More Information:

John LaRocque
Executive Director
360.725.3166
john.larocque@commerce.wa.gov

Kaaren Roe
Program Manager
360.725.3018
kaaren.roe@commerce.wa.gov

Phyllis Cole
Project Manager
360.725.4001
phyllis.cole@commerce.wa.gov

Laurie Dschaak
Grant Specialist
360.725.5020
laurie.dschaak@commerce.wa.gov

Mary Trimarco
Business Services Manager
206.256.6146
mary.trimarco@commerce.wa.gov

Introduction

The Washington State Community Development Block Grant (CDBG) program provides funds on a competitive basis for public facilities, community facilities, economic development, affordable housing, public services and planning projects that principally benefit low- and moderate-income persons.

Since 1982, the Washington State CDBG Program has distributed and managed over $445 million from the U.S. Department of Housing and Urban Development (HUD). With this funding, the CDBG Program improves the economic, social and physical environment of eligible, rural cities and counties to enhance the quality of life for low- and moderate-income residents, and as a result, make a difference for the entire community.

2013 Funding Set-Asides

In 2013, approximately $12 million in federal CDBG funds are anticipated to be awarded to Washington State. These funds are proposed to be distributed as follows:

- **General Purpose Grants**
  
  Contact: Kaaren Roe
  
  Grants for public facility, community facility, affordable housing, or economic development projects principally benefiting low- and moderate-income persons in eligible rural communities. Annual competitive application cycle with maximum grant of $750,000 or $1 million if higher funding criteria are met. Application materials are released in November 2012, with applications due by January 31, 2013 and awards announced in May 2013.

  **$9,750,000**

- **Planning-Only Grants**
  
  Contact: Phyllis Cole
  
  Grants for a range of planning activities that lead to implementation of priority projects for eligible small communities and rural counties. Maximum grants at $24,000 or $35,000 for critical public health issues where non-compliance, hardships and lack of other funding exist. Application materials are released in April 2013 and can be submitted year round beginning May 2013, with first awards announced by July 2013 and ongoing until all funds have been awarded.

  **$425,000**

2013 amounts are proposed, contingent upon approval of the state 2013 Action Plan and federal funding.
- **Housing Enhancement Grants** $200,000
  Contact: Kaaren Roe
  Companion funds to support priority applications submitted to the Washington State Housing Trust Fund, which fund necessary off-site infrastructure or community facility components of the affordable housing project.

- **Imminent Threat Grants** $125,000
  Contact: Kaaren Roe
  Provides funds to address unique emergencies posing a serious and immediate threat to public health and safety on a funds availability basis. Upon formal Declaration of Emergency and completion of an Imminent Threat grant application, costs can be covered for a temporary repair or solution while funding for a permanent fix is secured.

- **Public Services Grants** $1,500,000
  Contact: Laurie Dschaak
  Provides funds to 17 eligible counties and community action agencies to fund new or expanded direct services for persons with low- and moderate- incomes.

- **CDBG Economic Development Loans** $11,000,000
  Contact: Mary Trimarco
  Provides eligible jurisdictions with short-term loans for economic development/job creation financing for CDBG-eligible activities meeting a HUD National Objective. Applications may be submitted on an ongoing, fund available basis.
  - Float Loan - Economic Development/Job Creation
  - HUD Section 108 Guarantee Loans

**HUD National Objectives**
CDBG project activities must meet one of three HUD National Objectives:
- Principally benefits low-and moderate-income persons
- Aids in the prevention or elimination of slums or blight
- Addresses imminent threat to public health or safety

**CDBG Eligibility Guidelines**
- Eligible applicants are Washington State cities/towns with less than 50,000 in population and not participating in a CDBG entitlement urban county consortium; and counties with less than 200,000 in population. Eligible cities/towns and counties are listed on the CDBG website.
- Special purpose districts, public housing authorities, community action agencies, economic development councils, other nonprofit organizations, and Indian tribes are not eligible to apply directly to the state CDBG Program for funding, but may be a partner in projects and subrecipient of funding with an eligible city/town or county applicant.
- Applicants may submit one request per fund each program year. Exception: An eligible city/town or county may apply for a second General Purpose Grant if one application is for a local microenterprise assistance program.
RESOLUTION NO.______
APPLICATION FOR A COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG)

WHEREAS, Whatcom County is applying to the State Office of Community Development for funding assistance; and

WHEREAS, it is necessary that certain conditions be met as part of the application requirements; and

WHEREAS, County Executive Jack Louws is authorized to submit this application to the State of Washington on behalf of Whatcom County; and

NOW, THEREFORE, BE IT RESOLVED that the Whatcom County Council authorizes submission of this application to the state Department of Commerce to request up to $115,409 and any amended amounts to fund public service activities in coordination with the Opportunity Council, and certifies that if funded, it:

Will comply with applicable provisions of Title I of the Housing and Community Development Act of 1974, as amended, and other applicable state and federal laws; and

