### WHATCOM COUNTY COUNCIL AGENDA BILL

<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>twh</td>
<td>06/26/14</td>
<td></td>
<td>0708/14</td>
<td>Natural Resources</td>
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<tr>
<td>Division Head:</td>
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<td>Dept. Head:</td>
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<td>Prosecutor:</td>
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<td>Purchasing/Budget:</td>
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<td>Executive:</td>
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</table>

**TITLE OF DOCUMENT:** Water Action Plan Update

**ATTACHMENTS:** Water resources memo and corresponding matrix

**SEPA review required?** ( ) Yes ( ) NO  **Should Clerk schedule a hearing?** ( ) Yes ( ) NO

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

Executive Louws requests the opportunity to provide a Council update on the development and progress of the action plan for water resources in Whatcom County.

**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: Whatcom County Council Members

THROUGH: Jack Louws, County Executive

FROM: Tyler Schroeder, Executive Special Projects Manager

SUBJECT: Water Action Plan Update

DATE: June 26, 2014

The Administration would like to update the Council, as requested through the Water Action Plan, on the existing levels of service for water related programs, recommendations of needed or expanded programs and to guide priority program implementation and budget allocations for the 15/16 budget.

A copy of the Water Resources Memo and corresponding matrix is also included for your review. For further detail and background, resolution 2014-015 declaring the Council’s intent to create a Water Action Plan can be found here:


Thank you.
Water Resources in Whatcom County

Objective: Reduce the multitude of water resource demands to a manageable list of programs and projects that Whatcom County can advance. Clearly articulate Whatcom County’s water resource efforts and continue to coordinate each department’s roles in a clear and cohesive manner to accomplish the overall goals.

Goals: Communicate each department’s role in Water Resources planning and focus the overall efforts to achieve Whatcom County’s water resource overall goals;

- Identify existing and potential funding sources, staff allocations, and existing contract obligations.
- Study future stormwater services, including capital financing, staff, maintain/operation, development review including ongoing inspections with primary focus on Lake Whatcom and NPDES areas.
- Evaluate rural and urban water quality programs in coastal drainages with a focus on public health concerns of fecal coliform bacteria in Whatcom County’s river, creeks, and marine waters.
- Continue to provide good scientific information for the public discussion surrounding water quantity issues in Whatcom County.
- Continue to address issues surrounding flood preparedness, capital planning and delivery of river and flood project.

Priorities: The list of water resources demands in Whatcom County is long and complex. To provide a more manageable approach Whatcom County will continue with existing programs and advance the following priority areas:

1. Water Quality
   a. Public Health concerns regarding water quality in Whatcom County’s river, creeks, and marine waters
      i. Expand the PIC program to a local (Whatcom County) program which integrates Public Works, Health and PDS
      ii. Focus on stable funding sources and grant opportunities
      iii. Continue to focus on scientific information on water quality monitoring results
      iv. Continued outreach and increased enforcement of program (CPAL)
      v. Communicate program in a more effective manner
2. Water Quantity
   a. "A Path Forward", which includes three main basics;
      1. Public Involvement and open decision-making will always be honored
      2. Continue to provide good scientific information for the public discussion, and
      3. Provide a framework so that the cost and manner of delivering these services will be known to decision makers, as well as a process for decision-making
   b. Pursuing a three-pronged approach to gather information and data necessary to better understand groundwater characteristics, interaction between groundwater and surface water, and demand for water from existing and future growth.
      1. Coordinated Water System Plan (CWSP) to address future need for public water systems (municipal, water districts and associations, and other public water systems)
      2. Quantify current and future needs for other out-of-stream users (farmers, industry, rural exempt well users, etc.). Incorporate these needs with those for public water systems (through CWSP) and develop a Water Supply Plan to meet these needs.
   c. Groundwater model and assessment (Abbotsford-Sumas Aquifer) to determine continuity between ground and surface water and groundwater supply potential. Model can be expanded to other areas through time.

3. Lake Whatcom
   a. Define the path forward to accomplish the TMDL goals
      i. Increase local funding sources to allow for a stable Capital Improvement Program (public facility maintenance and certain private residential retrofits) aimed at meeting TMDL goals
      ii. Review background information to be able to communicate all that has been accomplished
      iii. Continue to fund options that will accomplish a near-term Capital Improvement Program
      iv. Continue to deliver water quality project aimed at reducing phosphorus reductions to the lake (retrofitting existing public facilities)
      v. Monitoring the existing regulations (newer Lake Whatcom Title 20 code) that are intended to protect from further degradation of water quality
4. Habitat Issues
   a. Increased outreach and enforcement of CPAL program
   b. Additional enforcement positions to work on planning and natural resources issues
   c. Continue to service habitat issues through the CAO implementation and Public Works programs

5. NPDES Compliance/Program
   a. State and Federal law requires attention, recognition and administration of this program
   b. Continue to train and prepare Whatcom County Staff for greater stormwater burden, including additional development reviews and ongoing maintenance and operation
   c. Prepare for greater inspection and maintenance programs, through additional FTE's and associated funding to implement program requirements (eg. Homeowner inspections, private contractor inspections, or County inspections)
   d. Determine if inter-local agreements can be done to have City's or other utility districts provide services

6. Flood Preparedness and Flood Plain Management
   a. Continue to deliver projects
   b. Integrate more effective habitat projects (water quality improvements) into flood projects
   c. Continue to accomplish SWIF program and other administrative responsibilities
   d. Maintain emergency preparedness
### WATER ACTION PLAN

<table>
<thead>
<tr>
<th>Health Department Involvement</th>
<th>PWS Involvement</th>
<th>Public Works involvement</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Bacterial Pollution Shellfish Growing Areas</strong></td>
<td><strong>Lead</strong></td>
<td><strong>Support</strong></td>
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<tr>
<td>DDS-On Site Sewage</td>
<td>HP</td>
<td>PW</td>
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<tr>
<td>CPAL-Conservation Program on Ag Lands - Enforcement and Outreach</td>
<td>PWS</td>
<td>PW</td>
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<tr>
<td>CAO-Critical Area Ordinance</td>
<td>PWS</td>
<td>PW</td>
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<tr>
<td>ERP Buffers</td>
<td>PW</td>
<td>PWS</td>
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<tr>
<td>Stormwater</td>
<td>PW</td>
<td>PWS</td>
</tr>
<tr>
<td>Domestic pets</td>
<td>PW</td>
<td>PWS</td>
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<tr>
<td>BENEFICIAL USE OF MANURE</td>
<td>PW</td>
<td>PWS</td>
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<tr>
<td>BMP for livestock owners</td>
<td>HP</td>
<td>PWS</td>
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<tr>
<td>Adequacy of current monitoring</td>
<td>PW</td>
<td>PWS</td>
</tr>
<tr>
<td>Other High Priority areas</td>
<td>HP</td>
<td>PW</td>
</tr>
<tr>
<td>Viability of Manure Digesters</td>
<td>HP</td>
<td>PWS</td>
</tr>
<tr>
<td>Education and Compliance Q&amp;M Enforcement</td>
<td>HP</td>
<td>PW</td>
</tr>
</tbody>
</table>

### Water Quantity and Availability

- Process similar to Lower Nooksack Strategy (info., studies, personnel) | PW | PWS | HD |
- Groundwater model-data collection | PW | PWS | HD |
- Groundwater model-data use studies | PW | PWS | HD |
- Options-costs ground/ surface water models | PW | PWS | HD |
- Pilots for water storage opportunities | PW | PWS | HD |
- Pilots for in-stream flows | PW | PWS | HD |
- CWSIP | PW | PWS | HD |
- Info. needs on water use | PW | PWS | HD |

### Lake Whatcom TMDL Response

- Retrofit existing development to control runoff | PW | PWS | HD |
- Exist assistance of watershed residents | PW | PWS | HD |
- Current OSS - encourage sewer hookup | HP | PW | PWS |
- Equity re. assistance vs. regulatory on future development | PWS | PW | HD |
- Policy discussion who pays for programs | PWS | PW | HD |
- Education and Compliance Q&M Enforcement | HP | PW | PWS |
- Prevent contamination from Urban stormwater runoff | PW | PWS | HD |
- Capital facility planning and implementation | PW | PWS | HD |
- TMDL representative for County, LWMP, and Ecology | PW | PWS | HD |

### Habitat Issues

- Concerns w/CPAL program | PWS | HP | PW |
- Concerns with current enforcement /CAO & SPM | PWS | HP | PW |
- Nexus between buffers re. in-stream and habitat | PWS | HP | PW |
- Needed studies for County's flood program | PW | PWS | HD |
- County Staffing levels re. salmon, near shore protection, habitat | PW | PWS | HD |

### Stormwater Issues

- LOI requirements be required outside NPDES covered areas | PWS | PW | HD |
- Concerns w/County code to prevent stormwater impacts downstream | PWS | PW | HD |
- Concerns w/County funding levels for stormwater improvements | PW | PWS | HD |
- Water education for LOI techniques | PWS | PW | HD |
- Incentive programs for LOI and stormwater infiltration | PW | PWS | HD |
- Other high priority programs within County's authority | PW | PWS | HD |
- NPDES - IDDE & Enforcement | PW | PWS | HD |
- NPDES Permit Requirements | PW | PWS | HD |

### Other Overlapping Issues

- Fireflow requirements | PWS | HP | PW |
- Water Conservation | HP | PW | PWS |
- Water Recycling and Reuse | HP | PW | PWS |

### Flood

- CHMP Update | PW | PWS | HD |
- SWIFT/CHMP Implementation (capital projects) | PW | PWS | HD |
- Fish-Farmland Initiative | PW | PWS | HD |
- Channel/Migration Zone Map | PW | PWS | HD |
- Special District administration | PW | PWS | HD |

Highlighted sections indicate an increase or expanded program recommendation from the County administration. All other items and programs will continue to be serviced with existing levels.
**WHATCOM COUNTY COUNCIL AGENDA BILL**

<table>
<thead>
<tr>
<th>CLEARANCES</th>
<th>Originator: DR</th>
<th>Initial Date: 6-13-14</th>
<th>Date Received in Council Office</th>
<th>Agenda Date: 7/8/2014</th>
<th>Assigned to: Finance/Council</th>
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</thead>
</table>

**TITLE OF DOCUMENT:** Children's Representation in Dependency Contract.

**ATTACHMENTS:**
Two Contract Originals between Whatcom County and Geraldine Coleman, Scott Mawson, and Margaret Mawson.

**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.)

Geraldine Coleman, Scott Mawson, and Margeret Mawson will provide legal representation to youth involved in dependency proceedings.

**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, County Executive
FROM: David Reynolds, Director
RE: Contract for Services with GERALDINE COLEMAN, SCOTT MAWSON and MARGARET MAWSON
DATE: June 3, 2014

Attached are two contract original amendments between Whatcom County and GERALDINE COLEMAN, SCOTT MAWSON and MARGARET MAWSON

*Background and Purpose*

2014 Whatcom County conflict legal representation children in dependency proceedings. Both Ms. Coleman and the Mawsons have long provided this service.

*Funding Amount and Source*

This funding is through current expense, and an approved expenditure in the 2014 budget.

*Differences from Previous Contract*

The previous contract included parent representation, however, this burden will be assumed by the state effective 7-1-14.

Please contact me at extension 56788, if you have any questions or concerns regarding the terms of this agreement,
WHATCOM COUNTY CONTRACT INFORMATION SHEET

<table>
<thead>
<tr>
<th>Originating Department:</th>
<th>Superior Court Administration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract or Grant Administrator:</td>
<td>David Reynolds, Director</td>
</tr>
<tr>
<td>Contractor's / Agency Name:</td>
<td>Geraldine Coleman, Scott Mawson, and Margaret Mawson</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 ______

**Does contract require Council Approval?**  
Yes _X_  No ___  If No, include WCC _______ 
(see Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)

**Is this a grant agreement?**  
Yes ___  No _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) 14-35 Cost Center: _______

**Is this agreement excluded from E-Verify?**  
No ___  Yes _X_  If no, include Attachment D Contractor Declaration form.  
**If yes, indicate exclusion(s) below:**

- Professional services agreement for certified/licensed professional
- Contract work is for less than 120 days
- Contract less than $100,000.
- Contract for Commercial off the shelf items (COTS)
- Work related subcontract less than $25,000.
- Interlocal Agreement (between Gov'ts)
- Public Works - Local Agency/Federally Funded FHWA

**Contract Amount:** (sum of original contract amount and any prior amendments)  
$ 76,548

**This Amendment Amount:**  
$ 0.00

**Total Amended Amount:**  
$ 76,548

**Summary of Scope:**  
Attorneys will provide legal representation to children in dependency proceedings.

**Expiration Date:**  
6-30-15

**Term of Contract:**

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<tr>
<th>Contract Routing Steps &amp; Signoff:</th>
<th>Expiration Date:</th>
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<tr>
<td>1. Prepared by: DReynolds.</td>
<td>Indicate date transmitted</td>
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<tr>
<td>2. Attorney reviewed: Kae</td>
<td>Date 6-13-14</td>
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<tr>
<td>3. AS Finance reviewed:</td>
<td>Date 6-14-14</td>
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<tr>
<td>4. IT reviewed if IT related:</td>
<td>Date 6-14-14</td>
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<tr>
<td>5. Attorney signoff: Kae</td>
<td>Date 6-14-14</td>
</tr>
<tr>
<td>7. Contractor signed:</td>
<td>Date 6-19-14</td>
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<tr>
<td>8. Submitted to Exec Office:</td>
<td>Date 6-19-14</td>
</tr>
<tr>
<td>9. Council approved (if necessary):</td>
<td>Date 6-19-14</td>
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<td>10. Executive signed:</td>
<td>Date 6-19-14</td>
</tr>
<tr>
<td>11. Original to Council</td>
<td>Date 6-19-14</td>
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</tbody>
</table>

**Last Edited:** 061014

9
CONTRACT BETWEEN WHATCOM COUNTY AND GERALDINE COLEMAN, SCOTT MAWSON AND MARGARET MAWSON

GERALDINE COLEMAN, SCOTT MAWSON, and MARGARET MAWSON hereinafter called Contractors, and Whatcom County hereinafter referred to as County, agree and contract as set forth in this Agreement including:

- General Conditions, pp 3-8
- Exhibit A (Services) p. 9
- Exhibit B (Consideration), p. 10
- Exhibit C - Liability Insurance

The term of this Agreement shall commence on the 1st day of July 1, 2014, and shall unless terminated or renewed as elsewhere provided in this Agreement, terminate on the 31st day of June 30, 2015. It may however, be renewed on a year to year basis for an additional two years.

The general purpose or objective of this Agreement is to provide representation of children involved in dependency proceedings as more fully and generally described in Exhibit A hereto. The language of Exhibit A controls in case of any conflict between it and that provided here.

The Contractor attorney certifies that he/she is qualified to perform the services indicated in the Contractor’s bid proposal, said qualifications being those for the type of case identified in the Washington Defender Association Standard Fourteen, Qualification of Attorneys.

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 provision set for in Paragraphs 21.1, 30.1, 32.1, 34.2 are fully part of this contract and have been mutually negotiated by the parties.

IN WITNESS WHEREOF, the parties have executed this Amendment on the date and year below written.

DATED this 13th day of June, 2014

CONTRACTORS:

GERALDINE COLEMAN

STATE OF WASHINGTON )

COUNTY OF WHATCOM)

On this 13 day of June, 2014, before me personally appeared GERALDINE COLEMAN, to me known to be an Attorney At Law and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

BARBARA V. PLUMBO

NOTARY PUBLIC in and for the State of Washington, residing at Bellingham. My commission expires 11-09-14

2014 Children’s Representation in Dependency
STATE OF WASHINGTON )
) ss.
COUNTY OF WHATCOM)

On this 12 day of June, 2014 before me personally appeared SCOTT MASWON, to me known to be an Attorney At Law 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 Bellingham. My commission expires 11-09-14

MARGARET MAWSON
STATE OF WASHINGTON )
) ss.
COUNTY OF WHATCOM)

On this 12 day of June, 2014 before me personally appeared MARGARET MAWSON, to me known to be an Attorney At Law 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 Bellingham. My commission expires 11-09-14

WHATCOM COUNTY:
Department Director Date

Approved as to form:

Prosecuting Attorney Date

Approved:
Accepted for Whatcom County:

By:
Jack Louws, Whatcom County Executive

STATE OF WASHINGTON )
) ss.
COUNTY OF WHATCOM )

On this _____ day of _______, 2006, 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 ______________.
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.

10.3 Uncompleted Cases:
In the event the Independent Contractor is assigned clients under this agreement whose cases are incomplete at the termination of this agreement, the Independent Contractor agrees to continue representation of any such client beyond the termination of this agreement and the County agrees to pay the independent Contractor for such services under the terms and conditions stated herein, except, however, that the Independent Contractor expressly reserves the right to renegotiate the hourly rate of reimbursement for any services rendered after the termination of this agreement involving any cases referred to the Independent Contractor during the term of this agreement. It is agreed and understood that this reservation of the right to negotiate the rate of reimbursement for services rendered after the termination of this agreement shall in no manner be constructed to lessen or diminish the quality of representation or diligence with which the Independent Contractor performs services for those clients or in those cases which may be the subject of such renegotiation while any such renegotiation may be in progress. If the independent Contractor and Whatcom County are unable to agree to a new rate of payment, the rate of payment shall be set by the Presiding Judge of the Whatcom County Superior Court.

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:
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.
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 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 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:
The Contractor agrees to comply with state and federal requirements, as applicable, 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:
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.

30.4 Licensing:
The contractor agrees that he or she will remain licensed to practice law in the State of Washington and to abide by the Code of Professional Responsibility during the term of this contract.

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:
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 and 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 professional liability insurance in the amount of $300,000.00 per occurrence.

34.2 Industrial Insurance Waiver:
With respect to the performance of this agreement and as to claims against the County, its officers, agents and employees, the Contractor expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, for 2014 Children's Representation in Dependency
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 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 the negligence 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.

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, 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 ensure 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:
The Contractor shall not discriminate on the grounds of race, color, creed, religion, national origin, sex, age, marital status, 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/its receipt 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: Not Applicable

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:

David Reynolds, Director
Whatcom County Superior Court Administration
311 Grand Avenue, #301,
Bellingham WA 98225

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 thereto. 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: Not applicable.

c. Detailed Claim: Not applicable.

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:
2014 Children’s Representation in Dependency
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”

Services

The Contractor agrees to provide professional legal services in performing all Superior Court representation of children 12 or older involved in dependency proceedings, but not subject to representation pursuant to Senate Bill 6126.

Ms. Coleman’s caseload shall not exceed 20 children.
Mr. and Ms. Mawson’s caseload shall not exceed 40 children.
EXHIBIT “B”

Consideration

In consideration for the services described in “Exhibit “A”, the County agrees to pay to the order of the individual Contractor’s law firm performing such services as follows:

Scott and Margaret Mawson will cover 50% of the FTE work, and compensation will be $4,253 per month.

Geraldine Coleman will cover 25% of the FTE and will be compensated at $2,126.50 per month.
Friday, January 17, 2014

~ INSURANCE BINDER ~

Attn: Geraldine R. Coleman
    ~ Attorney at Law

Dear Ms. Coleman,

This letter is to confirm that the ProAssurance Indemnity Company has bound coverage for the firm, with the effective date of: 01/19/2014.

The policy is being issued with the following terms:

<table>
<thead>
<tr>
<th>Term</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>LIMITS</td>
<td>$1,000,000 / $2,000,000</td>
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<tr>
<td>DEDUCTIBLE</td>
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<tr>
<td>ANNUAL PREMIUM</td>
<td>$1,073</td>
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<tr>
<td>COMPANY</td>
<td>ProAssurance Indemnity Company</td>
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<tr>
<td>POLICY TERM</td>
<td>01-19-2014 to 01-19-2015</td>
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<tr>
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<tr>
<td>POLICY #</td>
<td>LP81063</td>
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All other terms and conditions on the quote are also in effect.

INVOICE

INSURED'S NAME: Geraldine R. Coleman, Attorney
* NET PREMIUM DUE: $1,073 ~ Payable to 'Moranco & Associates'
* DUE DATE: Your full payment has already been received, thank you!!

Thank you very much for your business! I look forward to continuing my service for your insurance needs. If you should have any questions or concerns, please feel free to contact me @ our office, anytime...

Sincerely,

[Signature]
Marty Moran
Your Agent @ Moranco, Inc.

... POLICY TO FOLLOW IN THE NEXT FEW WEEKS ......

9631 N. NEVADA ST., SUITE 309 * SPOKANE, WA 99218 * PHONE: 800-607-2620 * FAX: 509-326-8867

LARRY MORAN – PRESIDENT
E-MAIL: info@moranconational.com

JEREMY MORAN
MARTY MORAN
KIM PETERSON
VICE PRESIDENT, PROFESSIONAL LIABILITY BROKER
PROFESSIONAL LIABILITY PRODUCER
OFFICE ADMINISTRATOR, PROFESSIONAL LIABILITY PRODUCER

BEN WERNER
ANTOINETTE DUPUY
LIFE & HEALTH BROKER
OFFICE ASSISTANT
LAWYERS PROFESSIONAL LIABILITY POLICY

POLICY NUMBER: 21057049
REPLACEMENT OF: 032672143

NOTICE
THIS IS A CLAIMS-MADE AND REPORTED FORM. EXCEPT TO SUCH EXTENT AS MAY OTHERWISE BE PROVIDED HEREBIN, THE COVERAGE OF THIS POLICY IS GENERALLY LIMITED TO LIABILITY FOR THOSE CLAIMS THAT ARE FIRST MADE AGAINST INSUREDS DURING THE POLICY PERIOD AND REPORTED TO THE INSURER AS THE POLICY REQUIRES. DEFENSE COSTS REDUCE THE LIMIT OF LIABILITY. PLEASE READ THE POLICY CAREFULLY AND DISCUSS THE COVERAGE WITH YOUR INSURANCE AGENT OR BROKER TO DETERMINE WHAT IS AND WHAT IS NOT COVERED.

Terms appearing in bold type have special meanings. See the Definitions for more information

DECLARATIONS

ITEMS

1 a. NAME OF FIRM (the "Firm") Mawson & Mawson, Attorneys, PLLC
MAILING ADDRESS:
103 East Holly Street
Suite 508
Bellingham, WA 98225

1 b. PREDECESSOR FIRM(S) (the "Predecessor Firm(s)") As per Application

2 POLICY PERIOD
Inception Date: 08/12/2013
Expiration Date: 08/12/2014
12:01 A.M. at the address stated in Item 1 above.

3 LIMIT OF LIABILITY
(a) per Claim $100,000
(b) Aggregate $300,000
(c) Separate Limit of Liability - Disciplinary Proceedings $25,000

4 RETROACTIVE DATE 08/12/2004

5 DEDUCTIBLE
each Claim: $5,000

6 TOTAL PREMIUM $1,902.00

7 Name and Address for Notice/Claims Reporting:
YORKpro, Inc.
One Whitehall Street, 14th Floor
New York, New York 10004
Reference 21057049

8 Name and Address of Insurer:
175 Water Street
New York, NY 10038
Producer: AFPD, a division of NSM Insurance Group
Address: 555 North Lane, Suite 6060, Conshohocken, PA 19428

101421 (4/09)
0 All rights reserved.
### 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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</thead>
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<td>DMP</td>
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<td>07/08/14</td>
<td></td>
<td>07/08/14</td>
<td>Finance/Council</td>
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</tbody>
</table>

### TITLE OF DOCUMENT:

State of Washington Department of Commerce Edward Byrne Memorial Justice Assistance Grant

### ATTACHMENTS:

Interagency Agreement between Whatcom County and State of Washington Department of Commerce

### 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 Sheriff’s Office was awarded a grant from the State of Washington Department of Commerce to interdict criminal gangs and drugs through multi-jurisdictional efforts of law enforcement and prosecution. Total grant award is $131,738 (indirect federal funds of $99,099 from the U.S. Department of Justice, Edward Byrne Memorial Justice Assistance Grant (JAG) Program, CFDA No. 16.738 and state funds of $32,639 from Department of Commerce. These funds support positions in the Sheriff’s Office and the Prosecuting Attorney’s Office as well as operational costs for the Drug Task Force for the period July 1, 2014 through June 30, 2015.

### COMMITTEE 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>
<td></td>
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</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](http://www.co.whatcom.wa.us/council).
MEMORANDUM

TO: Jack Louws, County Executive
FROM: Bill Elfo, Sheriff
DATE: June 12, 2014
RE: Department of Commerce
Edward Byrne Memorial Justice Assistance Grant Program
Fiscal Year July 2014 – June 2015
Multi-Jurisdictional Drug-Gang Task Forces

Enclosed for your review and signature are two (2) original grant agreements between Whatcom County and the State of Washington Department of Commerce.

• Background and Purpose
  Interagency agreement for federal and state funding to help support positions in the Sheriff’s Office and W.C. Prosecuting Attorney’s Office and operational costs for the Drug Task Force.

• Funding Amount and Source
  Total grant in the amount of $131,738 is from State of Washington Department of Commerce ($99,099 indirect federal funds from the U.S. Department of Justice, Edward Byrne Memorial Justice Assistance Grant Program, CFDA No. 16.738 plus additional $32,639 state funds from Department of Commerce).

• Differences from Previous Contract
  An increase in funding of $3,050 from last year’s grant.

Please contact Undersheriff Jeff Parks at extension 50418 if you have any questions regarding the terms of this agreement.

Enclosures
**WHATCOM COUNTY CONTRACT INFORMATION SHEET**

**Originating Department:** Whatcom County Sheriff’s Office

**Contract or Grant Administrator:** Jeff Parks, Undersheriff

**Contractor’s / Agency Name:** State of Washington Department of Commerce

<table>
<thead>
<tr>
<th>Question</th>
<th>Yes</th>
<th>No</th>
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</thead>
<tbody>
<tr>
<td>Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract?</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Does contract require Council Approval?</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Is this a grant agreement?</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Is this contract the result of a RFP or Bid process?</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Is this agreement excluded from E-Verify?</td>
<td>Yes</td>
<td>No</td>
</tr>
</tbody>
</table>

**If yes, indicate exclusion(s) below:**

- Professional services agreement for certified/licensed professional
- Contract for Commercial off the shelf items (COTS)
- Contract work is all performed outside U.S.
- Work related subcontract less than $25,000.

**Contract Amount:**

| Original Contract Amount | $131,738.00 |
| Total Amended Amount     | $131,738.00 |

**Summary of Scope:**

This grant was awarded to interdict criminal gangs and drugs through multi-jurisdictional efforts of law enforcement and prosecution. Total grant is $131,730 (indirect federal funds of $99,099 from U.S. Department of Justice, Edward Byrne Memorial Justice Assistance Grant (JAG) Program and state funds of $32,639 from Department of Commerce). These funds help support positions in the Sheriff’s Office and Prosecuting Attorney’s Office as well as operational costs for the Drug Task Force.

**Term of Contract:** July 1, 2014  
**Expiration Date:** June 30, 2015
Interagency Agreement with

Whatcom County

through

Justice Assistance Grant
Criminal Justice Section
Office of Crime Victims Advocacy
Community Services and Housing Division

For
Multi-jurisdictional investigation and prosecution of drug and gang organizations operating at levels normally beyond the level of local agencies to adequately pursue

Start date: July 1, 2014
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FACE SHEET

Washington State Department of Commerce
Community Services and Housing Division
Office of Crime Victims Advocacy
Multi-Jurisdictional Drug-Gang Task Forces

<table>
<thead>
<tr>
<th>1. Contractor</th>
<th>2. Contractor Doing Business As (optional)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Whatcom County Sheriff’s Office 311 Grand Avenue Bellingham, WA 98225-4186</td>
<td>Northwest Regional Drug Task Force</td>
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</tbody>
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<table>
<thead>
<tr>
<th>3. Contractor Representative</th>
<th>4. COMMERCE Representative</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kevin Hester 360-676-6650 <a href="mailto:khester@co.whatcom.wa.us">khester@co.whatcom.wa.us</a></td>
<td>William Johnston 1011 Plum Street SE Olympia, WA 98504-2525 360-725-3030 <a href="mailto:Bill.johnston@commerce.wa.gov">Bill.johnston@commerce.wa.gov</a></td>
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14. Contract Purpose

To provide local governments with U.S. Department of Justice, Bureau of Justice Assistance funds for the investigation, disruption, and prosecution of drug and gang organizations operating at levels above the normal capacity of local jurisdictions to pursue.

COMMERCE, defined as the Department of Commerce, and the Contractor, as defined above, acknowledge and accept the terms of this Contract and attachments and have executed this Contract on the date below to start as of the date and year referenced above. The rights and obligations of both parties to this Contract are governed by this Contract and the following other documents incorporated by reference: Contractor Terms and Conditions including Attachment “A” - Scope of Work, Attachment “B” - Budget, Attachment “C” - Activity Reporting, Grantee’s Application for Funding under this program as amended, the Grantee’s Certifications and Assurances required by COMMERCE as pre-requisites for execution of this Agreement, and ‘Criminal Justice Grants - Policies and Procedures Guide’ published by COMMERCE, as amended.

FOR CONTRACTOR

See attached signature page.

<insert name>, <insert title>

Date

FOR COMMERCE

Diane Klontz, Assistant Director

Date

APPROVED AS TO FORM ONLY
BY ASSISTANT ATTORNEY GENERAL
WHATCOM COUNTY:
Recommended for Approval:

Approved as to form:

Approved:
Accepted for Whatcom County:

By: ____________________________ ____________________________
    Jack Louws, Whatcom County Executive                      Date

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 ______________________.
1. **ACKNOWLEDGEMENT OF FEDERAL FUNDING**

The Contractor agrees that any publications (written, visual, or sound) but excluding press releases, newsletters, and issue analyses, issued by the Contractor describing programs or projects funded in whole or in part with federal funds under this Contract, shall contain the following statements:

"This project was supported by a grant awarded by United States Department of Justice, Office of Justice Programs, Bureau of Justice Assistance. Points of view in this document are those of the author and do not necessarily represent the official position or policies of the United States Department of Justice. Grant funds are administered by the Office of Crime Victims Advocacy, Community Services and Housing Division, Washington State Department of Commerce."

2. **CONTRACT MANAGEMENT**

The Representative for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Contract.

The Representative for COMMERCE and their contact information are identified on the Face Sheet of this Contract.

The Representative for the Contractor and their contact information are identified on the Face Sheet of this Contract.

3. **COMPENSATION**

COMMERCE shall pay an amount not to exceed the amount specified in Block 5 of this Agreement's Face Sheet for the performance of all things necessary for or incidental to the performance of work as set forth in the Scope of Work.

4. **BILLING PROCEDURES AND PAYMENT**

COMMERCE will pay Contractor upon receipt of properly completed invoices, which shall be submitted to the Representative for COMMERCE not more often than monthly, but at least quarterly.

The invoices shall describe and document, to COMMERCE's satisfaction, a description of the work performed. The invoice shall include the Agreement reference number specified on the upper-right corner of each page of this Agreement. If expenses are invoiced, provide a detailed breakdown by category of expense.

Payment shall be considered timely if made by COMMERCE within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the Contractor.

COMMERCE may, in its sole discretion, terminate the Contract or withhold payments claimed by the Contractor for services rendered if the Contractor fails to satisfactorily comply with any term or condition of this Contract.

No payments in advance or in anticipation of services or supplies to be provided under this Agreement shall be made by COMMERCE.

**Duplication of Billed Costs**

The Contractor shall not bill COMMERCE for services performed under this Agreement, and COMMERCE shall not pay the Contractor, if the Contractor is entitled to payment or has been or will be paid by any other source, including grants, for that service.

**Disallowed Costs**

The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subcontractors.
Withholding Payment
Payment for otherwise allowable costs incurred in April 2015 and subsequent months will be withheld unless and until the registration of the Contractor's Dun & Bradstreet (DUNS) Number in the Central Contract Registry as renewed as evidenced by the System for Award Management.

5. INSURANCE
The Contractor shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect COMMERCE should there be any claims, suits, actions, costs, damages or expenses arising from any loss, or negligent or intentional act or omission of the Contractor or Subcontractor, or agents of either, while performing under the terms of this Agreement.

The insurance required shall be issued by an insurance company authorized to do business within the state of Washington. Except for Professional Liability or Errors and Omissions Insurance, the insurance shall name the state of Washington, its agents, officers, and employees as additional insureds under the insurance policy. All policies shall be primary to any other valid and collectable insurance. The Contractor shall instruct the insurers to give COMMERCE thirty (30) calendar days advance notice of any insurance cancellation, non-renewal or modification.

The Contractor shall submit to COMMERCE within fifteen (15) calendar days of the Agreement start date, a certificate of insurance which outlines the coverage and limits defined in this insurance section. During the term of the Agreement, the Contractor shall submit renewal certificates not less than thirty (30) calendar days prior to expiration of each policy required under this section.

The Contractor shall provide insurance coverage that shall be maintained in full force and effect during the term of this Agreement, as follows:

Commercial General Liability Insurance Policy. Provide a Commercial General Liability Insurance Policy, including contractual liability, written on an occurrence basis, in adequate quantity to protect against legal liability arising out of Agreement activity but no less than $1,000,000 per occurrence. Additionally, the Contractor is responsible for ensuring that any Subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.

Automobile Liability. In the event that performance pursuant to this Agreement involves the use of vehicles, owned or operated by the Contractor or its Subcontractor, automobile liability insurance shall be required. The minimum limit for automobile liability is $1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.

Professional Liability, Errors and Omissions Insurance. The Contractor shall maintain Professional Liability or Errors and Omissions Insurance. The Contractor shall maintain minimum limits of no less than $1,000,000 per occurrence to cover all activities by the Contractor and licensed staff employed or under contract to the Contractor. The state of Washington, its agents, officers, and employees need not be named as additional insureds under this policy.

Fidelity Insurance. Every officer, director, employee, or agent who is authorized to act on behalf of the Contractor for the purpose of receiving or depositing funds into program accounts or issuing financial documents, checks, or other instruments of payment for program costs shall be insured to provide protection against loss:

A. The amount of fidelity coverage secured pursuant to this Agreement shall be $100,000 or the highest of planned reimbursement for the Agreement period, whichever is lowest. Fidelity insurance secured pursuant to this paragraph shall name COMMERCE as beneficiary.

B. Subcontractors that receive $10,000 or more per year in funding through this Agreement shall secure fidelity insurance as noted above. Fidelity insurance secured by Subcontractors pursuant to this paragraph shall name the Contractor as beneficiary.

C. The Contractor shall provide, at COMMERCE's request, copies of insurance instruments or certifications from the insurance issuing agency. The copies or certifications shall show the insurance coverage, the designated beneficiary, who is covered, the amounts, the period of
coverage, and that COMMERCE will be provided thirty (30) days advance written notice of cancellation.

**Additional Provisions:**

Above insurance policy shall include the following provisions:

1. **Additional Insured.** The state of Washington, COMMERCE, its elected and appointed officials, agents and employees shall be named as an additional insured on all general liability, excess, umbrella and property insurance policies. All insurance provided in compliance with this Agreement shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State.

2. **Identification.** The policy must reference COMMERCE’s Agreement number and the State agency name.

3. **Insurance Carrier Rating.** All insurance and bonds should be issued by companies admitted to do business within the state of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best’s Reports. Any exception shall be reviewed and approved by COMMERCE’s Risk Manager, or the Risk Manager for the state of Washington, before the Agreement is accepted or work may begin. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and 284-15 WAC.

4. **Excess Coverage.** By requiring insurance herein, COMMERCE does not represent that coverage and limits will be adequate to protect Contractor and such coverage and limits shall not limit Contractor's liability under the indemnities and reimbursements granted to COMMERCE in this Agreement.

**Local Government Contractors that Participate in a Self-Insurance Program**

Self-Insured/Liability Pool or Self-Insured Risk Management Program – The Contractor may provide the coverage above under a self-insured/liability pool or self-insured risk management program. All self-insured risk management programs or self-insured/liability pool financial reports must comply with Generally Accepted Accounting Principles (GAAP) and adhere to accounting standards promulgated by: 1) Governmental Accounting Standards Board (GASB), 2) Financial Accounting Standards Board (FASB), and 3) the Washington State Auditor's annual instructions for financial reporting. Contractor's participating in joint risk pools shall maintain sufficient documentation to support the aggregate claim liability information reported on the balance sheet. The state of Washington, its agents, and employees need not be named as additional insured under a self-insured property/liability pool, if the pool is prohibited from naming third parties as additional insured.

**6. FEDERAL NON-DISCRIMINATION REQUIREMENTS**

The Contractor will comply with any applicable federal nondiscrimination requirements, which may include:

- the Omnibus Crime Control Act and Safe Streets Act of 1968 (42 U.S.C. § 3789d);
- the Victims of Crime Act (42 U.S.C. § 10604(e));
- the Juvenile Justice and Delinquency Prevention Act of 2002 (42 U.S.C. § 5672(b));
- the Civil Rights Act of 1964 (42 U.S.C. § 2000(d));
- the Rehabilitation Act of 1973 (29 U.S.C. § 794);
- the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12131-34);
- the Education Amendments of 1972 (20 U.S.C. §§ 1681,1683,1685-86);
- the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-07);
- 28 C.F.R. Part 42 (U.S. Department of Justice Regulations – Nondiscrimination, Equal Employment Opportunity, Policies and Procedures);
7. **NOTIFICATION OF FINDINGS OF DISCRIMINATION OR NON-COMPLIANCE**

In the event a state or federal court or a state or federal administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin, age, disability, or sex against the Contractor or a Subcontractor receiving grant funds, the Contractor will forward a copy of the finding to the U.S. Department of Justice, Office of Justice Programs, Office of Civil Rights (OCR), and COMMERCE.

The Contractor shall include a statement clearly stating whether or not the finding is related to any grant activity supported with a grant in which U.S. Department of Justice Funds are involved, and identify all open grants utilizing U.S. Department of Justice funding, by Contract number and program title.

The Contractor is required to ensure compliance with this requirement by any Subcontractor receiving funding from a grant supported with U.S. Department of Justice funds.

8. **PROGRAM FIDELITY**

In the event the Contractor does not maintain agency participation and personnel dedication as described in Appendix A - Scope of Work and Form 5 of their Application for Funding under this program, funding shall be reduced or terminated in accordance with the 'TASK FORCE MODEL COMPLIANCE FUNDING REDUCTIONS' section (Page 2) of the 'Application Package for Regional Justice Assistance Grant Multi-Jurisdictional Drug-Gang Task Forces'.

9. **ORDER OF PRECEDENCE**

In the event of an inconsistency in this Contract, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable federal and state of Washington statutes and regulations.
- Special Terms and Conditions.
- General Terms and Conditions.
- Attachment A – Statement of Work.
- Attachment B – Budget.
- Attachment C – Activity Report.
1. **DEFINITIONS**

   As used throughout this Contract, the following terms shall have the meaning set forth below:

   A. "Authorized Representative" shall mean the Director and/or the designee authorized in writing to act on the Director's behalf.

   B. "COMMERCE" shall mean the Department of Commerce.

   C. "Contractor" shall mean the entity identified on the face sheet performing service(s) under this Contract, and shall include all employees and agents of the Contractor.

   D. "Personal Information" shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.

   E. "State" shall mean the state of Washington.

   F. "Subcontractor" shall mean one not in the employment of the Contractor, who is performing all or part of those services under this Contract under a separate contract with the Contractor. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier.

2. **ADVANCE PAYMENTS PROHIBITED**

   No payments in advance of or in anticipation of goods or services to be provided under this Contract shall be made by COMMERCE.

3. **ALL WRITINGS CONTAINED HERIN**

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

4. **AMENDMENTS**

   This Contract 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.

5. **AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the “ADA” 28 CFR Part 35**

   The Contractor 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 telecommunications.

6. **ASSIGNMENT**

   Neither this Contract, nor any claim arising under this Contract, shall be transferred or assigned by the Contractor without prior written consent of COMMERCE.

7. **ATTORNEYS’ FEES**

   Unless expressly permitted under another provision of the Contract, in the event of litigation or other action brought to enforce Contract terms, each party agrees to bear its own attorneys fees and costs.

8. **AUDIT**

   A. **General Requirements**

      Contractors are to procure audit services based on the following guidelines.

      The Contractor shall maintain its records and accounts so as to facilitate audits and shall ensure that Subcontractors also maintain auditable records.

      The Contractor is responsible for any audit exceptions incurred by its own organization or that of its Subcontractors.
COMMERCE reserves the right to recover from the Contractor all disallowed costs resulting from the audit.

Responses to any unresolved management findings and disallowed or questioned costs shall be included with the audit report. The Contractor must respond to COMMERCE requests for information or corrective action concerning audit issues within thirty (30) days of the date of request.

B. **Federal Funds Requirements - OMB Circular A-133 Audits of States, Local Governments and Non-Profit Organizations**

Contractors expending $500,000 or more in a fiscal year in federal funds from all sources, direct and indirect, are required to have an audit conducted in accordance with Office of Management and Budget (OMB) Revised Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations." Revised OMB A-133 requires the Contractor to provide the auditor with a schedule of Federal Expenditure for the fiscal year(s) being audited. When state funds are also to be paid under this Agreement a Schedule of State Financial Assistance must also be included. Both schedules include:

- Grantor agency name
- Federal agency
- Federal program name
- Other identifying contract numbers
- Catalog of Federal Domestic Assistance (CFDA) number (if applicable)
- Grantor contract number
- Total award amount including amendments (total grant award)
- Current year expenditures

If the Contractor is a state or local government entity, the Office of the State Auditor shall conduct the audit. Audits of non-profit organizations are to be conducted by a certified public accountant selected by the Contractor in accordance with OMB Circular A-110 "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations."

The Contractor shall include the above audit requirements in any subcontracts.

In any case, the Contractor’s financial records must be available for review by COMMERCE.

C. **Documentation Requirements**

The Contractor must send a copy of any required audit Reporting Package as described in OMB Circular A-133, Part C, Section 320(c) no later than nine (9) months after the end of the Contractor’s fiscal year(s) by sending a scanned copy to auditreview@commerce.wa.gov or a hard copy to:

- Department of Commerce
- ATTN: Audit Review and Resolution Office
- 1011 Plum Street SE
- PO Box 42525
- Olympia WA 98504-2525

In addition to sending a copy of the audit, when applicable, the Contractor must include:

- Corrective action plan for audit findings within three (3) months of the audit being received by COMMERCE.
- Copy of the Management Letter.
9. CERTIFICATION REGARDING DEBARMENT, SUSPENSION OR INELIGIBILITY AND VOLUNTARY EXCLUSION—PRIMARY AND LOWER TIER COVERED TRANSACTIONS

A. Contractor, defined as the primary participant and its principals, certifies by signing these General Terms and Conditions that to the best of its knowledge and belief that they:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.
2. 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 or private agreement or transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;
3. 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 federal Executive Order 12549; and
4. Have not within a three-year period preceding the signing of this Contract had one or more public transactions (Federal, State, or local) terminated for cause of default.

B. Where the Contractor is unable to certify to any of the statements in this Contract, the Contractor shall attach an explanation to this Contract.

C. The Contractor agrees by signing this Contract that 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 COMMERCE.

D. The Contractor further agrees by signing this Contract that it will include the clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,” as follows, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions:

LOWER TIER COVERED TRANSACTIONS

a) The lower tier contractor certifies, by signing this Contract that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by COMMERCE.

b) Where the lower tier contractor is unable to certify to any of the statements in this Contract, such contractor shall attach an explanation to this Contract.

E. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, person, primary covered transaction, principal, and voluntarily excluded, as used in this section, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact COMMERCE for assistance in obtaining a copy of these regulations.

10. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

A. "Confidential Information" as used in this section includes:

1. All material provided to the Contractor by COMMERCE that is designated as "confidential" by COMMERCE;
2. All material produced by the Contractor that is designated as "confidential" by COMMERCE; and
3. All personal information in the possession of the Contractor that may not be disclosed under state or federal law. "Personal information" includes but is not limited to information related to a person’s name, health, finances, education, business, use of government services,
addresses, telephone numbers, social security number, driver’s license number and other identifying numbers, and “Protected Health Information” under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).

B. The Contractor shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Contractor shall use Confidential Information solely for the purposes of this Contract and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of COMMERCE or as may be required by law. The Contractor shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Contractor shall provide COMMERCE with its policies and procedures on confidentiality. COMMERCE may require changes to such policies and procedures as they apply to this Contract whenever COMMERCE reasonably determines that changes are necessary to prevent unauthorized disclosures. The Contractor shall make the changes within the time period specified by COMMERCE. Upon request, the Contractor shall immediately return to COMMERCE any Confidential Information that COMMERCE reasonably determines has not been adequately protected by the Contractor against unauthorized disclosure.