Has provided opportunities for citizen participation comparable to the state’s requirements (those described in Section 104(a)(2)(3) of the Housing and Community Development Act of 1974, as amended); has complied with all public hearing requirements and provided citizens, especially low and moderate-income persons, with reasonable advance notice of, and the opportunity to present their views during the assessment of community development and housing needs, during the review of available funding and eligible activities, and on the proposed activities; and

Has provided technical assistance to citizens and groups representative of low and moderate income persons that request assistance in developing proposals; and

Will provide opportunities for citizens to review and comment on proposed changes in the funded project and program performance; and

Will not use assessments against properties owned and occupied by low and moderate income persons or charge user fees to recover the capital costs of CDBG-funded public improvements from low and moderate income owner-occupants; and
Will establish a plan to minimize displacement as a result of activities assisted with CDBG funds; and assist persons actually displaced as a result of such activities, as provided in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended; and

Will conduct and administer its program in conformance with Title VI of the Civil Rights Act of 1964 and the Fair Housing Act, and will affirmatively further fair housing, (Title VIII of the Civil Rights Act of 1968); and

Has adopted (or will adopt) and enforce a policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations; and has adopted (or will adopt) and implement a policy of enforcing applicable state and local laws against physically barring entrance to or exit from a facility or location which is the subject of such nonviolent civil rights demonstration within its jurisdiction, in accordance with Section 104(1) of the Title I of the Housing and Community development Act of 1974, as amended; and

Certifies to meeting the National Environmental Policy Act (NEPA) through a determination the CDBG-funded public services will not have a physical impact or result in any physical changes and are exempt under 24 CFR 58.34(a), and are not applicable to the other requirements under 24 CFR 58.6; and are categorically exempt under the State Environmental Policy Act (SEPA) per WAC 197-11-305 (2); and

Whatcom County designates Jack Louws, County Executive, as the authorized Chief Administrative Official and authorized representative to act in all official matters in connection with this application and Whatcom County's participation in the Washington State CDBG Program.

APPROVED this ___ day of __________, 2013.

ATTEST:  WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

__________________________        ________________________________
Dana Brown-Davis, Clerk of the Council    Kathy Kershner, Council Chair

APPROVED AS TO FORM:

____________________________
Daniel L. Gibson
Civil Deputy Prosecutor
Appointments to Portage Bay Shellfish District: various applicants

Appoint applicants to existing vacanc(y)es on the Portage Bay Shellfish Protection District Advisory Committee. Terms are four years, ending January 31, 2017.
WHATCOM COUNTY COUNCIL

BOARDS AND COMMISSIONS VACANCIES
March 15, 2013

COUNCIL-APPOINTED BOARDS AND COMMISSION VACANCIES

The Whatcom County Council makes appointments. All members must live in and be registered to vote in Whatcom County and, if applicable, meet the residency, employment, and/or affiliation requirements of the position. Applications are available in the Council Office, Whatcom County Courthouse, 311 Grand Ave., Suite 105, Bellingham, on the County website at: (http://www.co.whatcom.wa.us/boards/boardsapplication.pdf), or phone 360-676-6690. For more information on a board or committee, call the Council office at 676-6690, unless otherwise noted. The County Council will make appointments at a regular County Council meeting in the County Council Chambers, 311 Grand Avenue, Bellingham.

PORTAGE BAY SHELLFISH PROTECTION DISTRICT ADVISORY COMMITTEE: 2 Vacancies. Four-year term.

Members must have a direct interest in the Shellfish Protection District. The Advisory Committee will monitor and advise on the overall operations of the Shellfish Protection District which was formed in response to the closure of portions of Portage Bay to shellfish harvesting due to contamination of the water. The District shall approximate the area included in the Nooksack Watershed. The northern District boundary is approximately from Marine Drive at the Lummi Indian Reservation north to the western boundary of the City of Ferndale, then continue north to the Canadian border at Markworth Road. Then, east along the Canadian border to Hammer Road, south to Nugent’s Corner, and north to the Canadian border that is north of Kendall. Finally, east along the border to the Mt. Baker National Forest. The southern District boundary runs approximately from Marine Drive at Wynn Road, northeast around the Bellingham city limits, then southeast from E. Smith Road at Mission Road to Highway 9 at Saxon Road, then finally to the Whatcom/Skagit county line.
APPLICATION FOR APPOINTMENT TO WHATCOM COUNTY BOARDS AND COMMISSIONS

PLEASE PRINT LEGIBLY and COMPLETE ALL ITEMS

Name: Christine Woodward
Street Address: 2715 W. Illinois
City: Bellingham
Date: 1-10-13
Zip Code: 98225

Mailing Address (if different from street address): 

Day Telephone: 360-601-6336 Evening Telephone: Same Cell Phone: Same

E-mail address: Orcannis@yahoo.com

1. Name of board or committee-please see reverse: Portage Bay Shellfish Advisory Committee

2. You must specify which position you are applying for. Please refer to vacancy list.

3. Do you meet the residency, employment, and/or affiliation requirements of the position for which you’re applying? (If applicable, please refer to vacancy list.) ( ) Yes ( ) No

4. Which Council district do you live in? ( ) One ( ) Two ( ) Three

5. Are you a US citizen? ( ) Yes ( ) No

6. Are you registered to vote in Whatcom County? ( ) Yes ( ) No

7. Have you ever been a member of this Board/Commission? ( ) Yes ( ) No

If yes, dates: 1998 - 2000

8. Do you or your spouse have a financial interest in or are you an employee or officer of any business or agency that does business with Whatcom County? ( ) Yes ( ) No

If yes, please explain:

9. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education.