C. Unauthorized Use or Disclosure. The Contractor shall notify COMMERCE within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

11. CONFLICT OF INTEREST

Notwithstanding any determination by the Executive Ethics Board or other tribunal, COMMERCE may, in its sole discretion, by written notice to the Contractor terminate this contract if it is found after due notice and examination by COMMERCE that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving the Contractor in the procurement of, or performance under this contract.

In the event this contract is terminated as provided above, COMMERCE shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Contractor. The rights and remedies of COMMERCE provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which COMMERCE makes any determination under this clause shall be an issue and may be reviewed as provided in the “Disputes” clause of this contract.

12. COPYRIGHT PROVISIONS

Unless otherwise provided, all Materials produced under this Contract shall be considered “works for hire” as defined by the U.S. Copyright Act and shall be owned by COMMERCE. COMMERCE shall be considered the author of such Materials. In the event the Materials are not considered “works for hire” under the U.S. Copyright laws, the Contractor hereby irrevocably assigns all right, title, and interest in all Materials, including all intellectual property rights, moral rights, and rights of publicity to COMMERCE effective from the moment of creation of such Materials.

“Materials” means all items in any format and includes, but is not limited to, data, 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.

For Materials that are delivered under the Contract, but that incorporate pre-existing materials not produced under the Contract, the Contractor hereby grants to COMMERCE a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Contractor warrants and represents that the Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to COMMERCE.

The Contractor shall exert all reasonable effort to advise COMMERCE, at the time of delivery of Materials furnished under this Contract, of all known or potential invasions of privacy contained
therein and of any portion of such document which was not produced in the performance of this Contract. The Contractor shall provide COMMERCE with prompt written notice of each notice or claim of infringement received by the Contractor with respect to any Materials delivered under this Contract. COMMERCE shall have the right to modify or remove any restrictive markings placed upon the Materials by the Contractor.

13. DISPUTES

Except as otherwise provided in this Contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with the Director of COMMERCE, who may designate a neutral person to decide the dispute.

The request for a dispute hearing must:

- be in writing;
- state the disputed issues;
- state the relative positions of the parties;
- state the Contractor's name, address, and Contract number; and
- be mailed to the Director and the other party's (respondent's) Contract Representative within three (3) working days after the parties agree that they cannot resolve the dispute.

The respondent shall send a written answer to the requestor's statement to both the Director or the Director's designee and the requestor within five (5) working days.

The Director or designee shall review the written statements and reply in writing to both parties within ten (10) working days. The Director or designee may extend this period if necessary by notifying the parties.

The decision shall not be admissible in any succeeding judicial or quasi-judicial proceeding.

The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this Contract shall be construed to limit the parties’ choice of a mutually acceptable alternate dispute resolution (ADR) method in addition to the dispute hearing procedure outlined above.

14. DUPLICATE PAYMENT

COMMERCE shall not pay the Contractor, if the Contractor has charged or will charge the State of Washington or any other party under any other contract or agreement, for the same services or expenses.

15. GOVERNING LAW AND VENUE

This Contract shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

16. INDEMNIFICATION

To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the state of Washington, COMMERCE, agencies of the state and all officials, agents and employees of the state, from and against all claims for injuries or death arising out of or resulting from the performance of the contract. "Claim" as used in this contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorneys fees, attributable for bodily injury, sickness, disease, or death, or injury to or the destruction of tangible property including loss of use resulting therefrom.

The Contractor's obligation to indemnify, defend, and hold harmless includes any claim by Contractor's agents, employees, representatives, or any subcontractor or its employees.
The Contractor expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to the Contractor's or any subcontractor's performance or failure to perform the contract. The Contractor's obligation to indemnify, defend, and hold harmless the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its agents, agencies, employees and officials.

The Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the state and its agencies, officers, agents or employees.

17. INDEPENDENT CAPACITY OF THE CONTRACTOR

The parties intend that an independent contractor relationship will be created by this Contract. The Contractor and its employees or agents performing under this Contract are not employees or agents of the state of Washington or COMMERCE. The Contractor will not hold itself out as or claim to be an officer or employee of COMMERCE or of the state of Washington by reason hereof, nor will the Contractor make any claim of right, privilege or benefit which would accrue to such officer or employee under law. Conduct and control of the work will be solely with the Contractor.

18. INDUSTRIAL INSURANCE COVERAGE

The Contractor shall comply with all applicable provisions of Title 51 RCW, Industrial Insurance. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, COMMERCE may collect from the Contractor the full amount payable to the Industrial Insurance Accident Fund. COMMERCE may deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by COMMERCE under this Contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Contractor.

19. LAWS

The Contractor shall comply with all applicable laws, ordinances, codes, regulations, and policies of local, state, and federal governments, as now or hereafter amended, including, but not limited to:

United States Laws, Regulations and Circulars (Federal)

A. Audits
Office of Management and Budget (OMB) Revised Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations."

B. Labor and Safety Standards
Convict Labor, 18 U.S.C. 751, 752, 4081, 4082.
Drug-Free Workplace Act of 1988, 41 USC 701 et seq.

C. Laws against Discrimination
Nondiscrimination in Federally Assisted Programs.
Executive Order 11246, as amended by EO 11375, 11478, 12086 and 12102.
GENERAL TERMS AND CONDITIONS


Nondiscrimination and Equal Opportunity, 24 CFR 5.105(a).


Nondiscrimination in employment, Title VII of the Civil Rights Act of 1964, Public Law 88-352.


Section 3, Housing and Urban Development Act of 1968, 12 USC 1701u (See 24 CFR 570.607(b)).

D. Office of Management and Budget Circulars

Cost Principles for State, Local and Indian Tribal Governments, OMB Circular A-87, 2 CFR, Part 225.

Cost Principles for Nonprofit Organizations, OMB Circular A-122 (if the Contractor is a nonprofit organization).

Grants and Cooperative Agreements with State and Local Governments, OMB Circular A-102 (if the Contractor is a local government or federally recognized Indian tribal government).

Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations, OMB Circular A-110.

E. Other


Non-Supplanting Federal Funds.

Section 8 Housing Assistance Payments Program.

F. Privacy


Washington State Laws and Regulations

A. Affirmative action, RCW 41.06.020 (1).

B. Boards of directors or officers of non-profit corporations – Liability - Limitations, RCW 4.24.264.

C. Disclosure-campaign finances-lobbying, Chapter 42.17A RCW.
D. Discrimination-human rights commission, Chapter 49.60 RCW.
E. Ethics in public service, Chapter 42.52 RCW.
F. Office of minority and women’s business enterprises, Chapter 39.19 RCW and Chapter 326-02 WAC.
G. Open public meetings act, Chapter 42.30 RCW.
H. Public records act, Chapter 42.56 RCW.
I. State budgeting, accounting, and reporting system, Chapter 43.88 RCW.

20. LICENSING, ACCREDITATION AND REGISTRATION
The Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements or standards necessary for the performance of this Contract.

21. LIMITATION OF AUTHORITY
Only the Authorized Representative or the Authorized Representative’s delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract. Furthermore, any alteration, amendment, modification, or waiver or any clause or condition of this contract is not effective or binding unless made in writing and signed by the Agent.

22. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS
During the performance of this Contract, the Contractor shall comply with all federal, state, and local nondiscrimination laws, regulations and policies. In the event of the Contractor’s non-compliance or refusal to comply with any nondiscrimination law, regulation or policy, this Contract may be rescinded, canceled or terminated in whole or in part, and the Contractor may be declared ineligible for further contracts with COMMERCE. The Contractor shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the “Disputes” procedure set forth herein.

23. POLITICAL ACTIVITIES
Political activity of Contractor employees and officers are limited by the State Campaign Finances and Lobbying provisions of Chapter 42.17A RCW and the Federal Hatch Act, 5 USC 1501 - 1508.

No funds may be used for working for or against ballot measures or for or against the candidacy of any person for public office.

24. PROCUREMENT STANDARDS FOR FEDERAFLY FUNDED PROGRAMS
A Contractor which is a local government or Indian Tribal government must establish procurement policies and procedures in accordance with OMB Circulars A-102, Uniform Administrative Requirements for Grants in Aid for State and Local Governments, for all purchases funded by this Contract.

A Contractor which is a nonprofit organization shall establish procurement policies in accordance with OMB Circular A-110, Uniform Administrative Requirements for Grants and Agreements with Nonprofit Agencies, for all purchases funded by this Contract.

The Contractor’s procurement system should include at least the following:

1. A code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in the awarding of contracts using federal funds.

2. Procedures that ensure all procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition.

3. Minimum procedural requirements, as follows:
a. Follow a procedure to assure the avoidance of purchasing unnecessary or duplicative items.

b. Solicitations shall be based upon a clear and accurate description of the technical requirements of the procured items.

c. Positive efforts shall be made to use small and minority-owned businesses.

d. The type of procuring instrument (fixed price, cost reimbursement) shall be determined by the Contractor, but must be appropriate for the particular procurement and for promoting the best interest of the program involved.

e. Contracts shall be made only with reasonable subcontractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement.

f. Some form of price or cost analysis should be performed in connection with every procurement action.

g. Procurement records and files for purchases shall include all of the following:
   1) Contractor selection or rejection.
   2) The basis for the cost or price.
   3) Justification for lack of competitive bids if offers are not obtained.

h. A system for contract administration to ensure Contractor conformance with terms, conditions and specifications of this Contract, and to ensure adequate and timely follow-up of all purchases.

4. Contractor and Subcontractor must receive prior approval from COMMERCE for using funds from this Contract to enter into a sole source contract or a contract where only one bid or proposal is received when value of this Contract is expected to exceed $5,000.

Prior approval requests shall include a copy of proposed contracts and any related procurement documents and justification for non-competitive procurement, if applicable.

25. PUBLICITY

The Contractor agrees not to publish or use any advertising or publicity materials in which the state of Washington or COMMERCE’s name is mentioned, or language used from which the connection with the state of Washington’s or COMMERCE’s name may reasonably be inferred or implied, without the prior written consent of COMMERCE.

26. RECAPTURE

In the event that the Contractor fails to perform this Contract in accordance with state laws, federal laws, and/or the provisions of this Contract, COMMERCE reserves the right to recapture funds in an amount to compensate COMMERCE for the noncompliance in addition to any other remedies available at law or in equity.

Repayment by the Contractor of funds under this recapture provision shall occur within the time period specified by COMMERCE. In the alternative, COMMERCE may recapture such funds from payments due under this Contract.

27. RECORDS MAINTENANCE

The Contractor shall maintain books, records, documents, data and other evidence relating to this contract and performance of the services described herein, including but not limited to accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract.

The Contractor shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the contract, shall be
subject at all reasonable times to inspection, review or audit by COMMERCE, personnel duly authorized by COMMERCE, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

28. RIGHT OF INSPECTION

The Contractor shall provide right of access to its facilities to COMMERCE, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this contract.

29. 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, COMMERCE may terminate the Contract under the "Termination for Convenience" clause, without the ten calendar day notice requirement. In lieu of termination, the Contract may be amended to reflect the new funding limitations and conditions.

30. SEVERABILITY

The provisions of this contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the contract.

31. SITE SECURITY

While on COMMERCE premises, the Contractor, its agents, employees, or subcontractors shall conform in all respects with physical, fire or other security policies or regulations.

32. SUBCONTRACTING

The Contractor may only subcontract work contemplated under this Contract if it obtains the prior written approval of COMMERCE.

If COMMERCE approves subcontracting, the Contractor shall maintain written procedures related to subcontracting, as well as copies of all subcontracts and records related to subcontracts. For cause, COMMERCE in writing may: (a) require the Contractor to amend its subcontracting procedures as they relate to this Contract; (b) prohibit the Contractor from subcontracting with a particular person or entity; or (c) require the Contractor to rescind or amend a subcontract.

Every subcontract shall bind the Subcontractor to follow all applicable terms of this Contract. The Contractor is responsible to COMMERCE if the Subcontractor fails to comply with any applicable term or condition of this Contract. The Contractor shall appropriately monitor the activities of the Subcontractor to assure fiscal conditions of this Contract. In no event shall the existence of a subcontract operate to release or reduce the liability of the Contractor to COMMERCE for any breach in the performance of the Contractor’s duties.

Every subcontract shall include a term that COMMERCE and the State of Washington are not liable for claims or damages arising from a Subcontractor’s performance of the subcontract.

33. SURVIVAL

The terms, conditions, and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive.
34. TAXES
All payments accrued on account of payroll taxes, unemployment contributions, the Contractor's income or gross receipts, any other taxes, insurance or expenses for the Contractor or its staff shall be the sole responsibility of the Contractor.

35. TERMINATION FOR CAUSE
In the event COMMERCE determines the Contractor has failed to comply with the conditions of this contract in a timely manner, COMMERCE has the right to suspend or terminate this contract. Before suspending or terminating the contract, COMMERCE shall notify the Contractor in writing of the need to take corrective action. If corrective action is not taken within 30 calendar days, the contract may be terminated or suspended.

In the event of termination or suspension, the Contractor shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time.

COMMERCE reserves the right to suspend all or part of the contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the Contractor or a decision by COMMERCE to terminate the contract. A termination shall be deemed a "Termination for Convenience" if it is determined that the Contractor: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence.

The rights and remedies of COMMERCE provided in this contract are not exclusive and are, in addition to any other rights and remedies, provided by law.

36. TERMINATION FOR CONVENIENCE
Except as otherwise provided in this Contract, COMMERCE may, by ten (10) business days written notice, beginning on the second day after the mailing, terminate this Contract, in whole or in part. If this Contract is so terminated, COMMERCE shall be liable only for payment required under the terms of this Contract for services rendered or goods delivered prior to the effective date of termination.

37. TERMINATION PROCEDURES
Upon termination of this contract, COMMERCE, in addition to any other rights provided in this contract, may require the Contractor to deliver to COMMERCE any property specifically produced or acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

COMMERCE shall pay to the Contractor the agreed upon price, if separately stated, for completed work and services accepted by COMMERCE, and the amount agreed upon by the Contractor and COMMERCE for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services that are accepted by COMMERCE, and (iv) the protection and preservation of property, unless the termination is for default, in which case the Authorized Representative shall determine the extent of the liability of COMMERCE. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. COMMERCE may withhold from any amounts due the Contractor such sum as the Authorized Representative determines to be necessary to protect COMMERCE against potential loss or liability.

The rights and remedies of COMMERCE provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a notice of termination, and except as otherwise directed by the Authorized Representative, the Contractor shall:
1. Stop work under the contract on the date, and to the extent specified, in the notice;
2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;

3. Assign to COMMERCE, in the manner, at the times, and to the extent directed by the Authorized Representative, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case COMMERCE has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

4. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Authorized Representative to the extent the Authorized Representative may require, which approval or ratification shall be final for all the purposes of this clause;

5. Transfer title to COMMERCE and deliver in the manner, at the times, and to the extent directed by the Authorized Representative any property which, if the contract had been completed, would have been required to be furnished to COMMERCE;

6. Complete performance of such part of the work as shall not have been terminated by the Authorized Representative; and

7. Take such action as may be necessary, or as the Authorized Representative may direct, for the protection and preservation of the property related to this contract, which is in the possession of the Contractor and in which COMMERCE has or may acquire an interest.

38. TREATMENT OF ASSETS

Title to all property furnished by COMMERCE shall remain in COMMERCE. Title to all property furnished by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in COMMERCE upon delivery of such property by the Contractor. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in COMMERCE upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the AGENCY in whole or in part, whichever first occurs.

A. Any property of COMMERCE furnished to the Contractor shall, unless otherwise provided herein or approved by COMMERCE, be used only for the performance of this contract.

B. The Contractor shall be responsible for any loss or damage to property of COMMERCE that results from the negligence of the Contractor or which results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices.

C. If any COMMERCE property is lost, destroyed or damaged, the Contractor shall immediately notify COMMERCE and shall take all reasonable steps to protect the property from further damage.

D. The Contractor shall surrender to COMMERCE all property of COMMERCE prior to settlement upon completion, termination or cancellation of this contract

All reference to the Contractor under this clause shall also include Contractor's employees, agents or Subcontractors.

39. WAIVER

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Contract unless stated to be such in writing and signed by Authorized Representative of COMMERCE.
OUTCOME:

Work performed by the Multi-jurisdictional Drug-Gang Task Force shall have the outcome specified in the Contractor’s Application for funding and this Agreement. To reach this outcome, COMMERCE will provide funding and external evaluation of the task force; and the Contractor will provide for the task force’s organization, oversight, administration, supervision and mission, staffing and support, and other items necessary to carry out this Agreement.

To reach this goal, the Contractor shall provide or perform the following:

INTERIM OUTCOMES AND PERFORMANCE MEASURES:

1. The Regional Task Force continuously meets/exceeds Byrne JAG Gang-Drug Task Force Program Model Personnel staffing, as measured by:

   - Minimum of four (4) commissioned officers dedicated to the project (full time), or three (3) commissioned officers at a reduced funding level. In either case, one (1) of the commissioned officers shall be a full-time supervisor. Such officers shall work out a common location. Such officers shall work out of a common location.
   - Support staff (minimum of half-time).
   - Prosecutorial support of one (1) dedicated prosecutor/deputy prosecutor, or sufficient prosecutorial support such that no case submitted by the task force is rejected due to lack of staffing;
   - Gang Liaison (may be another member of the local task force).
   - Analyst (Optional).

2. Participation—the Task Force shall organize and govern participating partners, as measured by:

   - Contribution of least one (1) dedicated law enforcement officer by a minimum of three (3) local law enforcement agencies in the service area, or two (2) local law enforcement agencies if funded at a reduced funding level.
     - Local law enforcement agencies for this purpose includes city, county and tribal agencies.
     - Aggregated cash contributions from jurisdictions not large enough to fully dedicate individual officers, sufficient to support 90% of the full cost of a dedicated officer, may count as participation by local law enforcement agency for each officer so supported.
     - The Washington State Patrol may substitute for one of the local law enforcement agencies in small and rural task forces.

3. Task Force Mission—The Governance Board shall determine the Task Force Mission and set the priorities for work to be accomplished, as measured by:

   - A primary focus on cooperative, investigative work to identify, interdict, dismantle, and prosecute mid- to upper-level criminal organizations engaged in illicit gang, gun, and drug activities.

4. JAG Task Force Peer Review Participation—Task Force Governance Boards shall assure that JAG Grant compliance is achieved, as measured by:

   - Task Force will agree to an audit of its performance, a minimum of once per biennium, as described in COMMERCE’s Byrne JAG Task Force Peer Review Program Guide; and to participate in a follow-up of the Peer Review within the following year.
SCOPE OF WORK

• Task Force will participate in support of the Peer Review process by allowing assigned staff to volunteer as members of Peer Review Teams during audits in other jurisdictions.

5. Peer Review, Grant Compliance Monitoring, and State and Federal Audit Results—Task Force management and staff will review COMMERCE’s Policies and Procedures and Task Force internal rules and policies, as well as requirements and policies of the Contract fiscal agent to assure JAG Grant compliance, as measured by:
   • No repeat findings or discrepancies.
   • No recommendations requiring a reply by endorsement, or restructuring task force management.
   • No findings or discrepancies indicative of failure to maintain sound financial management.
   • No finding of non-compliance with grant requirements.

6. Other Fiscal and Administrative requirements, as measured by:
   • “FIFO” or First-In/First-Out tracking and quarterly reporting of Program Income funds (Forfeitures).
   • Timely submission of Contractor’s A-19 (Reimbursement Requests/Vouchers) by the 15th of the month following the reported quarter (as per COMMERCE’s Policy and Procedures Guide).
   • Compliance with all policies and procedures included in the current version of the Public Safety Unit’s Criminal Justice Policy and Procedures Guide.

7. Commander’s Conference (Semi-Annual) Training Attendance—Task Force Governance Boards shall establish policy to assure that key supervisory/management staff achieve JAG grant compliance, as measured by:
   • Attendance by key personnel as mandatory unless waiver is granted by COMMERCE

PERFORMANCE MEASURES AND DELIVERABLES:

1. Quarterly Performance Measures—Task Force Governance Boards will set measures to assure Task Force success by achievement of the critical performance measures reported in the Periodic Activity Report (PAR), as measured by a:
   • Minimum of 40 percent of Task Force arrests will be for multiple arrests cases.
   • Prosecutorial success rate of 80 percent of case results received with outcomes of “guilty,” “pled,” and/or “verdict” received.
   • Forfeiture success rate of 90 percent.
   • Minimum of 40 percent of task force cases disrupted/dismantled which consist of five (5) or more individuals where investigations have demonstrated an involvement in the criminal enterprise.

2. Quarterly Program Performance Activity Report (INTERIM OUTCOMES AND PERFORMANCE MEASURES 1 AND 2)—Task Force management will plan for, collect, and report program performance data, as measured by:
   • Timely submission per published scheduled Due Dates (See COMMERCE Task Force Application Report Schedule).
   • Entry of all applicable data as prescribed by the PAR Form User’s Guide.

3. Active cooperation and response to Evaluation Findings and Discrepancies (INTERIM OUTCOMES AND PERFORMANCE MEASURES 3 THROUGH 6)—administrative and compliance monitoring, and Peer Review Evaluations, as measured by:
• Assessment and response to discrepancies and findings noted in monitoring and peer review evaluations.

• Item-by-item demonstration of corrective action either through submitted written response or during a Peer Review or Monitoring follow-up visit (normally conducted approximately six [6] months after a Peer Review Evaluation).

4. **Commanders Conference Registration (INTERIM OUTCOMES AND PERFORMANCE MEASURES 7), as measured by:**

   • Advance registration.

   • On-site sign-in and handout collection.
GENERAL:
The total budget awarded under this Agreement shall be the amount specified in Block 5 of this Agreement’s Face Sheet.

The total Federal funds awarded under this Agreement shall be the amount specified in Block 9 of this Agreement’s Face Sheet. The CFDA number of the federal funds is 16.738.

Allocation of funds between categories of expense shall be as specified in the Contractor’s application for funding, as approved, except that the Contractor may vary from the application’s funding plan by shifting up to ten percent (10%) of the total awarded funds between categories of expense. This authority to shift funds is limited by the following: grant funds may not be shifted into zero budgeted categories of expense, and any shifts made may not constitute a significant change to the Scope of Work (Attachment A).

DRAWDOWN LIMITATION – FIRST THREE MONTHS:
During the first three months of the contract period not more than 24 percent of the total expenditures as described in the approved budget may be charged to this award. The Commerce Representative may terminate this limitation at any time by written notice.

PERFORMANCE BASED INCENTIVES AND CONSEQUENCES:

1. Delay and Disallowance of Reimbursement Requests Due to Late Performance Reporting

   Past due performance reports will result in withholding of requested reimbursements until the reports are received. Should a report be received after the due date, but not in sufficient time for enclosure in the corresponding federal quarterly report, the report will be rejected and no payment will be authorized for the missed quarter. For the first three quarters of this award, missed data and the corresponding expenditures may be submitted during the following quarter. However, lack of timely submission of the fourth quarter’s activity report will result in loss of all funds not previously reimbursed; and if disbursement of funds to reimburse expenditures incurred during the unreported quarter has been made, repayment shall be required.

2. Delay and Disallowance of Reimbursement Requests Due to Non-Compliance with Federal Pre-Requisites to Receive Funding

   During any period in which the Contractor is non-compliant with essential federal pre-requisites to receive federal funds, all expenditures will be disallowed. Eligibility of expenditures for reimbursement will resume on the date that the Contractor is deemed to be fully compliant with the essential federal pre-requisites as specified below:
   
   • DUNS (Data Universal Numbering System) number is registered in the Central Contract Registry portion of Grants.Gov (www.grants.gov), and the registration is current.
   
   • An Equal Employment Opportunity Plan The Contractor has been prepared and signed into effect within the last two years, and a copy has been forwarded to COMMERCE, and if appropriate to the Office of Civil Rights, U.S. Department of Justice.
   
   • Center of Task Force Leadership and Integrity Training through the www.ctfli.org website has been completed by all personnel dedicated to the task force not later than 120 days of being dedicated to the task force, but in any case within two years of the effective date of this Agreement. Dedicated personnel includes personnel assigned as investigative personnel, acting in supervisory and/or executive management, administrative, analytical or prosecutorial support of the task force,
   
   • Failure to respond to audit, monitoring or evaluation findings by the specified response date.

3. Reduction in the Quarterly Reimbursable Funds Due to Non-Compliance with the Task Force Staffing and Participation Model:

   Reporting staffing and/or “local” agency participation below that specified in the Contractor’s application on any Periodic Activity Report (quarterly activity report) shall cause the maximum amount...
that may be reimbursed for that quarter to be reduced in accordance with the table published on Page 2 of the Byrne Justice Assistance Grant, SFY 2014 Multi-Jurisdictional, Drug-Gang Task Force Program Application Package. For this purpose, the reimbursable amount authorized for the reported quarter shall be one-fourth of the total award as specified in Block 5 of this Agreement’s Face Sheet, multiplied by the ‘percent of allocation’ corresponding to the reported compliance level.

The difference between one-fourth of the total award (as specified in Block 5 of this Agreement’s Face Sheet) and the reimbursable amount authorized for the corresponding quarter is non-reimbursable, and is lost to the Contractor during the balance of this Agreement’s duration.

In the event that the Contractor has already been reimbursed beyond the reimbursable amount authorized for the quarter as calculated above, the corresponding expenditure is disallowed. Any funds so disallowed may be applied against authorized expenditures of the next quarter, if the quarter for which the disallowance is made is not the last calendar quarter of this Agreement. Should any funds be disallowed for the last calendar quarter of this Agreement, disallowed funds must be returned to COMMERCE.

COMMERCE reserves the right to waive this reduction/disallowance in event the reported non-compliance is considered a brief and minor anomaly not materially affecting task force operations or safety. Such a waiver is at the sole discretion of COMMERCE.

SEQUENCE OF APPLICATION OF EXPENDITURES AGAINST GRANT FUNDS SHALL BE AS FOLLOWS:

COMMERCE shall apply reported expenditures, and its reimbursement of those expenditures, as follows:

- Limited life funds (carryover about to expire) shall be disbursed first.

- After limited life funds are disbursed, State General Funds awarded under this Agreement shall be disbursed at a rate proportionate to the total federal funds disbursed (including any limited life funds). COMMERCE shall control this disbursement rate to ensure that sufficient State Funds are available to cover any program-wide rescission or a spending limit on state funds that may be imposed. COMMERCE shall notify each Contractor of the precise amount/source of disbursed funding upon request, and shall further notify the Contractor upon the imposition of any rescission or spending limit.
### Quarterly Performance Activity Reporting
Jul 2014 - Jun 2015

#### Local Funding

<table>
<thead>
<tr>
<th></th>
<th>Semi-Annual Budget</th>
<th>Semi-Annual Budget</th>
<th>Total (Annual)</th>
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<td>Local Budget</td>
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**JAG DGT**

#### Task Force Staffing

- FTEs are based upon the business standard of 820 Hrs/Qtr
- Report FTEs in decimals (not fractions, percent or hours)
- Report only FTEs supporting the Task Force (other duties go unreported)
- Do Not Count Prosecutor’s Offices as Law Enf. Agencies (Double Counts Jurisdictions)

#### Task Force Staffing Table

<table>
<thead>
<tr>
<th>Agency</th>
<th>Position</th>
<th>Q1 Jul-Sep</th>
<th>Q2 Oct-Dec</th>
<th>Q3 Jan-Mar</th>
<th>Q4 Apr-Jun</th>
<th>Year to Date</th>
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<td>Grant</td>
<td>Other</td>
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<td>Supported FTE</td>
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**Examples:** S.O. P.D. Pos. - Not X.B.X.O.

#### Full Commission Supervisors/Investigators (Commissioners don’t count for this purpose)

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<tr>
<th>Overtime</th>
<th>Q1 Jul-Sep</th>
<th>Q2 Oct-Dec</th>
<th>Q3 Jan-Mar</th>
<th>Q4 Apr-Jun</th>
<th>Year to Date</th>
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<td>Paid by JAG Only</td>
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<th>Personnel</th>
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<th>Year to Date</th>
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<th>Training</th>
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<th>Q2 Oct-Dec</th>
<th>Q3 Jan-Mar</th>
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<th>Year to Date</th>
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<tr>
<td>CTFI Training</td>
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<th>Essential Training</th>
<th>Q1 Jul-Sep</th>
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<th>Q3 Jan-Mar</th>
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<th>Year to Date</th>
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<td>Drug Basic or Supervisory</td>
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| Current Need | | | | | |

**Note:** Line number of the individual serving as the primary Gang Liaison Officer
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<th>Investigations Case Management</th>
<th>Q1 Jul-Sep</th>
<th>Q2 Oct-Dec</th>
<th>Q3 Jan-Mar</th>
<th>Q4 Apr-Jun</th>
<th>Year to Date</th>
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<td>Open/Closed</td>
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<td>No Arrests</td>
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<td>Multiple Arrestes</td>
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<td>Open at End of this Report Period</td>
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<td>Multi Arrest Case Percentage</td>
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<th>Q4 Apr-Jun</th>
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<td>5+ Suspect Investigations</td>
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<td>Total Nbr Meth Investigations</td>
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<td>Nbr Labs Dismantled</td>
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<td>Nbr Lab Sites Processed</td>
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<th>Small Groups Dismantled/Disrupted</th>
<th>Q1 Jul-Sep</th>
<th>Q2 Oct-Dec</th>
<th>Q3 Jan-Mar</th>
<th>Q4 Apr-Jun</th>
<th>Year to Date</th>
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<tr>
<td>Primary Nexus</td>
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<tr>
<td>(3-4 Mbr Org's)</td>
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<tr>
<td>Gang &amp; Drug Orgs</td>
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<td>Nbr Gang Orgs</td>
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<td>Q2 Oct-Dec</td>
<td>Q3 Jan-Mar</td>
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<td>Cooperative Investigations (All sized Org's)</td>
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<td>Nbr Federal Agencies</td>
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<td>Gang &amp; Drug Nexus</td>
<td>Drug Nexus</td>
<td>Other Investigations</td>
<td>Meth Nexus</td>
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<td>Gang &amp; Drug Nexus</td>
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## Activity Reporting

### Prosecution

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<tr>
<th>State</th>
<th>Federal (DAG-71s)</th>
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<tr>
<td>Q1 Jul-Sep</td>
<td>Q2 Oct-Dec</td>
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<tr>
<td>Not Felony Accepted for Pros</td>
<td>Not Misdemeanor Accepted for Pros</td>
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<tr>
<td>Results Received</td>
<td>Guilty Verdict/Plea - Felony</td>
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<td>Drug Nexus</td>
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<td>Other Nexus</td>
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<td>Firearm Violation</td>
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### Overall Prosecution

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<tr>
<th>Overall Prosecution</th>
<th>Prosecution Success Rate</th>
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<td>Forfeitures</td>
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<td>State Process</td>
<td>Number Successful</td>
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<tr>
<td>Federal (DAG-71s)</td>
<td>Number Successful</td>
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### Forfeitures Subject to Federal Rules from State Processed Forfeitures

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<tr>
<th>Carried Forward into Quarter</th>
<th>Date of Earliest Forfeiture's Realization Date</th>
<th>Not Fully Expended</th>
<th>Realized this Qtr</th>
<th>Expended this Qtr</th>
<th>Balance</th>
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<td>&quot;Use $ of Loss $&quot; Date</td>
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<tr>
<th>Firearm Types</th>
<th>Q1 Jul-Sep</th>
<th>Q2 Oct-Dec</th>
<th>Q3 Jan-Mar</th>
<th>Q4 Apr-Jun</th>
<th>Year to Date</th>
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<td>Nbr Seized</td>
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<td>Nbr Forfeited</td>
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<td>Nbr Firearms</td>
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<td>Rptls to ATF</td>
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<td>Nbr Hits on Rptls to ATF</td>
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<table>
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<tr>
<th>Equipment (Bought with Grant Funds ONLY)</th>
<th>Q1 Jul-Sep</th>
<th>Q2 Oct-Dec</th>
<th>Q3 Jan-Mar</th>
<th>Q4 Apr-Jun</th>
<th>Year to Date</th>
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<td>Non-Lethal Weapons</td>
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<td>Computers &amp; Accessories</td>
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<td>Cameras</td>
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<td>Video Recorders</td>
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<td>BodyWes &amp; Accessories</td>
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<td>Other 2 (Overtype)</td>
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<th>Drug Removals</th>
<th>Q1 Jul-Sep</th>
<th>Q2 Oct-Dec</th>
<th>Q3 Jan-Mar</th>
<th>Q4 Apr-Jun</th>
<th>Year to Date</th>
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<tbody>
<tr>
<td>Cocaine (grams)</td>
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<td>Crack Cocaine (grams)</td>
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<td>Oxycontin (Dosage Units)</td>
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<td>Oxycodeone (Dosage Units)</td>
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<td>Overhot Pharmaceutical (Dosage Units)</td>
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<td>Hallucinogens (Grams)</td>
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<tr>
<td>Heroin (All Forms) (Grams)</td>
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| Marijuana                          |          |           |           |           |              |
| Nbr of Grows Shaded                |          |           |           |           |              |
| Nbr of Plants Not Shaded           |          |           |           |           |              |
| Nbr Grows Not Medical Mj           |          |           |           |           |              |
| Nbr Plants Not Medical Mj          |          |           |           |           |              |

| Meth & Club Drugs                  |          |           |           |           |              |
| Meth (Grams)                       |          |           |           |           |              |
| Meth Crystal (CE) (Grams)          |          |           |           |           |              |
| Erythromycin (Grams)               |          |           |           |           |              |
| Pseudophedrine (Grams)             |          |           |           |           |              |
| MDM & Ecstasy (Dosage Units)       |          |           |           |           |              |
| Club Drugs (Dosage Units)          |          |           |           |           |              |
| Other Drugs (Dosage Units)         |          |           |           |           |              |

ACTIVITY REPORTING
M14-31440-017
ATTACHMENT C
### Homicide

<table>
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<tr>
<th>Violent Crime Situation</th>
<th>Q1 Jul-Sep</th>
<th>Q2 Oct-Dec</th>
<th>Q3 Jan-Mar</th>
<th>Q4 Apr-Jun</th>
<th>Year to Date</th>
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<td>Total in Jurisdiction(s)</td>
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<tr>
<td>Involving Firearms</td>
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### Aggravated Assault

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<th>Q3 Jan-Mar</th>
<th>Q4 Apr-Jun</th>
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<td>Gang Related</td>
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### Robbery

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<th>Year to Date</th>
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<td>Total in Jurisdiction(s)</td>
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### Gang Situation

#### (Estimate or Survey)

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<th>Q3 Jan-Mar</th>
<th>Q4 Apr-Jun</th>
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<td>RISSGANG Inquiries</td>
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To Best Judgement Std.
**WHATCOM COUNTY COUNCIL AGENDA BILL**

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<th>CLEARANCES</th>
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<th>Date Received in Council Office</th>
<th>Agenda Date</th>
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<td>07/08/14</td>
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**TITLE OF DOCUMENT:**
Washington State Military Department Homeland Security Grant Agreement
Operation Stonegarden Program (OPSG) Fiscal Year 2013

**ATTACHMENTS:**
Washington State Military Department Homeland Security Grant Agreement
FFY13 Operation Stonegarden Program (OPSG)

**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 supports enhanced cooperation and coordination among local, Tribal, territorial, State, and Federal law enforcement agencies in a joint mission to secure the international borders of the United States. Funding is provided by the U.S. Department of Homeland Security, Operation Stonegarden Program (OPSG) for Fiscal Year 2013.

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

TO: Jack Louws, County Executive
FROM: Bill Elfo, Sheriff
DATE: June 20, 2014
RE: Washington State Military Department
U.S. Department of Homeland Security
FFY13 Operation Stonegarden Program (OPSG) Contract #E14-251

Enclosed for your review and signature are two (2) original grant agreements between Whatcom County Sheriff’s Office and the State of Washington State Military Department for FFY13 Operation Stonegarden Program (OPSG), Grant Agreement Number E14-251.

• Background and Purpose
The Whatcom County Sheriff’s Office has been awarded $447,391 from the U.S. Department of Homeland Security (DHS), Operation Stonegarden Program (OPSG) for Fiscal Year 2013. This grant flows from DHS through the Washington State Military Department to Whatcom County. This is the sixth year that Whatcom County has received an Operation Stonegarden award.

The OPSG Grant Program supports enhanced cooperation and coordination among local, Tribal, territorial, State, and Federal law enforcement agencies in a joint mission to secure the borders of the United States along routes of ingress, to include travel corridors along the Canadian and international water borders.

Active participants include U.S. Border Patrol Blaine Sector, the Bellingham, Blaine, Everson, Ferndale, Lynden, and Sumas Police Departments, and the Whatcom County Sheriff’s Office.

This funding will be used for operational overtime and related mileage/fuel and for the purchase of equipment pre-approved during the application process.

• Funding Amount and Source

• Differences from Previous Contract
A decrease in funding of $277,609 from previous grant.

Please contact Undersheriff Jeff Parks at extension 50418 if you have any questions regarding the terms of this agreement.
### Whatcom County Contract Information Sheet

**Originating Department:** Whatcom County Sheriff's Office  
**Contract or Grant Administrator:** Jeff Parks, Undersheriff  
**Contractor's / Agency Name:** Washington State Military Department

<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract?</td>
<td>Yes ☑ No ☐</td>
</tr>
<tr>
<td>If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #</td>
<td></td>
</tr>
<tr>
<td>Does contract require Council Approval? Yes ☑ No ☐ If No, include WCC</td>
<td></td>
</tr>
<tr>
<td>(see Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)</td>
<td></td>
</tr>
<tr>
<td>Is this a grant agreement? Yes ☑ No ☐ If yes, grantor agency contract number(s) E14-251 CFDA # 97.067-HSGP (OPSG)</td>
<td></td>
</tr>
<tr>
<td>Is this contract grant funded? Yes ☑ No ☐ If yes, associated Whatcom County grant contract number(s)</td>
<td></td>
</tr>
<tr>
<td>Is this contract the result of a RFP or Bid process? Yes ☑ No ☐ If yes, RFP and Bid number(s)</td>
<td></td>
</tr>
<tr>
<td>Is this agreement excluded from E-Verify? No ☑ Yes ☑ If no, include Attachment D Contractor Declaration form.</td>
<td></td>
</tr>
<tr>
<td><strong>If yes, indicate exclusion(s) below:</strong></td>
<td></td>
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<tr>
<td>☐ Professional services agreement for certified/licensed professional</td>
<td></td>
</tr>
<tr>
<td>☐ Contract less than $100,000.</td>
<td></td>
</tr>
<tr>
<td>☐ Contract work is for less than 120 days</td>
<td></td>
</tr>
<tr>
<td>☑ Interlocal Agreement (between Gov't's)</td>
<td></td>
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<tr>
<td>☐ Work related subcontract less than $25,000.</td>
<td></td>
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<tr>
<td>☐ Public Works - Local Agency/Federally Funded FHWA</td>
<td></td>
</tr>
<tr>
<td><strong>Contract Amount:</strong> (sum of original contract amount and any prior amendments):</td>
<td></td>
</tr>
<tr>
<td>$ 447,391.00</td>
<td></td>
</tr>
<tr>
<td><strong>This Amendment Amount:</strong></td>
<td></td>
</tr>
<tr>
<td>$</td>
<td></td>
</tr>
<tr>
<td><strong>Total Amended Amount:</strong></td>
<td></td>
</tr>
<tr>
<td>$ 447,391.00</td>
<td></td>
</tr>
<tr>
<td><strong>Summary of Scope:</strong></td>
<td></td>
</tr>
<tr>
<td>Grant agreement supports enhanced cooperation and coordination among local, Tribal, territorial, State, and Federal law enforcement agencies in a joint mission to secure the international borders of the United States. Funding is provided by the U.S. Department of Homeland Security, Operation Stonegarden Program (OPSG) for Fiscal Year 2013.</td>
<td></td>
</tr>
<tr>
<td><strong>Term of Contract:</strong> 10/01/13</td>
<td></td>
</tr>
<tr>
<td><strong>Expiration Date:</strong> 06/30/15</td>
<td></td>
</tr>
</tbody>
</table>
**Washington State Military Department**  
**Homeland Security Grant Agreement Face Sheet**

<table>
<thead>
<tr>
<th>1. Sub-grantee Name and Address: Whatcom County Sheriff's Office 311 Grand Avenue Bellingham, WA 98225-4048</th>
<th>2. Grant Agreement Amount: $447,391</th>
<th>3. Grant Agreement Number: E14-251</th>
</tr>
</thead>
<tbody>
<tr>
<td>4. Sub-grantee Contact, phone/email: Dawn Pierce, (360) 676-6650 ext. 50456 <a href="mailto:dpierce@co.whatcom.wa.us">dpierce@co.whatcom.wa.us</a></td>
<td>5. Grant Agreement Start Date: October 1, 2013</td>
<td>6. Grant Agreement End Date: June 30, 2015</td>
</tr>
<tr>
<td>10. Funding Authority: Washington State Military Department (the “Department”) and the U.S. Department of Homeland Security (DHS)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>17. Women/Minority-Owned, State Certified?: X N/A □ NO □ YES, OMWBE #</td>
<td></td>
<td></td>
</tr>
<tr>
<td>18. Agreement Classification</td>
<td>19. Contract Type (check all that apply): □ Contract X Grant □ Intergovernmental (RCW 39.34) □ Intergency</td>
<td></td>
</tr>
<tr>
<td>□ Personal Services □ Client Services X Public/Local Gov’t □ Collaborative Research □ A/E □ Other</td>
<td></td>
<td></td>
</tr>
<tr>
<td>□ Sub-Grantee Selection Process: X &quot;To all who apply &amp; qualify&quot; □ Competitive Bidding □ Sole Source □ A/E RCW □ N/A</td>
<td>21. Sub-Grantee Type (check all that apply): □ Private Organization/Individual □ For-Profit □ Public Organization/Jurisdiction X Non-Profit □ VENDOR □ SUBRECIPIENT □ OTHER</td>
<td></td>
</tr>
<tr>
<td>□ Filed w/OMF? □ Advertised? □ YES □ NO</td>
<td></td>
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<tr>
<td>22. PURPOSE: The U.S. Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA) is providing funds to boost the capability of state and local units of government to prevent, deter, respond to, and recover from catastrophic and/or terrorist events through the FY13 Operation Stonegarden Program (OPSG). The OPSG Grant Program supports enhanced cooperation and coordination among local, Tribal, territorial, State, and Federal law enforcement agencies in a joint mission to secure the United States' borders along routes of ingress, to include travel corridors along the Canadian and international water borders.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>This agreement is based on Operations Order No. 14-BLWBLW-12-001 Version 0, approved by FEMA and the U.S. Customs and Border Protection/Border Patrol, and more fully described in the enclosed Scope Of Work (Exhibit C).</td>
<td></td>
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</tr>
<tr>
<td>IN WITNESS WHEREOF, the Department and Sub-Grantee 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 &amp; Conditions (Exhibit A); General Terms and Conditions (Exhibit B); Approved Projects (Exhibit C); Grant 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.</td>
<td></td>
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<tr>
<td>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.</td>
<td></td>
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</tr>
<tr>
<td>WHEREAS, the parties hereto have executed this Grant Agreement on the day and year last specified below.</td>
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</tr>
<tr>
<td>FOR THE DEPARTMENT:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Signature</td>
<td>Date</td>
<td></td>
</tr>
<tr>
<td>Richard A. Woodruff, Contracts Administrator Washington State Military Department</td>
<td>9/16/2013</td>
<td></td>
</tr>
<tr>
<td>BOILERPLATE APPROVED AS TO FORM:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Brian E. Buchholz (signature on file) Assistant Attorney General</td>
<td></td>
<td></td>
</tr>
<tr>
<td>FOR THE SUB-GRANTEE:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Signature</td>
<td>Date</td>
<td></td>
</tr>
<tr>
<td>Jack Louws, County Executive</td>
<td>6-20-2013</td>
<td></td>
</tr>
<tr>
<td>Signature</td>
<td>Date</td>
<td></td>
</tr>
<tr>
<td>Bill Elfo, Sheriff</td>
<td></td>
<td></td>
</tr>
<tr>
<td>APPROVED AS TO FORM (if applicable):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Applicant's Legal Review Date</td>
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</tr>
</tbody>
</table>

Form 10/27/10 wg

DHS-FEMA-HSGP-OPSG-FFY13

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Whatcom County Sheriff’s Office, E14-251

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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.