     Current: Director of Natural Resources Samish Indian Nation
     Past: Whatcom County Shellfish Protection Districts, Manager
     Graduate of Western College, Worked on Time Project on the Dunes Restoration

10. Please describe why you’re interested in serving on this board or commission: I was previously part of the process with the County with Portage and Dungeness districts and want to be able to share my knowledge.

References (please include daytime telephone number):
     George Boggs - Whatcom Conservation District 360-359-2035

Signature of applicant: ____________________________

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APPLICATION FOR APPOINTMENT TO WHATCOM COUNTY BOARDS AND COMMISSIONS

PLEASE PRINT LEGIBLY and COMPLETE ALL ITEMS

Name: Lee First
Date: 2/5/2013
Street Address: 2309 Meridian Street
City: Bellingham Zip Code: 98225
Mailing Address (if different from street address): Same
Day Telephone: 360-733-8307 Evening Telephone: 527-8442 Cell Phone: __________
E-mail address: lee@e-w-sources.org

1. Name of board or committee-please see reverse:
Portage Bay Shellfish Protection District Advisory Committee seat

2. You must specify which position you are applying for. Please refer to vacancy list.

3. Do you meet the residency, employment, and/or affiliation requirements or the position for which you’re applying?
(If applicable, please refer to vacancy list.) X yes ( ) no

4. Which Council district do you live in? X One ( ) Two ( ) Three

5. Are you a US citizen? X yes ( ) no

6. Are you registered to vote in Whatcom County? X yes ( ) no

7. Have you ever been a member of this Board/Commission? X yes ( ) no
If yes, dates:

8. Do you or your spouse have a financial interest in or are you an employee or officer of any business or agency that does business with Whatcom County? X yes ( ) no
If yes, please explain:

9. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education.
B.S. Environmental Studies - Western Washington University
Currently employed as Pollution Prevention Specialist/RESrcs.
Previous Positions: Water Resources Specialist w/ Lummi Nation,
Wetland Ecologist w/ Skagit County Public Works,
Environmental Supervisor at City of Centralia

10. Please describe why you’re interested in serving on this board or commission: I am concerned w/ water quality issues in Whatcom County.

References (please include daytime telephone number):
Wendy Steffensen 733-8307 Mark Kaufman 715-5221

Signature of applicant: Lee First

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**TITLE OF DOCUMENT:** Appointments to the Whatcom County Behavioral Health Advisory Board

**ATTACHMENTS:** Memorandum dated 2/11/13 from Health Department Director Regina Delahunt; Applications of members

**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.)

County Executive Jack Louws recommends the confirmation of his initial appointments of the following individuals to the new Behavioral Health Advisory Board: Amy Schubert, Carol Hawk, David Kincheloe, Michael Massanari, Larry Richardson, Dascomb Jamison, Teresa Bosteter and Mark McDonald.

**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](http://www.co.whatcom.wa.us/council).
Memorandum

TO: Jack Louws, Whatcom County Executive, and Members of the Whatcom County Council

FROM: Regina A. Delahunt, Director

DATE: February 11, 2013

RE: Appointment of Behavioral Health Advisory Board (BHAB) Members

Requested Action

Health Department staff has reviewed the applications for the newly forming BHAB and recommends the appointment of Amy Schubert, Carol Hawk, David Kincheloe, Michael Massanari, Larry Richardson, Dascomb Jamison, Teresa Bosteter, and Mark McDonald. Six of the eight applicants served previously on the Mental Health or Substance Abuse advisory boards. If appointed, these applications must be forwarded to the council for confirmation as required by WCC 2.44.030.

Background and Purpose

The Behavioral Health Advisory Board is a newly forming board per Whatcom County Code 2.44.030 and Ordinance 2012-042. The board shall serve in an advisory capacity to the health department on general priorities for behavioral health programs, including substance abuse and mental health services. The board shall consist of 10 members who are residents of Whatcom County, including three positions filled by individuals who are in recovery from addiction, three members who are living with mental illness or have loved ones living with mental illness, three members who have a professional interest in behavioral health (such as ‘experts’ from the field), and one member of the County Council.

Information

Applications are attached.

If you need additional information you may contact Anne Deacon at ext. 50877.
APPLICATION FOR APPOINTMENT TO WHATCOM COUNTY BOARDS AND COMMISSIONS
PLEASE PRINT LEGIBLY and COMPLETE ALL ITEMS

Name: Amy Schubert
Street Address: 2101 N. Shore Rd.
City: Bellingham
Mailing Address (if different from street address): 
Date: 10-15-2012
Zip Code: 98226

Day Telephone: 752-8927 Evening Telephone: 392-8979 Cell Phone: 
E-mail address: Amy. Schubert 2011 @ gqmail.com

1. Name of board or committee—please see reverse: Substance Abuse Advisory Board

2. You must specify which position you are applying for. Please refer to vacancy list.

   Board Member

3. Do you meet the residency, employment, and/or affiliation requirements of the position for which you're applying? (If applicable, please refer to vacancy list.) ( ) Yes ( ) No

4. Which Council district do you live in? ( ) One ( ) Two ( ) Three

5. Are you a US citizen? ( ) Yes ( ) No

6. Are you registered to vote in Whatcom County? ( ) Yes ( ) No

7. Have you ever been a member of this Board/Commission? ( ) Yes ( ) No
   If yes, dates:

8. Do you or your spouse have a financial interest in or are you an employee or officer of any business or agency that does business with Whatcom County? ( ) Yes ( ) No
   If yes, please explain:

9. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education.

   Retention Project Coordinator @ BTC
   Masters Degree in Public Service Criminal Justice Concentration
   Executive Director of the (ESARA) Eastern Service Area Authority
   of Montana 2008 - 2009

10. Please describe why you're interested in serving on this board or commission:

   I have a personal passion regarding Substance Abuse Issues

References (please include daytime telephone number):

Signature of applicant: Amy Schubert

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APPLICATION FOR APPOINTMENT TO WHATCOM COUNTY BOARDS AND COMMISSIONS

PLEASE PRINT LEGIBLY AND COMPLETE ALL ITEMS

Name: Carol Wethington Hawk
Street Address: 188 Palo Park Dr
City: Bellingham WA
Zip Code: 98229

Date: Feb. 6th 2013

Day Telephone: 360-2517    Evening Telephone: 250-2184    Cell Phone: 360-2517
E-mail address: carolwhawk@comcast.com

1. Name of board or committee—please see reverse: Substance Abuse Advisory Board

2. You must specify which position you are applying for.
   Please refer to vacancy list.

3. Do you meet the residency, employment, and/or affiliation requirements of the position for which you're applying?
   (If applicable, please refer to vacancy list.)
   Yes ( ) No ( )

4. Which Council district do you live in?
   One ( ) Two ( ) Three ( )

5. Are you a US citizen?
   Yes ( ) No ( )

6. Are you registered to vote in Whatcom County?
   Yes ( ) No ( )

7. Have you ever been a member of this Board/Commission?
   Yes ( ) No ( )

8. Do you or your spouse have a financial interest in or are you an employee or officer of any business or agency that does business with Whatcom County?
   Yes ( ) No ( )

9. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education.
   - Director of Community Health Outreach Programs at United General Hospital (15 years)
   - BS in Community Health, working on MPH, Master certified (CHES)
   - Completed the SAPST training
   - Orchestrates several substance abuse programs and staff

10. Please describe why you're interested in serving on this board or commission:
    giving back to the community I live in, increased awareness of programs

Reference (please include daytime telephone number):

Dr. Billie Lindsey - 670-2595  Sarah Heiman - 354-9345

Signature of applicant: Carol W. Hawk

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APPLICATION FOR APPOINTMENT TO WHATCOM COUNTY BOARDS AND COMMISSIONS
PLEASE PRINT LEGIBLY and COMPLETE ALL ITEMS

Name: DAVID KINCHELOE
Street Address: 1015 OTIS ST APT 110
City: BELLINGHAM, WA
Mailing Address (if different from street address): SAME AS ABOVE
Day Telephone: (360) 961-8611 Evening Telephone: (360) 961-8611 Cell Phone: (360) 961-8611
E-mail address: DKINCHELOE@GMAIL.COM

Date: 11/8/2012
Zip Code: 98226

1. Name of board or committee—please see reverse: MENTAL HEALTH/STANCE ABUSE ADVISORY BOARD
2. You must specify which position you are applying for. Please refer to vacancy list. CHAIR/V. CHAIR/MEMBER
3. Do you meet the residency, employment, and/or affiliation requirements of the position for which you are applying? (If applicable, please refer to vacancy list.) (X) yes ( ) no
4. Which Council district do you live in? ( ) One ( ) Two ( ) Three
5. Are you a US citizen? (X) yes ( ) no
6. Are you registered to vote in Whatcom County? (X) yes ( ) no
7. Have you ever been a member of this Board/Commission? (X) yes ( ) no
   If yes, dates: 1/31/13
8. Do you or your spouse have a financial interest in or are you an employee or officer of any business or agency that does business with Whatcom County? (X) yes ( ) no
   If yes, please explain:
9. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education.
   Former Occupation: Professor/lecturer Psych, Neurolgy, Social Psych, M.D., Ph.D. + years
   Education: B.A. Soc. Psych; B.S. European Internl History; M.A. Soc. Psych; M.D. Demography, Ph.D. (ABD)
   Qualifications: High-level involvement in WA/CA at local/Country; state levels in MH/SA issuing/boards, etc. Not involved in MH through NIMH and NAMI.
   Currently volunteer of NSWHA: WWAHA Healthcare Integration Task Force.
10. Please describe why you are interested in serving on this board or commission: Same as before. Personal interest, academic/intellectual interest, interest in healthcare integration/ACO issues, comparative effectiveness.