<table>
<thead>
<tr>
<th>SUB-GRANTEE</th>
<th>MILITARY DEPARTMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name</td>
<td>Dawn Pierce</td>
</tr>
<tr>
<td>Title</td>
<td>Financial Accountant</td>
</tr>
<tr>
<td>E-Mail</td>
<td><a href="mailto:dpierce@co.whatcom.wa.us">dpierce@co.whatcom.wa.us</a></td>
</tr>
<tr>
<td>Phone</td>
<td>360-676-6650 ext. 50456</td>
</tr>
<tr>
<td>Name</td>
<td>Jeff Parks</td>
</tr>
<tr>
<td>Title</td>
<td>Undersheriff</td>
</tr>
<tr>
<td>E-Mail</td>
<td><a href="mailto:jparks@co.whatcom.wa.us">jparks@co.whatcom.wa.us</a></td>
</tr>
<tr>
<td>Phone</td>
<td>360-668-6650</td>
</tr>
</tbody>
</table>

ARTICLE II -- ADMINISTRATIVE AND/OR FINANCIAL REQUIREMENTS
The Sub-grantee 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 Sub-grantee, upon written request by 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 Sub-grantee shall comply with all applicable federal laws, regulations and guidance referenced in the Fiscal Year (FY) 2013 Homeland Security Grant Program (HSGP) Funding Opportunity Announcement (FOA) which can be found at [http://www.fema.gov/grants](http://www.fema.gov/grants) and is hereby incorporated in and made a part of this Agreement.

6. The Sub-grantee 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 Department Attachment #1 attached to and made a part of this Agreement.

ARTICLE III – REIMBURSEMENT/INVOICING PROCEDURES

1. The Sub-grantee 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 Sub-grantee agrees that it will not hold 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.gsa.gov](http://www.gsa.gov) without prior written approval by Department key personnel.

3. Receipts and/or backup documentation for any approved budget line items including travel related expenses that are authorized under this Grant Agreement must be maintained by the Sub-grantee and be made available upon request by the Department, and local, state, or federal auditors.

4. The Sub-grantee will submit reimbursement requests to the Department by submitting a properly completed State A-19 Invoice form and reimbursement spreadsheet (in the format provided by the Department) detailing the expenditures for which reimbursement is sought. Reimbursement requests must be submitted to HLS.Reimbursements@mil.wa.gov at least quarterly but not more frequently than monthly.

5. All work under this Agreement must end on or before the Agreement End Date, and the final reimbursement request must be submitted to the Department within 30 days after the 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 Sub-grantee 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 Sub-grantee'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 Agreement (including but not limited to those reports in the Grant Timeline) will prohibit the Sub-grantee from being reimbursed until such complete reports and reimbursement requests are submitted and the Department has had reasonable time to conduct its review.

9. Final reimbursement requests will not be approved for payment if Sub-grantee is not current with all reporting requirements contained in this Agreement.
ARTICLE IV - REPORTING REQUIREMENTS
1. The Sub-grantee shall submit with each reimbursement request a progress report describing current Approved Project activities.
2. The Sub-grantee shall submit a Closeout Report and a final Grant Funded Typed Resource Report no later than 30 days after Agreement End Date.

ARTICLE V - EQUIPMENT MANAGEMENT
All equipment purchased under this Grant Agreement, by the Sub-grantee or a contractor, will be recorded and maintained in the Sub-grantee'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 Sub-grantee, 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 Sub-grantee, or a recognized sub-grantee/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 Sub-grantee shall develop appropriate maintenance schedules and procedures to ensure the equipment is well maintained and kept in good operating condition.
3. The Sub-grantee 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 Sub-grantee 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 Sub-grantee until all litigation, claims, or audit findings involving the records have been resolved.
5. The Sub-grantee 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 Sub-grantee to determine the cause of the difference. The Sub-grantee shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.
6. The Sub-grantee 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 Department.
7. If the Sub-grantee 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 Sub-grantee 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 Sub-grantee shall compensate the Federal-sponsoring agency for its share.
9. As recipient of federal funds the Sub-grantee must pass on equipment management requirements that meet or exceed the requirements outlined above for all sub-contractors, consultants, and sub-grantees who receive pass-through funding from this Grant Agreement.

10. Allowable equipment categories for the FY 2013 SHSP program are listed on the web-based version of the Authorized Equipment List (AEL) located at the Responder Knowledge Base at http://www.rkb.us/. Reimbursement will only be provided for equipment that (1) is on the AEL or, (2) if not on the AEL, has received prior written approval from FEMA through the Department; Sub-grantees must contact the Department representative for assistance in seeking FEMA approval for equipment not on the AEL. Unless expressly provided otherwise, all equipment must meet all mandatory regulatory and/or FEMA adopted standards to be eligible for purchase using HSGP funds. In addition, Sub-grantees must obtain and maintain all necessary certifications and licenses for the equipment. Sub-grantees are solely responsible for ensuring equipment eligibility.

ARTICLE VI – ENVIRONMENTAL AND HISTORICAL PRESERVATION

2. The Sub-grantee agrees that to receive any federal preparedness funding, all EHP compliance requirements outlined in applicable guidance must be met. The Sub-grantee 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 Sub-grantee 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 Department for review and approval prior to the Sub-grantee's award and execution of a contract. This requirement must be passed on to all of the Sub-grantee's sub-contractors, at which point the Sub-grantee will be responsible for reviewing and approving their sub-contractor's sole source justifications.

ARTICLE VIII – SUB-GRAANTEE MONITORING
1. The Department will monitor the activities of the Sub-grantee from award to closeout. The goal of the Department's monitoring activities will be to ensure that agencies receiving federal pass-through funds are in compliance with this 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. As a subrecipient of federal financial assistance under Circular A-133, the Sub-grantee shall complete and return to the Department Attachment #2 "OMB Circular A-133 Audit Certification Form" with the signed Grant Agreement and each fiscal year thereafter until the Grant Agreement is closed, which form is incorporated in and made a part of this Agreement.

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 Sub-grantee 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 Agreement.

ARTICLE IX – NIMS COMPLIANCE
1. The National Incident Management System (NIMS) identifies concepts and principles that answer how to manage emergencies from preparedness to recovery regardless of their cause, size, location, or complexity. NIMS provides a consistent, nationwide approach and vocabulary for multiple agencies or jurisdictions to work together to build, sustain and deliver the core capabilities needed to achieve a secure and resilient nation.

Consistent implementation of NIMS provides a solid foundation across jurisdictions and disciplines to ensure effective and integrated preparedness, planning, and response. NIMS empowers the components of the National Preparedness System, a requirement of Presidential Policy Directive (PPD)-8, to guide activities within the public and private sector and describes the planning, organizing, equipping, training and exercising needed to build and sustain the core capabilities in support of the National Preparedness Goal.

2. The Sub-grantee agrees that in order to receive Federal Fiscal Year 2013 (FFY13) federal preparedness funding, to include SHSP, the National Incident Management System (NIMS) compliance requirements for 2013 must be met.

ARTICLE X – HSGP SPECIFIC REQUIREMENTS
The Washington State Military Department receives grant funding each year from the U.S. Department of Homeland Security (DHS) / Federal Emergency Management Agency (FEMA) through the Homeland Security Grant Program (HSGP). The FY 2013 HSGP plays an important role in the implementation of the National Preparedness System (NPS) by supporting the building, sustainment, and delivery of core capabilities essential to achieving the National Preparedness Goal (NPG) of a secure and resilient Nation. Delivering core capabilities requires the combined effort of the whole community, rather than the exclusive effort of any single organization or level of government. The FY 2013 HSGP’s allowable costs support efforts to build and sustain core capabilities across the Prevention, Protection, Mitigation, Response, and Recovery mission areas.

1. The FFY 2013 HSGP grant stipulates the following for the overall grant funding:
   a. Up to 5 percent of HSGP funds awarded may be used for management and administrative purposes directly related to administration of the grant.
   b. At least 25 percent of the combined HSGP funds allocated under SHSP and UASI 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, UASI or both.
   c. Personnel expenses may not exceed 50 percent of the HSGP award.

2. Percentages applicable to the Sub-grantee under this Grant Agreement may differ from the above overall FFY 2013 HSGP grant stipulations:
   a. The Grant Agreement percentage for management and administration purposes may be less than, but will not exceed, the maximum 5 percent.
   b. The Grant Agreement LETPA percentage may vary, but the Sub-grantee must meet the percentage identified on the Budget Sheet as a minimum.
   c. The Grant Agreement percentage for personnel expenses may vary, but the Sub-grantee must not exceed the percentage identified on the Budget Sheet.
3. Use of HSGP funds must be consistent with and supportive of implementation of the State Homeland Security Strategy.

4. 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, the National Strategy for Information Sharing, the National Infrastructure Protection Plan, and the State Preparedness Report.

5. UASI-funded projects must address the unique planning, organization, equipment, training, and exercise needs of high-threat, high-density Urban Areas, and assists them in building an enhanced and sustainable capacity to prevent, protect against, respond to, and recover from acts of terrorism.

6. OPSG-funded projects must enhance cooperation and coordination among local, tribal, territorial, state, and federal law enforcement agencies in a joint mission to secure the United States' borders along routes of ingress from international borders to include travel corridors in States bordering Mexico and Canada, as well as States and territories with international water borders.

7. The Sub-grantee shall use HSGP funds only to perform tasks as described in the Sub-grantee's application for funding, as approved by the Department.

8. 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 as stipulated in the https://hseep.dhs.gov/pages/1001_HSEEP7.aspx

9. Equipment must be in compliance with the FEMA Authorized Equipment List (AEL), as detailed at: http://www.rkb.us/.

10. Sub-grantees will provide reports and/or assist with completion of reports required by the grant including but not limited to the SPR, THIRA, core capabilities assessment, and data calls.

11. Cumulative changes to budget categories in excess of 10% of the Grant Agreement amount will not be reimbursed without prior written authorization from the Department. In no case shall the total budget amount exceed the Grant Agreement amount. Budget categories are as specified or defined on the budget sheet of the contract. Any changes to budget categories other than in compliance with this paragraph will not be reimbursed.

12. The Sub-grantee 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 shall be made until the appropriate approvals have been obtained.

13. Equipment purchased with funds from DHS grant programs is to be marked with "Purchased with funds provided by the U.S. Department of Homeland Security" whenever possible.

14. As a recipient of federal financial assistance under this Agreement, the Sub-grantee shall comply with all applicable state and federal statutes, regulations, executive orders, and guidelines, including but not limited to the following:

   a. All applicable state and federal statutes, regulations and executive orders relating to nondiscrimination, including but not limited to the following: (a) Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.) which prohibits discrimination on the basis of race, color or national origin; (b) the Civil Rights 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, 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) Clean Air Act of 1970, (g) Clean Water Act of 1977, (h) the Fair Housing Amendments Act of 1988, as amended (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (g) the Americans with Disabilities Act, as amended (42 U.S.C. §§ 12101-12213) which prohibits discrimination on the basis of disability; and (h) Executive Order 13166 Improving Access to Services for Persons with Limited English Proficiency.

b. All applicable state and federal statutes, regulations, executive orders and guidelines relating to environmental and historical preservation, including but not limited to the following: (a) the Coastal Wetlands Planning, Protection and Restoration Act of 1990, as amended (16 U.S.C. 3951 et seq.); (b) the Clean Air Act of 1970, as amended (42 U.S.C. §7401) and the Clean Water Act of 1977, as amended (38 U.S.C. §§ 1251-1387) and Executive Order 11738; (c) floodplains management pursuant to EO 11988, as amended; (e) the Coastal Zone Management Act of 1972, as amended (P.L. 92-583, 16 U.S.C. §§1451 et seq.); (d) the National Environmental Policy Act, as amended (42 U.S.C. §4321); (e) the Safe Drinking Water Act of 1974, as amended (PL 93-523); (f) the Endangered Species Act of 1973, as amended (PL 93-205); and (g) the National Historic Preservation Act, as amended (PL 89-665, 16 U.S.C. §470 et seq.) and 36 CFR Part 800.


d. Section 106(g) of the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. §7104) and 2 CFR §175.


15. The Sub-grantee must comply with any Federal 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.
16. The Sub-grantee must obtain DHS 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. The Sub-grantee must ensure that any 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.

18. 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 Sub-grantee must provide a list of all such proceedings, pending or completed, including outcome and copies of settlement agreements to the Department for forwarding to 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 Sub-grantee, 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.

19. If the Sub-grantee collects personally identifiable information (PII), the Sub-grantee must have a publically-available policy that describes what PII is collected, how the PII is used, whether the PII is shared with third parties, and how individuals may have their PII corrected as necessary.

20. The Sub-grantee and any of its sub-recipients are required to be non-delinquent in repayment of any Federal debt.
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. "Sub-grantee" means the government or other eligible legal entity to which a sub-grant 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 Sub-grantee and any sub-contractor retained by the Sub-grantee as permitted under the terms of this Grant Agreement. The term "Sub-grantee" and "Contractor" may be used interchangeably in this Agreement.

c. "Sub-grantee Agent" means the official representative and alternate designated or appointed by the Sub-grantee in writing and authorized to make decisions on behalf of the Sub-grantee.

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, the state of Washington is the Grantee. The Grantee and the Department 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 Sub-grantee 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 of a federal award, 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.

Sub-grantees that qualify as subrecipients 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 Sub-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 federal 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 Sub-grantee 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 Sub-grantee 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 Sub-grantee must respond to Department requests for information or corrective action concerning audit issues or findings within 30 days of the date of request. The Department reserves the right to recover from the Sub-grantee all disallowed costs resulting from the audit.

Once the single audit has been completed, the Sub-grantee must send a full copy of the audit to the Department and a letter stating there were no findings, or if there were findings, the letter should provide a list of the findings. The Sub-grantee must send the audit and the letter no later than nine (9) months after the end of the Sub-grantee's fiscal year(s) to:

Contracts Office
Washington Military Department
Finance Division, Building #1 TA-20
Camp Murray, WA  98430-5032

In addition to sending a copy of the audit, the Sub-grantee must include a corrective action plan for any audit findings and a copy of the management letter if one was received.

If Sub-grantee claims it is exempt from the audit requirements of Circular A-133, Sub-grantee 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 Sub-grantee fiscal year(s) to:

Contracts Office
Washington Military Department
Finance Division, Building #1 TA-20
Camp Murray, WA  98430-5032

The Department retains the sole discretion to determine whether a valid claim for an exemption from the audit requirements of this provision has been established.

The Sub-grantee 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 Sub-grantees failure to comply with said audit requirements may result in one or more of the following actions in the Department'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 Department shall make no payments in advance or in anticipation of goods or services to be provided under this Agreement. Sub-grantee shall not invoice the Department in advance of delivery and invoicing of such goods or services.

A.4  AMENDMENTS AND MODIFICATIONS
The Sub-grantee or the Department 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 Department and the Sub-grantee. 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. 12101 ET SEQ. AND ITS IMPLEMENTING REGULATIONS ALSO REFERRED TO AS THE “ADA” 28 CFR Part 35. The Sub-grantee 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 Department and Sub-grantee 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 Sub-grantee certifies that the Sub-grantee 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 Department, the Sub-grantee shall complete and sign a Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion form. Any such form completed by the Sub-grantee for this Grant Agreement shall be incorporated into this Grant Agreement by reference.

Further, the Sub-grantee agrees to comply with all applicable federal regulations concerning the federal debarment and suspension system, including 2 CFR Part 180. The Sub-grantee 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 Sub-grantee may comply with this provision by obtaining a certification statement from the potential sub-contractor or sub-recipient or by checking the System for Award Management (http://www.sam.gov) maintained by the federal government. The Sub-grantee 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” (http://www.lni.wa.gov/TradesLicensing/PrevWage/AwardingAgencies/DebarredContractors).

A.8 CERTIFICATION REGARDING RESTRICTIONS ON LOBBYING As required by 44 CFR Part 18, the Sub-grantee 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 Sub-grantee 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 Sub-grantee will complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its
instructions; (3) and that, as applicable, the Sub-grantee will require that the language of this certification be included in the award documents for all subawards at all tiers (including sub-contracts, 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.9 **CONFLICT OF INTEREST**

No officer or employee of the Department; no member, officer, or employee of the Sub-grantee 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 Sub-grantee 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 Sub-grantee shall incorporate, or cause to incorporate, in all such contracts or subcontracts, a provision prohibiting such interest pursuant to this provision.

A.10 **COMPLIANCE WITH APPlicable STATUTES, RULES AND DEPARTMENT POLICIES**

The Sub-grantee and all its contractors shall comply with, and the Department 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 Sub-grantee's or its contractor's noncompliance or refusal to comply with any applicable law, regulation, executive order, OMB Circular or policy, the Department may rescind, cancel, or terminate the Grant Agreement in whole or in part in its sole discretion. The Sub-grantee is responsible for all costs or liability arising from its failure to comply with applicable law, regulation, executive order, OMB Circular or policy.

A.11 **DISCLOSURE**

The use or disclosure by any party of any information concerning the Department for any purpose not directly connected with the administration of the Department's or the Sub-grantee's responsibilities with respect to services provided under this Grant Agreement is prohibited except by prior written consent of the Department or as required to comply with the state Public Records Act, other law or court order.

A.12 **DISPUTES**

Except as otherwise provided in this contract, when a bona fide dispute arises between the parties and it cannot be resolved through discussion and negotiation, either party may request a dispute resolution panel to resolve the dispute. A request for a dispute resolution board shall be in writing, state the disputed issues, state the relative positions of the parties, and be sent to all parties. The panel shall consist of a representative appointed by the Department, a representative appointed by the Contractor and a third party mutually agreed upon by both parties. The panel shall, by majority vote, resolve the dispute. Each party shall bear the cost for its panel member and its attorney fees and costs, and share equally the cost of the third panel member.
A.13 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 Sub-grantee, its successors or assigns, will protect, save and hold harmless 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 Sub-grantee, 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 Sub-grantee further agrees to defend 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 Department; provided, that if the claims or damages are caused by or result from the concurrent negligence of (1) the Department, and (2) the Sub-grantee, its agents, or employees, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Sub-grantee, or Sub-grantee'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.14 LIMITATION OF AUTHORITY – Authorized Signature

The signatories to this Agreement represent that they have the authority to bind their respective organizations to this Agreement. Only the Department’s Authorized Signature representative and the Authorized Signature representative of the Sub-grantee or Alternate for the Sub-grantee, 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 Sub-grantee 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 Agreement.

A.15 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 Agreement and prior to normal completion or end date, the Department may unilaterally reduce the scope of work and budget or unilaterally terminate all or part of the Agreement as a “Termination for Cause” without providing the Sub-grantee an opportunity to cure. Alternatively, the parties may renegotiate the terms of this Agreement under “Amendments and Modifications” to comply with new funding limitations and conditions, although the Department has no obligation to do so.
A.16 NONASSIGNABILITY
Neither this Grant Agreement, nor any claim arising under this Grant Agreement, shall be transferred or assigned by the Sub-grantee.

A.17 NONDISCRIMINATION
The Sub-grantee 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.18 NOTICES
The Sub-grantee 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.19 OCCUPATIONAL SAFETY/HEALTH ACT and WASHINGTON INDUSTRIAL SAFETY/HEALTH ACT (OSHA/WISHA)
The Sub-grantee 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 Sub-grantee's performance under this Grant Agreement. To the extent allowed by law, the Sub-grantee further agrees to indemnify and hold harmless the Department 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 Department, as a result of the failure of the Sub-grantee to so comply.

A.20 OWNERSHIP OF PROJECT/CAPITAL FACILITIES
The Department 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 Sub-grantee. The Sub-grantee shall assume all liabilities arising from the ownership and operation of the project and agrees to hold 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.21 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.22 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.23 PUBLICITY
The Sub-grantee agrees to submit to the Department prior to issuance all advertising and publicity matters relating to this Grant Agreement wherein the Department's name is mentioned or language used from which the connection of the Department's name may, in the Department's judgment, be inferred or implied. The Sub-grantee agrees not to publish or use such advertising and publicity matters without the prior written consent of the Department. The Sub-grantee 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.24 RECAPTURE PROVISION
In the event the Sub-grantee fails to expend funds under this Agreement in accordance with applicable federal, state, and local laws and/or the provisions of the Grant Agreement, the Department 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 Sub-grantee of funds under this recapture provision shall occur within 30 days of demand.

In the event the Department is required to institute legal proceedings to enforce the recapture provision, the Department shall be entitled to its costs thereof, including attorney fees.

A.25 RECORDS
a. The Sub-grantee agrees to maintain all books, records, documents, receipts, invoices and all other electronic or written records necessary to sufficiently and properly reflect the Sub-grantee'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 Sub-grantee's records related to this Grant Agreement and the projects funded may be inspected and audited by 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 Sub-grantee 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 Sub-grantee for such inspection and audit, together with suitable space for such purpose, at any and all times during the Sub-grantee’s normal working day.

d. The Sub-grantee 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.26 RESPONSIBILITY FOR PROJECT/STATEMENT OF WORK/WORK PLAN
While the Department undertakes to assist the Sub-grantee 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 Sub-grantee. The Department undertakes no responsibility to the Sub-grantee, 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 Sub-grantee, 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 Sub-grantee 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 Sub-grantee shall defend, at its own cost, any and all claims or suits at law or in equity, which may be brought against the Sub-grantee in connection with the project. The Sub-grantee shall not look to 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.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 Sub-grantee 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 Sub-grantee.

Sub-Grantees must comply with the following provisions regarding procurement, and all Sub-Grantee contracts with sub-contractors must contain the following provisions regarding procurement, per 44 CFR Part 13.36(i):

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. (All contracts more than the simplified acquisition threshold).

2) Termination for cause and for convenience by the grantee or sub-grantee 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 by grantees and their contractors or sub-grantees).


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 by grantees and sub-grantees 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 awarded by grantees and sub-grantees 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 awarding agency 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) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

10) Access by the grantee, the sub-grantee, 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 three years after grantees or sub-grantees make 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). (All contracts, sub-contracts, and sub-grants of amounts in excess of $100,000).


The DEPARTMENT reserves the right to review the Sub-Grantee procurement plans and documents, and require the Sub-Grantee to make changes to bring its plans and documents into compliance with the requirements of 44 CFR Part 13.36. The Sub-Grantee must ensure that its procurement process requires contractors and subcontractors to provide adequate documentation with sufficient detail to support the costs of the project and to allow both the Sub-Grantee and DEPARTMENT to make a determination on eligibility of project costs.

All sub-contracting agreements entered into pursuant to this Grant Agreement shall incorporate this Grant Agreement by reference.

A.29 SUB-GRANTEE NOT EMPLOYEE

The parties intend that an independent contractor relationship will be created by this Grant Agreement. The Sub-grantee, and/or employees or agents performing under this Grant Agreement are not employees or agents of the Department in any manner whatsoever. The Sub-grantee will not be presented as nor claim to be an officer or employee of the Department or of the State of Washington by reason of this Grant Agreement, nor will the Sub-grantee make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of 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.

It is understood that if the Sub-grantee is another state department, state agency, state university, state college, state community college, state board, or state commission, that the officers and employees are employed by the state of Washington in their own right and not by reason of this Grant Agreement.