References (please include daytime telephone number): None.

Signature of applicant: [Signature]

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APPLICATION FOR APPOINTMENT TO WHATCOM COUNTY BOARDS AND COMMISSIONS
PLEASE PRINT LEGIBLY and COMPLETE ALL ITEMS

Name: R. Michael Massanari, MD MS
Date: 1/8/2013
Street Address: 930 HENNEKER LOOP
City: LYNDEN
Zip Code: 98264
Mailing Address (if different from street address):

Day Telephone: 360 922 9463 Evening Telephone:
Cell Phone: 360 510 3048
E-mail address: Michael.Massanari@whatcom.edu

1. Name of board or committee—please see reverse:
   Mental Health Advisory Board

2. You must specify which position you are applying for. Please refer to vacancy list.
   Member of Combined MH/SA Board

3. Do you meet the residency, employment, and/or affiliation requirements of the position for which you’re applying?
   (If applicable, please refer to vacancy list.) (x) yes ( ) no

4. Which Council district do you live in? ( ) One (x) Two ( ) Three

5. Are you a US citizen? (x) yes ( ) no

6. Are you registered to vote in Whatcom County? (x) yes ( ) no

7. Have you ever been a member of this Board/Commission? (x) yes ( ) no

   If yes, dates: 2010 - PRESENT

8. Do you or your spouse have a financial interest in or are you an employee or officer of any business or agency that does business with Whatcom County? ( ) yes (x) no

   If yes, please explain:

9. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education:

   I am a retired Professor of Internal Medicine and Community Medicine at Wayne State University, Detroit, MI. I served as Director of Critical Multidisciplinary Institute (WMU) from 2010-2012. In Michigan I also served as Director of Project CARE—a collaborative project to improve evidence-based practices for Mental Health/Substance Abuse.

10. Please describe why you’re interested in serving on this board or commission: I am concerned for improving services for people with mental illness and/or substance abuse.

References (please include daytime telephone number):

   Jackie Mitchell, Director Behavioral Health Services - 626-672-5415

Signature of applicant: [Signature]

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APPLICATION FOR APPOINTMENT TO WHATCOM COUNTY BOARDS AND COMMISSIONS
PLEASE PRINT LEGIBLY and COMPLETE ALL ITEMS

Name: Larry S. Richardson
Street Address: 75 Garden St N, #202
City: Bellingham
Mailing Address (if different from street address):
Day Telephone: 671 4277 Evening Telephone: 671 4277 Cell Phone: 360 305 8082
E-mail address: richard11@yahoo.com

1. Name of board or committee—please see reverse: Mental Health Adv and NSMHA

2. You must specify which position you are applying for. Please refer to vacancy list.

3. Do you meet the residency, employment, and/or affiliation requirements of the position for which you’re applying? (If applicable, please refer to vacancy list.)

4. Which Council district do you live in? ( ) One ( ) Two ( ) Three

5. Are you a US citizen? ( ) Yes ( ) No

6. Are you registered to vote in Whatcom County? ( ) Yes ( ) No

7. Have you ever been a member of this Board/Commission? ( ) Yes ( ) No

8. Do you or your spouse have a financial interest in or are you an employee or officer of any business or agency that does business with Whatcom County? ( ) Yes ( ) No

9. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education. I am a retired WWU Professor.

My son Mark recently deceased was a mental health client for many years.

10. Please describe why you’re interested in serving on this board or commission: Because of my experience with my son and as President. Whatcom County State

References (please include daytime telephone number): Victoria McClure, Tom Richardson

Tara Thomas

Signature of applicant:

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APPLICATION FOR APPOINTMENT TO WHATCOM COUNTY BOARDS AND COMMISSIONS

PLEASE PRINT LEGIBLY and COMPLETE ALL ITEMS

Name: Dasmont "Dar" Jamison
Date: 1-29-13
Street Address: 3232 Laurelwood Ave
City: Bellingham, WA
Zip Code: 98225
Mailing Address (if different from street address): PO Box 1714 Bellingham, WA 98227
Day Telephone: 360 671-8192 Evening Telephone: same Cell Phone: NA
E-mail address:

1. Name of board or committee—please see reverse: Integrated Behavioral Health Board

2. You must specify which position you are applying for. Please refer to vacancy list.

3. Do you meet the residency, employment, and/or affiliation requirements of the position for which you’re applying? (If applicable, please refer to vacancy list.)

4. Which Council district do you live in? ( ) One ( ) Two ( ) Three

5. Are you a US citizen? ( ) yes ( ) no

6. Are you registered to vote in Whatcom County? ( ) yes ( ) no

7. Have you ever been a member of this Board/Commission? ( ) yes ( ) no

If yes, dates:

8. Do you or your spouse have a financial interest in or are you an employee or officer of any business or agency that does business with Whatcom County? ( ) yes ( ) no

If yes, please explain:

9. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education.

30 years in law enforcement working with mental health & drug enforcement systems.
alcoholic parents, 3 addicted siblings, 2 mentally ill family members

10. Please describe why you’re interested in serving on this board or commission: interested in making the systems more robust and much more efficient.

References (please include daytime telephone number): Dale Brandland 360-961-0102

Sally Ledgerwood - 360-224-3335

Signature of applicant: [Signature]

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APPLICATION FOR APPOINTMENT TO WHATCOM COUNTY BOARDS AND COMMISSIONS
PLEASE PRINT LEGIBLY and COMPLETE ALL ITEMS

Name: Teresa Bosteter Date: 12-15-2012
Street Address: 3836 Levitt St.
City: Bellingham Zip Code: 98226
Mailing Address (if different from street address): same
Day Telephone: 360-296-7355 Evening Telephone: 360-527-3640 Cell Phone: 360-510-0508
E-mail address: peasmommy@yahoo.com

1. Name of board or committee-please see reverse: Integrated Behavioral Health Board
   Current Substance Abuse Advisory Board

2. You must specify which position you are applying for. Please refer to vacancy list.

3. Do you meet the residency, employment, and/or affiliation requirements of the position for which you're applying? (If applicable, please refer to vacancy list.) (X) yes ( ) no

4. Which Council district do you live in? ( ) One (X) Two ( ) Three

5. Are you a US citizen? (X) yes ( ) no

6. Are you registered to vote in Whatcom County? (X) yes ( ) no

7. Have you ever been a member of this Board/Commission? (X) yes ( ) no
   If yes, dates: 1/2010 to present

8. Do you or your spouse have a financial interest in or are you an employee or officer of any business or agency that does business with Whatcom County? ( ) yes (X) no
   If yes, please explain:

9. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education.

Association Division Manager for Windermere Management where I am responsible for oversight and governance of 21 condominium and homeowner associations in Whatcom County; B.S. in Psychology 1986 Cal State Univ. Northridge; current real estate license; licensed foster parent since 1994.

10. Please describe why you’re interested in serving on this board or commission: I am a current member of the Substance Abuse Advisory Board.

References (please include daytime telephone number): Jack Hovenier 360-734-8398
       Jeannie Harland 360-384-0170

Signature of applicant: Teresa Bosteter

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APPLICATION FOR APPOINTMENT TO WHATCOM COUNTY BOARDS AND COMMISSIONS
PLEASE PRINT LEGIBLY and COMPLETE ALL ITEMS

Name: Mark McDonald
Street Address: 1101 McKenzie Ave. #305
City: Bellingham WA
Zip Code: 98225
Mailing Address (if different from street address):
Day Telephone: 360-734-2042 Evening Telephone: Cell Phone:
E-mail address:

1. Name of board or committee—please see reverse: Mental Health Advisory Board

2. You must specify which position you are applying for. Please refer to vacancy list.

3. Do you meet the residency, employment, and/or affiliation requirements of the position for which you're applying? (If applicable, please refer to vacancy list.) □ yes □ no

4. Which Council district do you live in? □ One □ Two □ Three

5. Are you a US citizen? □ yes □ no

6. Are you registered to vote in Whatcom County? □ yes □ no

7. Have you ever been a member of this Board/Commission? □ yes □ no
   If yes, dates: Mental Health Advisory Board last term

8. Do you or your spouse have a financial interest in or are you an employee or officer of any business or agency that does business with Whatcom County? □ yes □ no
   If yes, please explain:

9. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education.

   I do not have an occupation

10. Please describe why you're interested in serving on this board or commission:

    I advocate for mental health consumers

References (please include daytime telephone number):

Signature of applicant: Mark McDonald

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**WHATCOM COUNTY COUNCIL AGENDA BILL**

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**TITLE OF DOCUMENT:**

Letter sent by the Council with time restrictions

**ATTACHMENTS:**

**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.)

Letter sent by the Council with time restrictions

**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.
March 15, 2013

Senator Kevin Ranker
P.O. Box 40440
Olympia, WA 98504

Representative Kristine Lytton
P.O. Box 40600
Olympia, WA 98504

Representative Jeff Morris
P.O. Box 40600
Olympia, WA 98504

Senator Doug Erickson
414 Legislative Building
Olympia, WA 98504

Representative Jason Overstreet
P.O. Box 40600
Olympia, WA 98504

Representative Vincent Buys
P.O. Box 40600
Olympia, WA 98504

RE: State Shared Revenues

Dear Whatcom County Senators and Representatives:

We write you today to stress the importance of state shared revenues to the financial well-being of our county.