A.30 TAXES, FEES AND LICENSES

Unless otherwise provided in this Grant Agreement, the Sub-grantee 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 Sub-grantee 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 Sub-grantee may terminate this Grant Agreement by providing written notice of such termination to the Department'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 Department, 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 Sub-grantee. Upon notice of termination for convenience, the Department reserves the right to suspend all or part of the Grant Agreement, withhold further payments, or prohibit the Sub-grantee from incurring additional obligations of funds. In the event of termination, the Sub-grantee
shall be liable for all damages as authorized by law. The rights and remedies of the Department 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 Department, in its sole discretion, determines the Sub-grantee 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 Sub-grantee unable to perform any aspect of the Grant Agreement, or has violated any of the covenants, agreements or stipulations of this Grant Agreement, the Department has the right to immediately suspend or terminate this Grant Agreement in whole or in part.

The Department may notify the Sub-grantee in writing of the need to take corrective action and provide a period of time in which to cure. The Department is not required to allow the Sub-grantee an opportunity to cure if it is not feasible as determined solely within the Department's discretion. Any time allowed for cure shall not diminish or eliminate the Sub-grantee liability for damages or otherwise affect any other remedies available to the Department. If the Department allows the Sub-grantee an opportunity to cure, the Department shall notify the Sub-grantee 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 Department, or if such corrective action is deemed by the Department to be insufficient, the Grant Agreement may be terminated in whole or in part.

The Department reserves the right to suspend all or part of the Grant Agreement, withhold further payments, or prohibit the Sub-grantee from incurring additional obligations of funds during investigation of the alleged compliance breach, pending corrective action by the Sub-grantee, if allowed, or pending a decision by the Department to terminate the Grant Agreement in whole or in part.

In the event of termination, the Sub-grantee 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 Department 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 Sub-grantee: (1) was not in default or material breach, or (2) failure to perform was outside of the Sub-grantee'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 Department terminates this Grant Agreement, the Sub-grantee 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 Department may require the Sub-grantee to deliver to the Department 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 Department shall pay to the Sub-grantee agreed upon price, if separately stated, for properly authorized and completed work and services rendered or goods delivered to and accepted by the Department prior to the effective date of Grant Agreement termination, and the amount agreed upon by the Sub-grantee and the Department 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 Department, (iii) other work, services and/or equipment or supplies which are accepted by the Department, 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 Department shall determine the extent of the liability of the Department. The Department shall have no other obligation to the Sub-grantee for termination. The Department may withhold from any amounts due the Sub-grantee such sum as the Department determines to be necessary to protect the Department against potential loss or liability.

The rights and remedies of the Department 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 Department in writing, the Sub-grantee 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 Department, in the manner, at the times, and to the extent directed by the Department, all of the rights, title, and interest of the Sub-grantee under the orders and sub-contracts so terminated, in which case the Department 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 Department to the extent the Department may require, which approval or ratification shall be final for all the purposes of this clause;

e. Transfer title to the Department and deliver in the manner, at the times, and to the extent directed by the Department any property which, if the Grant Agreement had been completed, would have been required to be furnished to the Department;

f. Complete performance of such part of the work as shall not have been terminated by the Department in compliance with all contractual requirements; and

g. Take such action as may be necessary, or as the Department may require, for the protection and preservation of the property related to this Grant Agreement which is in the possession of the Sub-grantee and in which the Department 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 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 Sub-grantee may be required to provide to the Department copies of receipts for any travel related expenses other than meals and mileage (example: parking) that are authorized under this Agreement.

A.35 UTILIZATION OF MINORITY AND WOMEN BUSINESS ENTERPRISES (MWBE)

The Sub-grantee 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 Sub-grantee 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 Department in writing. The Department'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 Thurston County, Washington. The Sub-grantee, by execution of this Grant Agreement acknowledges the jurisdiction of the courts of the State of Washington.
From Approved Operations Order:

EXECUTIVE SUMMARY: The vulnerability in border security set against the volume of criminal activity in the region puts Whatcom County’s 131 miles of border at significant risk. Whatcom County law enforcement members, in cooperation with U.S. Border Patrol, Blaine Sector, will utilize OPSG funding to augment border security patrols and integrated surveillance operations.

The Whatcom County’s Integrated Planning Team (IPT) is represented by the Undersheriff of Whatcom County, the Chiefs of Police for the cities of Bellingham, Blaine, Everson, Ferndale, Lynden, and Sumas, Washington State Fish and Wildlife Police, and the U.S. Border Patrol (USBP) Blaine Sector OPSG Coordinator. The IPT seeks continued OPSG funding to conduct joint law enforcement patrols along the maritime boundary and to augment terrestrial border security patrols in exploited border zones in order to gain better situational awareness and to deliver a meaningful deterrent to illegal incursions.

By utilizing the whole of government approach, the OPSG IPT intends to identify locations being used by traffickers, develop actionable intelligence, and target organizations through investigations and interdictions. Through the use of targeted enforcement strategies, it is the goal of the OPSG IPT to be a key component in combating transnational criminal organizations operating within the Blaine Sector AOR.

MISSION: Through increased terrestrial and marine patrols, Blaine Sector and Whatcom County law enforcement members will gain situational awareness and reduce the threat of surreptitious border incursions and departures across the land and maritime borders.

ACTIVE PARTICIPANTS: USBP Blaine Sector (BLW), Bellingham Police Department (BPD), Blaine Police Department (BPD), Everson Police Department (EPD), Ferndale Police Department (FPD), Lynden Police Department (LPD), Sumas Police Department (SPD), Whatcom County Sheriff’s Office (WCSO)

SCOPE OF WORK: Approved Operations Order expenditures include: overtime and fringe costs, three fully-outfitted patrol vehicles (AEL #12VE-00-CMDV), three Sierra Wireless Airlink GX440 Gateways (AEL #06CP-02-BRDG), and mileage. These expenses will assist Whatcom County in conducting border-centric intelligence-driven, operations with the goal of reduction or elimination of threat, risk and vulnerability along our Nations’ borders.
**GRANT TIMELINE**

**FFY13 Homeland Security Grant Program (HSGP)**

**OPERATION STONEGARDEN (OPSG)**

<table>
<thead>
<tr>
<th>MILESTONE</th>
<th>TASK</th>
</tr>
</thead>
<tbody>
<tr>
<td>October 1, 2013</td>
<td>Start of Grant Agreement performance period</td>
</tr>
<tr>
<td>Quarterly Reimbursement Requests</td>
<td>Reimbursement requests shall be submitted at least quarterly, but not more frequently than monthly. Submittal due dates:</td>
</tr>
<tr>
<td></td>
<td>• June 30, 2014</td>
</tr>
<tr>
<td></td>
<td>• September 30, 2014</td>
</tr>
<tr>
<td></td>
<td>• December 31, 2014</td>
</tr>
<tr>
<td></td>
<td>• March 31, 2015</td>
</tr>
<tr>
<td></td>
<td>• July 31, 2015 (final invoice)</td>
</tr>
<tr>
<td>July 15, 2014</td>
<td>Progress Report Due (start of contract through June 2014)</td>
</tr>
<tr>
<td>January 15, 2015</td>
<td>Progress Report Due (July – December 2014)</td>
</tr>
<tr>
<td>June 30, 2015</td>
<td>Agreement End Date. All work ceases. Grant performance period ends</td>
</tr>
<tr>
<td>NLT: July 31, 2015</td>
<td><strong>Closeout</strong> Report (January – June 2015), final request for reimbursement. <strong>Closeout</strong> Report due before final invoice is reimbursed.</td>
</tr>
</tbody>
</table>
**Budget Sheet**

**FFY13 Homeland Security Grant Program (HSGP)**

**OPERATION STONEGARDEN (OPSG)**

**Whatcom County**

<table>
<thead>
<tr>
<th>CATEGORIES</th>
<th>ALLOCATION</th>
<th>FUNDING SOURCE / THRESHOLD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operational Overtime</td>
<td>$350,066</td>
<td>733GA</td>
</tr>
<tr>
<td>Travel</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Vehicle/Equipment Maintenance</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Fuel Cost and/or Mileage Reimbursement</td>
<td>$13,125</td>
<td></td>
</tr>
<tr>
<td>Equipment</td>
<td>$84,200</td>
<td></td>
</tr>
<tr>
<td>Subtotal</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL ALLOCATION AMOUNT:</strong></td>
<td><strong>$447,391</strong></td>
<td></td>
</tr>
</tbody>
</table>

1. Cumulative changes to budget categories in excess of 10% of the grant agreement will not be reimbursed without prior written authorization from the Department.

2. The Sub-grantee will not be reimbursed for personnel costs that exceed $223,696, or 50 percent of the total allocation amount. The allocation of $350,066 for Operational Overtime in the budget represents 78 percent of the total allocation amount.

Pending approval of the Personnel Cap Waiver by the FEMA Administrator, Whatcom County is authorized to spend up to, but must not exceed, 50 percent of the FY2013 Operation Stonegarden allocation issued by FEMA.

3. Funds shall not be used to supplant inherent routine patrols and law enforcement operations or activities not directly related to providing enhanced coordination between local and Federal law enforcement agencies.
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. System for Award Management (SAM) is a government wide registration system for organizations that do business with the Federal Government. SAM stores information about awardees including financial account information for payment purposes and a
link to D&B for maintaining current DUNS information, www.sam.gov. WMD requires SAM 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:** OPSG-FY2013  
**Agreement Number:** E14-251

**Completed by:** Brad Bennett  
**Title:** Finance Manager  
**Telephone:** 360-676-6734

**Date Completed:** 06/20/14

<table>
<thead>
<tr>
<th>STEP</th>
<th>Question</th>
<th>YES</th>
<th>NO</th>
<th>Decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Is your grant agreement less than $25,000?</td>
<td>STOP, no further analysis needed</td>
<td>GO to Step 2</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>In your preceding fiscal year, did your organization receive 80% or more of its annual gross revenues from federal funding?</td>
<td>GO to STEP 3</td>
<td>STOP, no further analysis needed</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>In your preceding fiscal year, did your organization receive $25,000,000 or more in federal funding?</td>
<td>GO to STEP 4</td>
<td>STOP, no further analysis needed</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Does the public have access to information about the total compensation of senior executives in your organization?</td>
<td>STOP, no further analysis needed</td>
<td>GO to STEP 5</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Executive #1 Name: Total Compensation amount: $</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Executive #2 Name: Total Compensation amount: $</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Executive #3 Name: Total Compensation amount: $</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Executive #4 Name: Total Compensation amount: $</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Executive #5 Name: Total Compensation amount: $</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**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.**

* 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)
OMB Circular A-133 Audit Certification Form
Audits of States, Local Governments, and Non-Profit Organizations

Contact Information
Subrecipient (Sub-Grantee) Name (Agency, Local Government, or Organization): Whatcom County
Authorized Chief Financial Officer (Central Accounting Office): Brad Bennett, Administrative Services Finance Manager
Address: 311 Grand Avenue, Bellingham, WA 98225
Email: BBennett@co.whatcom.wa.us Phone #: 360-676-6734

Purpose: As a pass-through agency of federal grant funds, the Washington Military Department/Emergency Management Division (WMD/EMD) is required by Office of Management and Budget (OMB) Circular A-133 to monitor activities of subrecipients to ensure federal awards are used for authorized purposes and ensure that subrecipients expending $500,000 or more in federal awards during their fiscal year have met the OMB Circular A-133 Audit Requirements. Your entity is a subrecipient subject to such monitoring by WMD/EMD because it is a non-federal entity that expends federal grant funds received from MIL/EMD as a pass-through entity to carry out a federal program. OMB Circular A-133 can be found at https://www.whitehouse.gov/sites/default/files/obamawhitehouse/OMB/Circular_A-133.pdf, and it should be consulted when completing this form.

Directions: As required by OMB Circular A-133, non-federal entities that expend $500,000 in federal awards in a fiscal year shall have a single or program-specific audit conducted for that year. If your entity is not subject to A-133 requirements, you must complete Section A of this Form. If your entity is required to complete an A-133 Audit, you must complete Section B of this form. When completed, you must sign, date, and return this form with your grant agreement contract and every fiscal year thereafter until the grant agreement contract is closed. Failure to return this completed Audit Certification Form may result in delay of grant agreement processing, withholding of federal awards or disallowance of costs, and suspension or termination of federal awards.

SECTION A: Entities NOT subject to the audit requirements of OMB Circular A-133
Our entity is not subject to the requirements of OMB Circular A-133 because (check all that apply):

☐ We did not expend $500,000 or more of total federal awards during the fiscal year.
☐ We are a for-profit agency.
☐ We are exempt for other reasons (describe): 

However, by signing below, I agree that we are still subject to the audit requirements, laws and regulations governing the program(s) in which we participate, that we are required to maintain records of federal funding and to provide access to such records by federal and state agencies and their designees, and that WMD/EMD may request and be provided access to additional information and/or documentation to ensure proper stewardship of federal funds.

SECTION B: Entities that ARE subject to the requirements of OMB Circular A-133
(Complete the information below and check the appropriate box)

☐ We completed our last A-133 Audit on [enter date] for Fiscal Year ending [enter date]. There were no findings related to federal awards from WMD/EMD. No follow-up action is required by WMD/EMD as the pass-through entity.

   A complete copy of the audit report, which includes exceptions, corrective action plan and management response, is either provided electronically to contracts.office@mil.wa.gov or provide the state auditor report number: ____________________________.

☐ We completed our last A-133 Audit on [enter date] for Fiscal Year ending [enter date]. There were findings related to federal awards.

   A complete copy of the audit report, which includes exceptions, corrective action plan and management response, is either provided electronically to contracts.office@mil.wa.gov or provide the state auditor report number: ____________________________.

☐ Our completed A-133 Audit will be available on [enter date] for Fiscal Year ending [enter date]. We will forward a copy of the audit report to you at that time unless it will be available online at: http://www.whatcomcounty.us/as/finance/index.jsp

I hereby certify that I am an individual authorized by the above identified entity to complete this form. Further, I certify that the above information is true and correct and all relevant material findings contained in audit report/statement have been disclosed. Additionally, I understand this Form is to be submitted every fiscal year for which this entity is a subrecipient of federal grant funds from MIL/EMD until the grant agreement contract is closed.

Signature of Authorized Chief Financial Officer: ____________________________ Date: ____________

Print Name & Title: Brad Bennett, Finance Manager
Debarment, Suspension, Ineligibility or Voluntary Exclusion Certification Form

<table>
<thead>
<tr>
<th>NAME</th>
<th>Whatcom County</th>
</tr>
</thead>
<tbody>
<tr>
<td>ADDRESS</td>
<td>311 Grand Avenue, Bellingham, WA 98225</td>
</tr>
<tr>
<td>Applicable Procurement or Solicitation #, if any:</td>
<td>WA Uniform Business Identifier (UBI) 600-358-208</td>
</tr>
<tr>
<td>Federal Employer Tax Identification #:</td>
<td>91-6001383</td>
</tr>
</tbody>
</table>

This certification is submitted as part of a request to contract.

Instructions For Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions

READ CAREFULLY BEFORE SIGNING THE CERTIFICATION. Federal regulations require contractors and bidders to sign and abide by the terms of this certification, without modification, in order to participate in certain transactions directly or indirectly involving federal funds.

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the department, institution or office to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. 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 meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal 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 proposed for debarment under the applicable CFR, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding 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 covered transactions.
7. 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 proposed for debarment under applicable CFR, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, 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 List of Parties Excluded from Federal Procurement and Non-procurement Programs.
8. 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 activity.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under applicable CFR, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions

The prospective lower tier participant certifies, by submission of this proposal or contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this form.

Bidder or Contractor Signature: ___________________________ Date: __________

Print Name and Title: Jack Louws, County Executive
FEDERAL DEBARMENT, SUSPENSION INELIGIBILITY and VOLUNTARY EXCLUSION

(FREQUENTLY ASKED QUESTIONS)

What is "Debarment, Suspension, Ineligibility, and Voluntary Exclusion"?
These terms refer to the status of a person or company that cannot contract with or receive grants from a federal agency.

In order to be debarred, suspended, ineligible, or voluntarily excluded, you must have:
• had a contract or grant with a federal agency, and
• gone through some process where the federal agency notified or attempted to notify you that you could not contract with the federal agency.
• Generally, this process occurs where you, the contractor, are not qualified or are not adequately performing under a contract, or have violated a regulation or law pertaining to the contract.

Why am I required to sign this certification?
You are requesting a contract or grant with the Washington Military Department. Federal law (Executive Order 12549) requires Washington Military Department ensure that persons or companies that contract with Washington Military Department are not prohibited from having federal contracts.

What is Executive Order 12549?
Executive Order 12549 refers to Federal Executive Order Number 12549. The executive order was signed by the President and directed federal agencies to ensure that federal agencies, and any state or other agency receiving federal funds were not contracting or awarding grants to persons, organizations, or companies who have been excluded from participating in federal contracts or grants. Federal agencies have codified this requirement in their individual agency Code of Federal Regulations (CFRs).

What is the purpose of this certification?
The purpose of the certification is for you to tell Washington Military Department in writing that you have not been prohibited by federal agencies from entering into a federal contract.

What does the word "proposal" mean when referred to in this certification?
Proposal means a solicited or unsolicited bid, application, request, invitation to consider or similar communication from you to Washington Military Department.

What or who is a "lower tier participant"?
Lower tier participants means a person or organization that submits a proposal, enters into contracts with, or receives a grant from Washington Military Department, OR any subcontractor of a contract with Washington Military Department. If you hire subcontractors, you should require them to sign a certification and keep it with your subcontract.

What is a covered transaction when referred to in this certification?
Covered Transaction means a contract, oral or written agreement, grant, or any other arrangement where you contract with or receive money from Washington Military Department. Covered Transaction does not include mandatory entitlements and individual benefits.

Sample Debarment, Suspension, Ineligibility, Voluntary Exclusion Contract Provision

Debarment Certification. The Contractor certifies that the Contractor is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Contract by any Federal department or agency. If requested by Washington Military Department, the Contractor shall complete a Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion form. Any such form completed by the Contractor for this Contract shall be incorporated into this Contract by reference.
**TITLE OF DOCUMENT:** Award Bid 14-40 Replacement of Self-Propelled Pneumatic Tire Rollers

**ATTACHMENTS:** Memos from Finance and Public Works

---

**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 Equipment Services is requesting approval to award bid 14-40 for the supply of two self-propelled pneumatic tire rollers to the responsive bidder, Pape' Machinery. The total cost is $170,562.00. This is a planned purchase and adequate funds are available in the current ER&R budget.
DATE: June 25, 2014  
TO: Jack Louws, County Executive  
FROM: Brad Bennett, Administrative Services Finance Manager  
SUBJECT: Award of Bid 14-40, Self-Propelled Pneumatic Tire Rollers

- Background & Purpose

Bids were advertised for the supply of two replacement self-propelled pneumatic tire rollers for use by Public Works Maintenance & Operations. Two bids were received on June 10, 2014. One bid met minimum specifications, and is noted below:

<table>
<thead>
<tr>
<th>Vendor</th>
<th>Make &amp; Model</th>
<th>Quantity</th>
<th>Cost per Unit</th>
<th>Sales Tax</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pape' Machinery</td>
<td>Dynapac CP142</td>
<td>2</td>
<td>78,600.00</td>
<td>13,362.00</td>
<td>$170,562.00</td>
</tr>
</tbody>
</table>

Public Works is requesting approval to award to the responsive bidder, Pape' Machinery. The total cost for this purchase is $170,562.00.

- Funding

This is a planned purchase and adequate funds are available in the current ER&R budget.

I concur with this request.

Admin. Services Finance Manager

Approved as recommended:

_______________________________________
County Executive

Date of Council Action  ________________
MEMORANDUM

TO: Brad Bennett, AS Finance Manager

THROUGH: Frank M. Abart, PW Director

FROM: Eric L. Schlehuber, PW Equipment Services Manager
       Jeff Gollen, PW Maintenance & Operations Superintendent

RE: Bid 14-40, Self-Propelled Pneumatic Tire Rollers

DATE: June 17, 2014

- **Requested Action**
  After researching the cost for self-propelled pneumatic tire rollers, I am requesting Executive and Council approval to purchase two Dynapac CP142 rollers to replace the following:

<table>
<thead>
<tr>
<th>DEPT</th>
<th>REPLACE UNIT</th>
<th>MAKE / MODEL</th>
<th>EST. HOURS OF USE</th>
</tr>
</thead>
<tbody>
<tr>
<td>PW - M&amp;O</td>
<td>431</td>
<td>1987 Bomag Roller</td>
<td>3,025</td>
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<tr>
<td>PW - M&amp;O</td>
<td>441</td>
<td>1981 Ingram Roller</td>
<td>3,693</td>
</tr>
</tbody>
</table>

- **Background and Purpose**
  These units were approved as replacements in the 2013-2014 Equipment Rental and Revolving Capital Equipment Budget. Public Works Maintenance & Operations Division will use these units as needed in the performance of county business on county road projects and road maintenance. Bids were duly advertised for these self-propelled pneumatic tire rollers. Two bids were received on Tuesday, June 10, 2014. Listed below is the detailed bid tabulation for the lowest responsive and responsible bid that meets minimum specifications:

<table>
<thead>
<tr>
<th>VENDOR</th>
<th>MAKE / MODEL</th>
<th>QTY</th>
<th>PRICE EACH</th>
<th>SALES TAX TOTAL (8.5%)</th>
<th>EXTENDED TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pape Machinery</td>
<td>Dynapac CP142</td>
<td>2</td>
<td>$78,600.00</td>
<td>$13,362.00</td>
<td>$170,562.00</td>
</tr>
</tbody>
</table>

- **Funding Amount and Source**
  This amount has been budgeted during in the 2013-2014 Budget process. I am requesting Executive and Council approval to purchase these units from Pape Machinery in Mount Vernon, Washington for the price of $78,600.00 per unit for a total of $157,200.00 for two units, plus sales tax of $13,362.00 for a total amount of $170,562.00.

- **Recommended Action**
  Please approve this purchase and forward to the Executive and the Whatcom County Council for approval at the July 8, 2014 Whatcom County Council Meeting. Please contact Eric L. Schlehuber at extension 50607, if you have any questions or concerns.
Public Works Maintenance & Operations requested bids for the annual supply of rock, gravel & soil for use as needed in various county road maintenance, and Parks department projects. They would like approval to accept all bids and select the appropriate vendor as dictated by the special circumstances of the particular job. This is a regularly budgeted expenditure and funds have been approved in the 2014 budget. Product is purchased on an as need basis and expenditures will exceed $50,000.
DATE: June 23, 2014
TO: Jack Louws, County Executive
FROM: Brad Bennett, AS Finance Manager
SUBJECT: Award of Bid 14-36 - Annual Supply of Rock, Gravel & Soil

BACKGROUND & PURPOSE
Bids were advertised for the annual supply of rock, gravel and soil for various Public Works Maintenance & Operations and Parks & Recreation projects as needed during 2014 and through June 30, 2015. Five firms submitted bids on Tuesday June 10, 2014. A tabulation of the prices is attached.