Counties are constitutionally established as the primary service provider for state services. Counties assess and collect property taxes, provide law enforcement, courts, transportation in unincorporated areas, public health, jails, and mental health services, conduct elections, and administer land use and environmental regulations. State shared revenues embody the partnership between counties and the state. Reduction or elimination of state shared revenues inhibits our ability to carry out the services you have directed us to provide.

State shared revenues include items such as municipal criminal justice assistance, flexible funding for public health, streamlined sales tax mitigation, distressed city-county assistance funding, liquor profit and tax revenue, rural economic development funding, and others. These revenues are incredibly important to counties, because the only other legislatively provided revenue sources are property taxes and sales tax. Counties do not enjoy additional diversified revenues sources afforded to cities such as B&O tax, business license and utility tax. Our limited revenue sources, particularly sales taxes, are also very narrowly proscribed. Even before the recent severe fiscal crisis, counties have been faced with shrinking revenues and increasing expenses.

We are fully aware of the budget constraints and demands the state faces, but urge you to remember that cutting state shared revenues is no different than cutting vital state services that are delivered at the local level. If this revenue is cut, it will exacerbate our existing budget struggles and prevent us from delivering the services you have directed us to provide.

Over the last several years, counties have proposed a number of legislative changes to provide adequate revenue to meet our financial needs, as well as suggestions to contain mandatory costs. These have included authority to enact a utility tax in the unincorporated
Whatcom County Senators and Representatives
March 15, 2013
Page Two

area, ability to approve the public safety sales tax council manically, assistance in
implementing the Public Records Act, jail medical cost reduction measures, liability reforms,
and containing the impacts of binding interest arbitration. While some of these have been
adopted, many have not. In addition to encouraging you to consider these sound proposals,
we urge you to NOT reduce or eliminate state shared revenues as a solution to the state’s
budget dilemma.

County elected officials are united in this request, and we request that you stand with us.

Sincerely,

Kathy Kershner, Council Chair
Whatcom County County Council

KK: mb

c: Eric Johnson
   Executive Director
   WA State Association of Counties

   James McMahan
   Executive Director
   WA Association of County Officials

   Josh Weiss
   Director of Policy & Legislative Relations
   WA State Association of Counties

   Whatcom County Councilmembers
   Dana Brown-Davis, Clerk of the Council
   Correspondence File
**WHATCOM COUNTY COUNCIL AGENDA BILL**

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**TITLE OF DOCUMENT:**
Amend WCC Chapter 3.37.070 to Establish Membership of the Behavioral Health Revenue Advisory Committee.

**ATTACHMENT:**
Memo to Executive, WCC Chapter 3.37 Exhibit A, Ordinance

| SEPA review required? | ( ) Yes | ( X ) NO |
| SEPA review completed? | ( ) Yes | ( X ) NO |
| Should Clerk schedule a hearing? | ( ) Yes | ( X ) NO |

**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:**
The purpose of the proposed amendment to Whatcom County Code is to amend Chapter 3.37, section 070. The new section will eliminate mental health and substance abuse advisory board representation due to the dissolution of those boards, and establish the Behavioral Health Advisory Board representation.

**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.
Memorandum

TO: Jack Louws, Whatcom County Executive
FROM: Regina A. Delahunt, Director
DATE: March 11, 2013
RE: Ordinance Amending WCC Chapter 3.37.070, establishing advisory board membership

The Chemical Dependency/Mental Health Program Fund Advisory Committee, informally called the "Behavioral Health Revenue Advisory Committee" was established in Whatcom County Code, Chapter 3.37, section 070. The attached ordinance to be considered by council amends this section of the code. Some of the provisions of the existing code are obsolete and no longer apply due to dissolution of the Mental Health and Substance Abuse Advisory Boards, and creation of the Behavioral Health Advisory Board.

A provision of the proposed ordinance is the replacement of the existing Mental Health Advisory Board and the Substance Abuse Advisory Board representation with a single Behavioral Health Advisory Board member.

Please contact Anne Deacon at ext. #50877, if you have any questions.
ORDINANCE NO. ________

An Ordinance Amending County Code, Chapter 3.37, Section 3.37.070 Chemical dependency/mental health program fund oversight advisory committee

WHEREAS, the Chemical Dependency/Mental Health Program Fund Advisory Committee requires representation from the mental health and substance abuse boards; and

WHEREAS, the Mental Health and Substance Abuse Advisory Boards have been dissolved; and

WHEREAS, Whatcom County has created a new Behavioral Health Advisory Board to represent Mental Health and Substance Abuse issues; and

WHEREAS, new representation from the Behavioral Health Advisory Board on the Chemical Dependency/Mental Health Program Fund Advisory Committee is now necessary; and

WHEREAS, certain sections of the existing code are obsolete because of the dissolution of the Mental Health and Substance Abuse Advisory Boards; and

WHEREAS, the existing code must designate member representation from the newly established Behavioral Health Advisory Board

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that Whatcom County Code Chapter 3.37.070 is amended as specified in Exhibit A of this ordinance to replace substance abuse and mental health advisory board representation with Behavioral Health Advisory Board representation, repealing obsolete sections.
Date prepared: 3/1/2013

**ADOPTED** this ____ day of __________, 2013.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Clerk of the Council

Kathy Kershner, Council Chair

WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON

APPROVED AS TO FORM:

Jack Louws, County Executive

( ) Approved  ( ) Denied

Date Signed: __________________________
3.37.070 Chemical dependency/mental health program fund oversight advisory committee.

To ensure oversight, implementation, and evaluation, the county council authorizes the county executive to appoint a 10-member oversight committee consisting of one representative from each of the following areas: Peace Health Hospital, the judicial branch of Whatcom County government, the Whatcom County sheriff or designee, the chief of corrections or designee, the Whatcom County public health director or designee, and the Behavioral Health Advisory Board. The remaining four positions are to include two people that represent mental health advocacy, and two people that represent drug recovery advocacy. In coordination with the oversight committee, the executive or designee shall submit quarterly progress reports and one annual summary report for those programs supported with the sales tax revenue to the county council. (Ord. 2008-027 Exh. A).
Chapter 3.37
SALES AND USE TAX FOR CHEMICAL DEPENDENCY OR MENTAL HEALTH TREATMENT SERVICES AND THERAPEUTIC COURT PROGRAMS

Sections:

3.37.010 Sales and use tax imposed.

3.37.020 Tax rate and applicability.

3.37.030 Administration and collection.

3.37.040 Establishment of chemical dependency/mental health program fund.

3.37.050 Use of funds.

3.37.060 Administration of fund.

3.37.070 Chemical dependency/mental health program fund oversight advisory committee.

3.37.080 Effective date.

3.37.090 Severability.

3.37.010 Sales and use tax imposed.

Pursuant to RCW 82.14.460, there is hereby imposed a sales and use tax, as the case may be, upon any taxable event, as defined in Chapters 82.08 and 82.12 RCW, occurring within Whatcom County. The tax shall be imposed upon and collected from those persons who are taxable by the state under Chapters 82.08 and 82.12 RCW. This tax shall be in addition to any other sales and use tax imposed by the state of Washington and/or Whatcom County. (Ord. 2008-027 Exh. A).

3.37.020 Tax rate and applicability.

The rate of tax shall equal one-tenth of one percent of the selling price in the case of a sales tax, or value of the article used in the case of a use tax. (Ord. 2008-027 Exh. A).

3.37.030 Administration and collection.
The tax imposed by this chapter shall be administered and collected in accordance with RCW 82.14.050. The county executive or designee is hereby authorized to and directed to execute any contracts with the Washington State Department of Revenue that may be necessary to provide for the administration or collection of the tax. (Ord. 2008-027 Exh. A).

3.37.040 Establishment of chemical dependency/mental health program fund.

There is hereby created the chemical dependency/mental health program fund. The Whatcom County treasurer shall deposit monies collected pursuant to this chapter in this fund. The treasurer may invest the fund balance and any interest earned shall be deposited into this fund. (Ord. 2008-027 Exh. A).

3.37.050 Use of funds.

Monies deposited into the chemical dependency/mental health program fund shall be used solely for the purpose of providing new or expanded chemical dependency or mental health treatment services and for the operation of new or expanded therapeutic court programs, and as otherwise authorized by the laws of the state of Washington as referenced in RCW 82.14.460. Monies collected under this chapter may be used to supplant existing funding for these programs as authorized by the laws of the State of Washington as referenced in RCW 82.14.460. (Ord. 2008-027 Exh. A).

3.37.060 Administration of fund.

The county executive shall administer the chemical dependency/mental health program fund with the assistance of the chemical dependency/mental health program fund oversight advisory committee and the Whatcom County health department, in accordance with budgetary processes and Whatcom County administrative policies and state statutes. (Ord. 2008-027 Exh. A).

3.37.070 Chemical dependency/mental health program fund oversight advisory committee.

To ensure oversight, implementation, and evaluation, the county council authorizes the county executive to appoint an 11-member oversight committee consisting of one representative from each of the following areas: Peace Health Hospital, the judicial branch of Whatcom County government, the Whatcom County sheriff or designee, the chief of corrections or designee, the Whatcom County public health director or designee, and the mental health advisory board, and the substance abuse advisory board. Behavioral Health Advisory Board. The remaining four positions are to include two people that represent mental health advocacy, and two people that represent drug recovery advocacy. In coordination with the oversight committee, the executive or designee shall submit quarterly progress reports and one annual summary report for those programs supported with the sales tax revenue to the county council. (Ord. 2008-027 Exh. A).
3.37.080 Effective date.

In accordance with the Whatcom County budget cycle, this chapter shall take effect January 1, 2009. (Ord. 2008-027 Exh. A).

3.37.090 Severability.

If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of this chapter or the application of the provisions to other persons or circumstances is not affected. (Ord. 2008-027 Exh. A).