Generally the County will select the supplier submitting the lowest bid price for the specific material needed. However, under special circumstances, the County may select the supplier or suppliers that best meet the requirements for that particular job based on criteria other than lowest bid price.

Special circumstances which may be considered include:
- Differences in ability to deliver
- Delivery time
- Availability of material
- Special loading or unloading conditions
- Total cost including transport and or labor, if not included with bid item
- Performance of the delivered material
- Location of the source
- Proximity to the delivery point

If the materials of the lowest priced vendor do not meet specifications for a particular job, or if a pattern of failing to meet specifications is apparent to the County, the County reserves the right to use the next lowest qualifying bidder, in light of the special circumstances noted above. All gravel must be obtained from pits that are in compliance with all applicable laws and regulations. Public Works recommends accepting all bids received.

FUNDING
This is a regularly budgeted item and funds have been approved in the 2014 budget. Product is purchased on an as needed basis and more than $50,000.00 will be spent on this commodity in 2014. I concur with this recommendation.

Approved As Recommended:

[Signature]
Administrative Services Finance Manager

County Executive

Date of Council Action
MEMORANDUM

TO: Brad Bennett, AS Finance Manager

THROUGH: Frank M. Abart, PW Director

FROM: Eric L. Schlehuber, PW Equipment Services Manager
       Jeff Gollen, PW Maintenance & Operations Superintendent


DATE: June 12, 2014

Requested Action
I am requesting Executive and Council approval to purchase rock, gravel, and soil as needed during 2014-2015 from any of the following vendors: Aggregates West, Inc., Concrete Nor’West, Cowden Gravel and Ready Mix, Granite Construction Company, and Iverson Earth Works, LLC. Consideration will be given as to the differences in ability to deliver, delivery time, availability of material, special loading or unloading conditions, total cost including transport if not included with bid item, performance of the delivered material, location of the source, and proximity to the delivery point.

Background and Purpose
Bids were duly advertised for the supply of rock, gravel, and soil. The purpose of this bid is to establish firm prices for the purchase of rock, gravel, and soil for use on various Public Works and Parks & Recreation projects during 2014 through June 30, 2015. The Maintenance & Operations Division of the Public Works Department and the Parks & Recreation Department uses these materials regularly for annual maintenance on county roads, beaches, county road projects, and parks. Bid responses were received Tuesday, June 10, 2014. We received good responses from five vendors (total of eleven locations). Attached is a copy of the Whatcom County Bid Opening Results which lists the price for each category type of rock, gravel, and soil.

Funding Amount and Source
These are regularly budgeted expenditures for material, which are used on an annual basis as needed and have been budgeted during the 2013-2014 Budget process. Based on prior and estimated usage it is anticipated total expenditures will exceed $35,000 and therefore requires Whatcom County Council approval.

Recommendation
Please approve this purchase and forward to the Executive and the Whatcom County Council for approval at the July 8, 2014 Whatcom County Council Meeting. Please contact Eric L. Schlehuber at extension 50607, if you have any questions or concerns.

Encl.

Cc: Parks Operations Manager
WHATCOM COUNTY BID OPENING RESULTS

The following information is a record of bidders and their bid totals as received at the time of the bid opening.
All bids are subject to review by the requesting department and approval by the County Executive and the County Council.
A formal award or rejection notice and tabulation will be issued to all participants or to any interested people once the bid has been awarded.

BID 14-36  Rock, Gravel & Soil
PW – M&O

2:30 p.m. Tuesday June 10, 2014

<table>
<thead>
<tr>
<th>BIDDER</th>
<th>1 1/2&quot; Minus Crushed</th>
<th>2&quot; Minus Crushed</th>
<th>4&quot; Minus Crushed</th>
<th>8&quot; Minus Quarry Spalls</th>
<th>12&quot; Minus</th>
<th>2' Minus</th>
<th>Light Loose Riprap</th>
<th>Heavy Loose Riprap</th>
<th>3' Minus</th>
<th>4' Minus</th>
<th>3' Plus Bldg Stone</th>
<th>4&quot; – 8&quot; Clean</th>
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<td>Pt Roberts – Delivered</td>
<td>25.00</td>
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</table>
**WHATCOM COUNTY BID OPENING RESULTS**

**BID 14-36 Rock, Gravel & Soil**
**PW – M&O**

<table>
<thead>
<tr>
<th>BIDDER</th>
<th>One Man Rock 12” – 18”</th>
<th>Two Man Rock 18” – 28”</th>
<th>Three Man Rock 28” – 36”</th>
<th>Four Man Rock 36” – 48”</th>
<th>Five Man Rock 48” – 54”</th>
<th>Six Man Rock 54” – 60”</th>
<th>4-Man Drilled Ballast Rock 36” – 48”</th>
<th>5-Man Drilled Ballast Rock 48” – 54”</th>
<th>6-Man Drilled Ballast Rock 54” – 60”</th>
<th>1/4” Modified Chips – Maint Rock</th>
<th>1/2” Crushed Surfacing</th>
<th>3/8” Crushed Surfacing</th>
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## WHATCOM COUNTY BID OPENING RESULTS

**BID 14-36**  Rock, Gravel & Soil  
**PW – M&O**

<table>
<thead>
<tr>
<th>BIDDER</th>
<th>5/8&quot; Crushed Surfacing</th>
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<th>3 - 4&quot; Minus Cracked Ballast</th>
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<th>Pit Run 2&quot; Screened</th>
<th>Pit Run 4&quot; Screened</th>
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## WHATCOM COUNTY BID OPENING RESULTS

**BID 14-36  Rock, Gravel & Soil  PW – M&O**

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<td>Birch Bay Lyn Rd</td>
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# WHATCOM COUNTY BID OPENING RESULTS

**BID 14-36 Rock, Gravel & Soil**  
**PW – M&O**

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<tr>
<th>BIDDER</th>
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<td><strong>Dirt Spoils</strong></td>
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<td>(No Woody Debris)</td>
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<table>
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<tr>
<th>BIDDER</th>
<th>Miscellaneous</th>
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<tr>
<td><strong>Aggregates West</strong></td>
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<tr>
<td>Pt Roberts – Delivered</td>
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<td>Lummi Island</td>
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<td>VanBuren Rd</td>
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<tr>
<td>Winter Road Sand (Utility Sand) – 7.00 / ton, loaded by vendor</td>
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<td><strong>Cowden Gravel &amp; Ready Mix</strong></td>
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### TITLE OF DOCUMENT: Approval to Award Bid 14-39 Annual Supply of Asphaltic Mixes (Hot & Cold Mix)

### ATTACHMENTS: Memos from Finance and Public Works

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Public Works is requesting approval to award Bid 14-39 for the delivery and supply of asphaltic mixes. Two bids were received and Public Works would like to award to both bidders and select the vendor that has the best value based on price and cost to transport the product to the job site. This is a regularly budgeted item and expenditures could exceed $50,000.

Funds were approved in the current budget.

### 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](http://www.co.whatcom.wa.us/council).
DATE: June 24, 2014  

TO: Jack Louws, County Executive  

FROM: Brad Bennett, Administrative Services Finance Manager  

SUBJECT: Award of Bid 14-39 Annual Supply of Asphaltic Mixes (Hot & Cold Mix)  

BACKGROUND & PURPOSE  
Administrative Services advertised for bids to supply Public Works Maintenance & Operations with their annual supply of asphaltic mixes. Two bids were received on Tuesday June 10, 2014. Public Works uses the material on county road projects and selects the vendor with the most economical product based on low price and source location.  

<table>
<thead>
<tr>
<th>Vendor</th>
<th>HMA 1/2&quot; (per ton)</th>
<th>HMA 3/8&quot; (per ton)</th>
<th>ATB (per ton)</th>
<th>Cold Mix (per ton)</th>
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<tr>
<td>Granite Construction –</td>
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<tr>
<td>Everson Goshen Rd</td>
<td>68.00</td>
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<td>95.00 (loaded in County vehicle)</td>
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<td>99.00 (delivery w/in 10 miles)</td>
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<td>105.00 (delivery w/in 20 miles)</td>
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<td>Whatcom Builders –</td>
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<tr>
<td>LaBounty Rd</td>
<td>70.00</td>
<td>72.00</td>
<td>55.00</td>
<td>117.00 (loaded in County vehicle)</td>
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</table>

AWARD RECOMMENDATION  
Public Works is requesting approval to award to both bidders. They will use the most economical bid for a particular job, based on low price and source location. This is a regularly budgeted purchase and product is purchased as needed and expenditures could exceed $50,000.00  

I concur with this recommendation.  

Approved as recommended:  

_________________________________  
County Executive  

Date of Council Action
TO: Brad Bennett, AS Finance Manager  
THROUGH: Frank M. Abart, PW Director  
FROM: Eric L. Schlehuber, PW Equipment Services Manager  
Jeff Gollen, PW Maintenance & Operations Superintendent  
RE: Bid 14-39, Annual Supply of Asphaltic Mixes (Hot & Cold Mix)  
DATE: June 16, 2014

### Requested Action

I am requesting Executive and Council approval to purchase asphaltic mixes as needed during 2013 from any of the following vendors: Granite Construction Company or Whatcom Builders, Inc. I further request and recommend that Whatcom County reserve the right to utilize vendors based upon the location of the project, distance to the plant(s), and product availability up to an annual expenditure in excess of $50,000.00.

### Background and Purpose

Bids were duly advertised for the supply of asphaltic mixes. Public Works Maintenance & Operations Division will use the asphaltic mixes on various county road projects as part of the annual road maintenance and repair program. Two bids were received Tuesday, June 10, 2014. We received good responses from two vendors (total of two plant locations). Attached is a bid proposal tabulation sheet listing each type of asphaltic mix with the lowest bid highlighted for each category.

<p>| ANNUAL EXPENDITURE FOR ASPHALTIC MIXES (HOT &amp; COLD MIX) |
|----------------|----------------|----------------|----------------|----------------|----------------|----------------|</p>
<table>
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<th>YEAR</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
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<tr>
<td>ANNUAL COST</td>
<td>$20,086.56</td>
<td>$51,885.93</td>
<td>$38,702.36</td>
<td>$14,204.14</td>
<td>$9,477.69</td>
<td>$55,051.79</td>
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### Funding Amount and Source

These are regularly budgeted expenditures for material, which are used on an annual basis as needed and have been budgeted during the 2013-2014 Budget process. Based on prior and estimated usage it is anticipated total expenditures may be in excess of $50,000.00 and therefore requires Whatcom County Council approval.

Please approve this purchase and forward to the Executive and the Whatcom County Council for approval at the July 8, 2014 Whatcom County Council Meeting. Please contact Eric L. Schlehuber at extension 50607, if you have any questions or concerns.

Attachment
**SECTION A**

<table>
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<tr>
<th>F.O.B. Delivery Point</th>
<th>Vendor Supplier Plant Location</th>
<th>Prices Firm Through</th>
<th>Vendor</th>
<th>Supplier</th>
<th>Plant Location</th>
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<td>VENDOR PLANT, LOADED INTO COUNTY VEHICLES</td>
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<td>GRANITE CONSTRUCTION COMPANY</td>
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<tr>
<td></td>
<td>GRANITE CONSTRUCTION COMPANY 6956 Everson Goshen Road</td>
<td></td>
<td>La Bounty Road Plant</td>
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<tr>
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<td>WHATCOM BUILDERS, INC. La Bounty Road Plant</td>
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<td></td>
<td>July 1, 2015</td>
<td>April 30, 2015</td>
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<tr>
<td>HMA Class 1/2&quot;</td>
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<tr>
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<tr>
<td>A.T.B.</td>
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<tr>
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<td>$117.00 per ton</td>
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<tr>
<td>Special Conditions</td>
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<td>N/A</td>
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**SECTION B**

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<th>F.O.B. Delivery Point</th>
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<th>Supplier</th>
<th>Plant Location</th>
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<td>La Bounty Road Plant</td>
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</tr>
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<td></td>
<td>WHATCOM BUILDERS, INC. La Bounty Road Plant</td>
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<td></td>
<td>July 1, 2015</td>
<td>April 30, 2015</td>
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<tr>
<td>HMA Class 1/2&quot;</td>
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**SECTION C**

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**Clearances**

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<tr>
<th>Originator: K. Christensen</th>
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<th>Date</th>
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<th>Agenda Date</th>
<th>Assigned to: Finance/Council</th>
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<tr>
<td>Division Head: G. Stoyka</td>
<td>Initial</td>
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<td>Dept. Head: F. Abart</td>
<td>Initial</td>
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<td>Prosecutor: D. Gibson</td>
<td>Initial</td>
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<td>Purchasing/Budget: B. Bennett</td>
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<td>Date</td>
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<tr>
<td>Executive: J. Louws</td>
<td>Initial</td>
<td>Date</td>
<td>Date Received in Council Office</td>
<td>Agenda Date</td>
<td>Assigned to: Finance/Council</td>
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**Title of Document:**

Construction Contract Award: Coronado-Fremont Stormwater Improvements, Phase 2

**Attachments**

1. Memorandum to County Executive and County Council
2. Approval for Contract Award endorsed by the Executive
3. Project Exhibit: Summary and Vicinity Map
4. Project Cost Breakdown
5. Bid Tabulation
6. Low Bid Proposal

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

**SEPA review completed?** (X) 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.)

Approval of contract award to Henifin Construction, LLC, as low bidder in the amount of $278,884.33 for the Coronado-Fremont Stormwater Improvements, Phase 2, project in the Lake Whatcom watershed.

**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
   Honorable Members of the Whatcom County Council

THROUGH: Frank M. Abart, Public Works Director

FROM: Gary Stoyka, LHG, Natural Resources Manager
       Kirk N. Christensen, P.E., Stormwater Manager

RE: Coronado-Fremont Stormwater Improvements, Phase 2, Construction Contract
    Award to Henifin Construction, LLC

DATE: June 19, 2014

Please find enclosed for your review and approval a contract award package for the second phase of the Coronado-Fremont stormwater capital improvement project in the Lake Whatcom watershed. This packet consists of an agenda bill, project exhibit and vicinity map, project cost breakdown, bid tabulation, and the low bid proposal. Bid proposals for this project were opened at 2:30 p.m. on Tuesday, June 17, 2014.

Requested Action
Public Works requests that the Whatcom County Council authorize the County Executive to enter into a contract for the subject project to the low bidder, Henifin Construction, LLC, (Henifin) in the amount of $278,884.33 including all taxes. Please signify your approval to award this contract to Henifin on the Approval for Contract Award page.

Background and Purpose
Stormwater improvements in the Coronado-Fremont area of the Geneva neighborhood have been identified as a high priority in the Lake Whatcom Comprehensive Stormwater Plan. This second phase of improvements include channel restoration, pre-treatment vault, storm filter cartridge vault, and conveyance system upgrades.

Funding Amount and Source
Expenditure for this project in the amount of $278,884.33 is authorized under Public Works-Stormwater’s 2014 base budget for Lake Whatcom projects (cost center 123208).

Please contact Kirk at extension 50209 if you have any questions.

Enclosures

In accordance with W.C.C.3.08.230, I concur with this recommendation:

Brad Bennett, AS-Finance Director

Date
CORONADO-FREMONT STORMWATER IMPROVEMENTS, PHASE 2

APPROVAL FOR CONTRACT AWARD

Approval is hereby granted to award the Contract as follows:

Project: Coronado-Fremont Stormwater Improvements, Phase 2  
To: Henifin Construction, LLC

in the amount of their bid proposal of $278,884.33 including all taxes.

Jack Louws
Whatcom County Executive
Approving Authority

Date
CORONADO-FREMONT STORMWATER IMPROVEMENTS, PHASE 2

Construction Year: 2014

Project Summary:
This project is located east of Bellingham in Sections 34 & 35, T38N, R3E, in an existing urban area of the Lake Whatcom Watershed. Improvements will treat stormwater, promote infiltration, and slow velocity to reduce erosion and sediment transport. Elements include channel restoration and installing stormwater vaults.

Project Status:
Construction will begin late July and will be completed by October 1, 2014.

Project Funding Sources:
Local $400,000

Environmental Permitting (Agencies/Permits):
Land Disturbance and Clearing Permit-Whatcom County. Revocable Encroachment Permit-Whatcom County, Shorelines and Hydraulic Permit Approval (HPA)

Right-of-Way Acquisition:
$5,000

County Forces:
N/A
# Project Cost Break Down

## Coronado-Fremont Stormwater Improvements, Phase 2

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<tr>
<th>Item</th>
<th>Cost</th>
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<tbody>
<tr>
<td>Design Engineering</td>
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<td>Right-of-Way</td>
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<td>Construction Contract</td>
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<tr>
<td>Construction Engineering</td>
<td>$65,000</td>
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<td>Permitting, and Surveying</td>
<td>$15,000</td>
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<td>Testing and Contingency</td>
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<td><strong>Total</strong></td>
<td><strong>$433,884</strong></td>
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<tr>
<td>A1</td>
<td>Spill prevention, control and access</td>
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<tr>
<td>A2</td>
<td>Erosion water pollution control</td>
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<tr>
<td>A3</td>
<td>Mobilization</td>
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<td>A4</td>
<td>Traffic control (vehicles, signs &amp; devices)</td>
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<td>A5</td>
<td>Traffic control labor</td>
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<tr>
<td>A6</td>
<td>Cleaning and grubbing and roadside cleanup</td>
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<tr>
<td>A7</td>
<td>Removal of structures and obstr.</td>
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<tr>
<td>A8</td>
<td>Shoring or extra excavation class B</td>
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<td>Excavation</td>
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<td>Rock excavation, pneumatic</td>
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<td>A12</td>
<td>Quarry spoils</td>
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<td>Gravel filter</td>
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<td>Concrete culvert headwall</td>
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<td>Trash rack</td>
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<td>Temporary stream bypass</td>
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<td>High visibility fence</td>
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<td>A22</td>
<td>Silt fence</td>
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<td>Topsoil, Type A</td>
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<td>Seeding, fertilizing, &amp; mulching</td>
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<td>Repair public and private facilities</td>
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**Total Schedule A**

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*Schedule B on Page 2*
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Total Schedule B: $155,217.00
Total BID: SCHEDULES A AND B: $298,514.40

I hereby certify that the amounts tabulated herein are correct and accurately represents the amounts contained in the Engineer's estimate and the respective bid proposals opened at 2:30 pm, June 17, 2014, for Coronado-Fremont Stormwater Improvements, Phase 2.

Kirk N. Christensen, Stormwater Manager

SANDRA L. MCKAY
Commissioner, Board of County Commissioners
Bellingham
State of Washington
July 1, 2014

Notary Public, resident of Bellingham
My commission expires July 1, 2017.
Date: June 17, 2014

TO: Whatcom County Executive and Council
    Whatcom County Courthouse
    311 Grand Avenue
    Bellingham, Washington 98225

Gentlepersons:

This certifies that the Undersigned: has examined the location of the project site and the conditions of work; and has carefully read and thoroughly understands the Contract Documents entitled: "CORONADO–FREMONT STORMWATER IMPROVEMENTS PHASE 2 Whatcom County, Washington," including the "Bid Procedures and Conditions," "Specifications and Conditions," "Contract Forms," and "Plans" governing the work embraced in this project, and the method by which payment will be made for said work. The Undersigned hereby proposes to undertake and complete the work embraced in this project in accordance with said contract documents, and agrees to accept as payment for said work, the schedule of lump sum and unit prices as set forth in the "Bids" below.

The Undersigned acknowledges that payment will be based on the actual work performed and material used as measured or provided for in accordance with the said contract documents, and that no additional compensation will be allowed for any taxes not included in each lump sum or unit price, and that the basis for payment will be the actual work performed and measured or provided for in accordance with the said Contract Documents.
## Coronado-Fremont Stormwater Improvements Phase 2
### Stream Channel Restoration
#### Bid Schedule A-TAXABLE ITEMS

<table>
<thead>
<tr>
<th>ITEM NO.</th>
<th>UNIT MEASURE</th>
<th>ITEM DESCRIPTION</th>
<th>APPROX. QUANTITY</th>
<th>UNIT PRICE IN FIGURES</th>
<th>EXTENDED PRICE IN FIGURES</th>
</tr>
</thead>
<tbody>
<tr>
<td>A-1</td>
<td>LUMP SUM</td>
<td>SPILL PREVENTION, CONTROL AND COUNTERMEASURES PLAN (1-07.15(1))</td>
<td>1</td>
<td>L.S.</td>
<td>$350.00</td>
</tr>
<tr>
<td>A-2</td>
<td>FORCE ACCOUNT</td>
<td>EROSION WATER POLLUTION CONTROL (According to Section 1-09.6 of the Std. Specifications)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>A-3</td>
<td>LUMP SUM</td>
<td>MOBILIZATION (1-09.7)</td>
<td>1</td>
<td>L.S.</td>
<td>$13,275.00</td>
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<tr>
<td>A-4</td>
<td>LUMP SUM</td>
<td>TRAFFIC CONTROL (Vehicles, Signs &amp; Devices) (1-10)</td>
<td>1</td>
<td>L.S.</td>
<td>$350.00</td>
</tr>
<tr>
<td>A-5</td>
<td>HOUR</td>
<td>TRAFFIC CONTROL LABOR (1-10) (Minimum Bid is $29 per hour)</td>
<td>100</td>
<td>$50.00</td>
<td>$5,000.00</td>
</tr>
<tr>
<td>A-6</td>
<td>LUMP SUM</td>
<td>CLEARING AND GRUBBING AND ROADSIDE CLEANUP (2-01)</td>
<td>1</td>
<td>L.S.</td>
<td>$1,000.00</td>
</tr>
<tr>
<td>A-7</td>
<td>LUMP SUM</td>
<td>REMOVAL OF STRUCTURES AND OBSTRUCTIONS (2-02)</td>
<td>1</td>
<td>L.S.</td>
<td>$200.00</td>
</tr>
<tr>
<td>A-8</td>
<td>SQUARE FEET</td>
<td>SHORING OR EXTRA EXCAVATION CLASS B</td>
<td>100</td>
<td>$8.00</td>
<td>$800.00</td>
</tr>
<tr>
<td>A-9</td>
<td>CUBIC YARDS</td>
<td>EXCAVATION (2-03, 2-10)</td>
<td>400</td>
<td>$25.00</td>
<td>$10,000.00</td>
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<tr>
<td>A-10</td>
<td>CUBIC YARDS</td>
<td>ROCK EXCAVATION, PNEUMATIC (2-03, 2-10)</td>
<td>20</td>
<td>$120.00</td>
<td>$2,400.00</td>
</tr>
<tr>
<td>A-11</td>
<td>TON</td>
<td>GRAVEL BORROW (2-03, 2-10, 9-03.14(1))</td>
<td>150</td>
<td>$260.00</td>
<td>$3,900.00</td>
</tr>
<tr>
<td>A-12</td>
<td>TON</td>
<td>QUARRY SPALLS (9-13)</td>
<td>5</td>
<td>$45.00</td>
<td>$225.00</td>
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<tr>
<td>A-13</td>
<td>TON</td>
<td>ROCK-LINED CHANNEL BOULDER WEIR (2-10)</td>
<td>110</td>
<td>$72.00</td>
<td>$7,920.00</td>
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<tr>
<td>A-14</td>
<td>TON</td>
<td>ROCK-LINED CHANNEL RIPRAP (2-10)</td>
<td>150</td>
<td>$45.00</td>
<td>$6,750.00</td>
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<tr>
<td>Item</td>
<td>Description</td>
<td>Quantity</td>
<td>Unit Price</td>
<td>Total Price</td>
<td></td>
</tr>
<tr>
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<td>----------</td>
<td>------------</td>
<td>-------------</td>
<td></td>
</tr>
<tr>
<td>A-15</td>
<td>TON GRAVEL FILTER (2-10)</td>
<td>40</td>
<td>$40.00 per TON</td>
<td>$1,600.00</td>
<td></td>
</tr>
<tr>
<td>A-16</td>
<td>LUMP CONCRETE CULVERT HEADWALL SUM (6-11)</td>
<td>1</td>
<td>L.S. $12,800.00</td>
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<td></td>
</tr>
<tr>
<td>A-17</td>
<td>LUMP CLASS V REINF. CONC. CULVERT PIPE, 36&quot; DIAM. SUM (7-02, 7-08, &amp; 9-05.3(2))</td>
<td>1</td>
<td>L.S. $800.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>A-18</td>
<td>LUMP TRASH RACK SUM</td>
<td>1</td>
<td>L.S. $900.00</td>
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<td></td>
</tr>
<tr>
<td>A-19</td>
<td>LINEAR RAILING FEET (WC DWG 508.E-2)</td>
<td>21.5</td>
<td>$200.00 per L.F.</td>
<td>$4,300.00</td>
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<tr>
<td>A-20</td>
<td>LUMP TEMPORARY STREAM BYPASS SUM</td>
<td>1</td>
<td>L.S. $4,800.00</td>
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<td></td>
</tr>
<tr>
<td>A-21</td>
<td>LINEAR HIGH VISIBILITY FENCE FEET (8-01 &amp; 9-14.5)</td>
<td>200</td>
<td>$3.00 per L.F.</td>
<td>$600.00</td>
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<tr>
<td>A-22</td>
<td>LINEAR SILT FENCE FEET (8-01)</td>
<td>30</td>
<td>$5.00 per L.F.</td>
<td>$150.00</td>
<td></td>
</tr>
<tr>
<td>A-23</td>
<td>CUBIC TOPSOIL, TYPE A YARD (8-02 &amp; 9-14.1(1))</td>
<td>50</td>
<td>$60.00 per C.Y.</td>
<td>$3,000.00</td>
<td></td>
</tr>
<tr>
<td>A-24</td>
<td>ACRE TOPSOIL, TYPE B (8-02 &amp; 9-14.1(2))</td>
<td>400</td>
<td>$2.00 per S.Y.</td>
<td>$800.00</td>
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</tr>
<tr>
<td>A-25</td>
<td>CUBIC COMPOST YARD (8-02 &amp; 9-14.1(2))</td>
<td>10</td>
<td>$25.00 per C.Y.</td>
<td>$250.00</td>
<td></td>
</tr>
<tr>
<td>A-26</td>
<td>SQUARE EROSION CONTROL BLANKET YARDS (8-01, 9-14)</td>
<td>100</td>
<td>$6.00 per S.Y.</td>
<td>$600.00</td>
<td></td>
</tr>
<tr>
<td>A-27</td>
<td>SQUARE SEEDING, FERTILIZING, &amp; MULCHING YARDS (8-01.3(2), 8-02)</td>
<td>30</td>
<td>$5.00 per 1000 GAL</td>
<td>$150.00</td>
<td></td>
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<tr>
<td>A-28</td>
<td>1000 WATER GALLONS (2-07, 8-01, 8-02)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>A-29</td>
<td>FORCE LANDSCAPE RESTORATION ACCOUNT (According to Section 1-09.6 of the Std. Specifications)</td>
<td></td>
<td>F.A.</td>
<td>$10,000.00</td>
<td></td>
</tr>
</tbody>
</table>

**BID NO: 14-33**

**CORONADO-FREMONT STORMWATER IMPROVEMENTS PHASE 2**
<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>F.A.</th>
<th>F.A.</th>
</tr>
</thead>
<tbody>
<tr>
<td>A-30</td>
<td>Force Repair Public and Private Facilities</td>
<td></td>
<td>$20,000.00</td>
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</tbody>
</table>

Schedule A Total (Bid Items A-1 through A-30, Before Tax)

- Whatcom County Sales Tax (8.5%)

**SCHEDULE A TOTAL, INCLUDING TAX** (Bid Items A-1 through A-30)

- $119,545.00
- $10,161.33
- $129,706.33
### BID PROPOSAL

Coronado-Fremont Stormwater Improvements Phase 2  
Water Treatment Improvements  
Bid Schedule B-NON-TAXABLE ITEMS

<table>
<thead>
<tr>
<th>ITEM NO.</th>
<th>UNIT MEASURE</th>
<th>ITEM DESCRIPTION</th>
<th>APPROX. QUANTITY</th>
<th>UNIT PRICE IN FIGURES</th>
<th>EXTENDED PRICE IN FIGURES</th>
</tr>
</thead>
<tbody>
<tr>
<td>B-1</td>
<td>LUMP SUM</td>
<td>SPILL PREVENTION, CONTROL AND COUNTERMEASURES PLAN (1-07.15(1))</td>
<td>1</td>
<td>L.S.</td>
<td>$350.00</td>
</tr>
<tr>
<td>B-2</td>
<td>FORCE ACCOUNT</td>
<td>EROSION/WATER POLLUTION CONTROL (According to Section 1-09.6 of the Std. specifications)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>B-3</td>
<td>LUMP SUM (1-09.7)</td>
<td>MOBILIZATION</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>B-4</td>
<td>LUMP SUM (1-10)</td>
<td>TRAFFIC CONTROL (Vehicles, Signs &amp; Devices)</td>
<td>1</td>
<td>L.S.</td>
<td>$350.00</td>
</tr>
<tr>
<td>B-5</td>
<td>HOUR (1-10) (Minimum Bid is $20 per hour)</td>
<td>TRAFFIC CONTROL LABOR</td>
<td>70</td>
<td>$50.00</td>
<td>$3,500.00 per HOUR</td>
</tr>
<tr>
<td>B-6</td>
<td>LUMP SUM (2-01)</td>
<td>CLEARING AND GRUBBING</td>
<td>1</td>
<td>L.S.</td>
<td>$250.00</td>
</tr>
<tr>
<td>B-7</td>
<td>LUMP SUM (2-02)</td>
<td>REMOVAL OF STRUCTURES AND OBSTRUCTIONS</td>
<td>1</td>
<td>L.S.</td>
<td>$1,250.00</td>
</tr>
<tr>
<td>B-8</td>
<td>LINEAR FEET</td>
<td>SAW CUT ASPHALT CONCRETE PAVEMENT (2-02)</td>
<td>34</td>
<td>$12.00</td>
<td>$408.00 per L.F.</td>
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<tr>
<td>B-9</td>
<td>EACH</td>
<td>POTHOLING</td>
<td>3</td>
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<tr>
<td>B-10</td>
<td>LUMP SUM</td>
<td>DEWATERING</td>
<td>1</td>
<td>L.S.</td>
<td>$250.00</td>
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<tr>
<td>B-11</td>
<td>CUBIC YARDS</td>
<td>REMOVAL OF UNSUITABLE BASE MATERIAL INCLUDING HAUL</td>
<td>25</td>
<td>$25.00</td>
<td>$625.00 per C.Y.</td>
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<tr>
<td>B-12</td>
<td>CUBIC YARDS</td>
<td>ROCK EXCAVATION, PNEUMATIC</td>
<td>10</td>
<td>$12.00</td>
<td>$1,200.00 per C.Y.</td>
</tr>
<tr>
<td>B-13</td>
<td>SQUARE FEET</td>
<td>SHORING</td>
<td>500</td>
<td>$8.00</td>
<td>$4,000.00 per S.F.</td>
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<tr>
<td>B-14</td>
<td>TON</td>
<td>CRUSHED SURFACING TOP COURSE (4-04, 9-03.9(3))</td>
<td>20</td>
<td>$85.00</td>
<td>$1,700.00 per TON</td>
</tr>
</tbody>
</table>

CORONADO-FREMONT STORMWATER IMPROVEMENTS PHASE 2  
BID No 14-33  
13

115
<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Details</th>
<th>Unit Price</th>
<th>Quantity</th>
<th>Total Cost</th>
</tr>
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<tbody>
<tr>
<td>B-15</td>
<td>TON COMMERCIAL HMA</td>
<td>5-04</td>
<td>$ 210.00</td>
<td>20</td>
<td>$ 4,200.00</td>
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<tr>
<td>B-16</td>
<td>LINEAR STORM SEWER, 12&quot; DIAM. FEET</td>
<td>7-04, 7-08, &amp; 9-05.20</td>
<td>$ 60.00</td>
<td>104</td>
<td>$ 6,240.00</td>
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<tr>
<td>B-17</td>
<td>EACH CATCH BASIN TYPE 1</td>
<td>7-05, 9-05.50(3))</td>
<td>$ 140.00</td>
<td>1</td>
<td>$ 140.00</td>
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<tr>
<td>B-18</td>
<td>EACH CATCH BASIN TYPE 2</td>
<td>7-05, 9-05.50(3))</td>
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<td>1</td>
<td>$ 2,400.00</td>
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<tr>
<td>B-19</td>
<td>EACH CONNECT TO EX. CATCH BASIN</td>
<td>7-05</td>
<td>$ 325.00</td>
<td>1</td>
<td>$ 325.00</td>
</tr>
<tr>
<td>B-20</td>
<td>EACH CONNECT TO EX. STORM DRAIN</td>
<td>7-05</td>
<td>$ 325.00</td>
<td>2</td>
<td>$ 650.00</td>
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<tr>
<td>B-21</td>
<td>EACH PLUG EX. STORM DRAIN</td>
<td>7-05</td>
<td>$ 325.00</td>
<td>4</td>
<td>$ 1,300.00</td>
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<tr>
<td>B-22</td>
<td>LUMP STORM CANISTER VAULT AT SUM LOCATION #1</td>
<td>7-31</td>
<td>$ 140.00</td>
<td>1</td>
<td>$ 140.00</td>
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<tr>
<td>B-23</td>
<td>LUMP PRETREATMENT MANHOLE, 30&quot; DIAM. AT LOCATION #1</td>
<td>7-32</td>
<td>$ 670.00</td>
<td>1</td>
<td>$ 670.00</td>
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<tr>
<td>B-24</td>
<td>SQUARE SEEDING, FERTILIZING, &amp; MULCHING YARDS</td>
<td>8-01.3(2),8-02</td>
<td>$ 5.00</td>
<td>50</td>
<td>$ 250.00</td>
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<tr>
<td>B-25</td>
<td>LINEAR SILT FENCE FEET</td>
<td>8-01</td>
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<td>95</td>
<td>$ 475.00</td>
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<td>B-26</td>
<td>LINEAR STRAW WATTLE FEET</td>
<td>8-01</td>
<td>$ 3.00</td>
<td>160</td>
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<td>EACH INLET PROTECTION</td>
<td>8-01</td>
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<td>$ 300.00</td>
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<tr>
<td>B-28</td>
<td>1000 WATER GALLONS</td>
<td>2-07, 8-01, 8-02</td>
<td>$ 5.00</td>
<td>10</td>
<td>$ 50.00</td>
</tr>
<tr>
<td>B-29</td>
<td>FORCE LANDSCAPE RESTORATION ACCOUNT</td>
<td>(According to Section 1-09.6 of the Std. Specifications)</td>
<td>F.A.</td>
<td></td>
<td>$ 3,000.00</td>
</tr>
<tr>
<td>B-30</td>
<td>FORCE REPAIR PUBLIC AND PRIVATE FACILITIES ACCOUNT</td>
<td>(According to Section 1-09.6 of the Std. Specifications)</td>
<td>F.A.</td>
<td></td>
<td>$ 17,000.00</td>
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<tr>
<td>Schedule</td>
<td>Description</td>
<td>Amount</td>
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<td>----------</td>
<td>-------------</td>
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<tr>
<td>Schedule B Total</td>
<td>(Bid Items B-1 through B-30)</td>
<td>$149,178.00</td>
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<tr>
<td>Schedule A Total</td>
<td>(Including Sales Tax)</td>
<td>$129,700.33</td>
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<td></td>
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<tr>
<td>Schedule B Total</td>
<td></td>
<td>$149,178.00</td>
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<td>TOTAL BID AMOUNT (SCH. A + SCH. B)</td>
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<td>$278,884.33</td>
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</table>
NON-COLLUSION DECLARATION

CORONADO – FREMONT STORMWATER IMPROVEMENTS PHASE 2

I, by signing the proposal, hereby declare, under penalty of perjury under the laws of the United States that the following statements are true and correct:
That the undersigned person(s) firm, association or corporation has (have) not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the project for which this proposal is submitted.
That by signing the signature page of this proposal, I am deemed to have signed and have agreed to the provisions of this declaration.

NOTICE TO ALL BIDDERS

To report bid rigging activities call:

1-800-424-9071

The U.S. Department of Transportation (USDOT) operates the above toll free "hotline" Monday through Friday, 8:00 a.m. to 5:00 p.m. Eastern Time. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the "hotline" to report such activities.

The "hotline" is part of USDOT's continuing effort to identify and investigate highway construction contract fraud and abuse, and is operated under the direction of the USDOT Inspector General. All information will be treated confidentially and caller anonymity will be respected.
BIDDER IDENTIFICATION

The name of the Bidder submitting this proposal, the address and phone number to which all communications concerned with this proposal shall be made and the number which has been assigned indicating the Bidder is licensed to do business in the State of Washington are as follows:

Firm Name: Henifin Construction, LLC
Address: 3857 Hanneken Road
         Bellingham WA 98226
Telephone: (360) 733-5411

Contractor's WA Registration Number: Henif 62254
Contractor's WA UBI Number: 601-709-974
Contractor's WA Employment Security Department Number: 035034-006
Contractor's WA Excise Tax Registration Number: 601-709-974

The Firm submitting this proposal is a: Sole Proprietorship
                                          Partnership
                                          □ Corporation

The names and titles of the principal officers of the corporation submitting this proposal, or of the partnership, or of all persons interested in this proposal as principals are as follows:

Owner  Jaime Henifin/Manager

NOTE: Signatures of this proposal must be identified above. Failure to identify the Signatories will be cause for considering the proposal irregular and for subsequent rejection of the bid.

CORONADO-FREMONT STORMWATER IMPROVEMENTS PHASE 2
BID No 14-33
17
BID PROPOSAL SIGNATURE AND ADDENDUM ACKNOWLEDGMENT

The bidder is hereby advised that by signature of this proposal he/she is deemed to have acknowledged all requirements and signed all certificates contained herein. The undersigned hereby agrees to pay labor not less than the prevailing rates of wages or less than the hourly minimum rate of wages as specified in the Specifications and Conditions for this project.

CASHIER’S CHECK □ IN THE AMOUNT OF __________________________

CERTIFIED CHECK □ ($_____________) PAYABLE TO WHATCOM COUNTY

SURETY BOND X IN THE AMOUNT OF 5% OF THE BID.

Receipt is hereby acknowledged by addendum(s) No.(s) ___, ___, & _____

SIGNATURE OF AUTHORIZED OFFICIAL(S)

(PROPOSAL MUST BE SIGNED) ___________ Heni-fin

FIRM NAME: Heni-fin Construction

STATE OF WASHINGTON )

COUNTY OF WHATCOM ) ss.

On this 17th day of June, 2014, before me personally appeared

Jaime Heni-fin to me personally known to be the person described

in and who executed the above instrument and who acknowledged to me the act of signing thereof

This proposal form is not alterable and any alteration of the firm's name entered hereon without prior permission from Whatcom County will be cause for considering the proposal irregular and for subsequent rejection of the bid.

CORONADO-FREMONT STORMWATER IMPROVEMENTS PHASE 2
BID No 14-33
SIMILAR PROJECT'S REFERENCE FORM

The name of the Agency or Client for which the project was performed, including the address, phone number, the name of the project manager:

Project Name: See Attached Resume 2001-2014 for Henifin Construction
Agency or Client: ____________________________
Project Manager’s Name: ____________________________
Address: _________________________________________
Phone Number: _________________________________________

Project Name: ____________________________
Agency or Client: ____________________________
Project Manager’s Name: ____________________________
Address: _________________________________________
Phone Number: _________________________________________

Project Name: ____________________________
Agency or Client: ____________________________
Project Manager’s Name: ____________________________
Address: _________________________________________
Phone Number: _________________________________________
BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we, Henifin Construction LLC of Bellingham WA, as principal, and the Developers Surety and Indemnity Company of _______ of ______, a corporation duly organized under the laws of the State of _______ and having its principal place of business at 9750 Third Ave NE, Ste 305, Seattle WA 98115 in the State of Washington, as Surety, are held and firmly bound unto Whatcom County, a Municipal Corporation in the State of Washington, in the full and penal sum of five percent (5%) of the total bid amount appearing on the bid proposal of said principal for the work hereinafter described, for the payment of which, well and truly to be made, we bind our heirs, executors, administrators and assigns, and successors and assigns, jointly and severally, firmly by these presents.

The condition of this bond is such that, whereas, the principal herein is herewith submitting his or its bid proposal for CORONADO – FREMONT STORMWATER IMPROVEMENTS PHASE 2 BID No. 14-33 bid proposal, by reference thereto, being hereby made a part hereof.

NOW, THEREFORE, if the said bid proposal submitted by the said PRINCIPAL be accepted, and the contract be awarded to said PRINCIPAL, and if said PRINCIPAL shall duly make and enter into and execute said contract and shall furnish the performance bond as required by the bidding and contract documents within a period of ten (10) calendar days from and after said award, exclusive of the day of such award, then its obligation to pay the above-mentioned penal sum as liquidated damages shall be null and void, otherwise it shall remain and be in full force and effect.

SIGNED AND SEALED this 17th day of, June 2014.

Henifin Construction LLC
Principal
By [Signature]

Developers Surety and Indemnity Company
Surety
By [Signature]

Attorney-In-Fact Cameron Huntsucker

The Attorney-in-fact who executes this bond on behalf of the surety company, must attach a copy of his power-of attorney as evidence of his authority.
POWER OF ATTORNEY FOR
DEVELOPERS SURETY AND INDEMNITY COMPANY
INDEMNITY COMPANY OF CALIFORNIA
PO Box 19725, IRVINE, CA 92623 (949) 263-3300

KNOW ALL BY THESE PRESENTS that except as expressly limited, DEVELOPERS SURETY AND INDEMNITY COMPANY and INDEMNITY COMPANY OF CALIFORNIA, do each hereby make, constitute and appoint:

***Kara Skinner, Cameron L. Huntsucker, Mercedes Trokey-Moudy, jointly or severally***

as their true and lawful Attorney(s)-in-Fact, to make, execute, deliver and acknowledge, for and on behalf of said corporations, as sureties, bonds, undertakings and contracts of suretyship giving and granting unto said Attorney(s)-in-Fact full power and authority to do and to perform every act necessary, requisite or proper to be done in connection therewith as each of said corporations could do, but reserving to each of said corporations full power of substitution and revocation, and all of the acts of said Attorney(s)-in-Fact, pursuant to these presents, are hereby ratified and confirmed.

This Power of Attorney is granted and is signed by facsimile under and by authority of the following resolutions adopted by the respective Boards of Directors of DEVELOPERS SURETY AND INDEMNITY COMPANY and INDEMNITY COMPANY OF CALIFORNIA, effective as of January 1, 2008:

RESOLVED, that a combination of any two of the Chairman of the Board, the President, Executive Vice-President, Senior Vice-President or any Vice President of the corporations be, and that each of them hereby is, authorized to execute this Power of Attorney, qualifying the attorney(s) named in the Power of Attorney to execute, on behalf of the corporations, bonds, undertakings and contracts of suretyship; and that the Secretary or any Assistant Secretary of either of the corporations be, and each of them hereby is, authorized to attest the execution of any such Power of Attorney;

RESOLVED, FURTHER, that the signatures of such officers may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures shall be valid and binding upon the corporations when so affixed and in the future with respect to any bond, undertaking or contract of suretyship to which it is attached.

IN WITNESS WHEREOF, DEVELOPERS SURETY AND INDEMNITY COMPANY and INDEMNITY COMPANY OF CALIFORNIA have severally caused these presents to be signed by their respective officers and attested by their respective Secretary or Assistant Secretary this May 23, 2013.

By:  
Daniel Young, Senior Vice-President

By:  
Gregg N. Okura, Vice-President

State of California  
County of Orange

On May 23, 2013 before me,  
Gina L. Garner, Notary Public

Here Insert Name and Title of the Officer

personally appeared Daniel Young and Gregg N. Okura

Name(s) of Signer(s)

Place Notary Seal Above

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature  
Gina L. Garner, Notary Public

CERTIFICATE

The undersigned, as Secretary or Assistant Secretary of DEVELOPERS SURETY AND INDEMNITY COMPANY or INDEMNITY COMPANY OF CALIFORNIA, does hereby certify that the foregoing Power of Attorney remains in full force and has not been revoked and, furthermore, that the provisions of the resolutions of the respective Boards of Directors of said corporations set forth in the Power of Attorney are in force as of the date of this Certificate.

This Certificate is executed in the City of Irvine, California, this 17th day of May, 2014.

By:  
Mark J. Lansdon, Assistant Secretary

ID-1380(Rev.09/13)
**WHATCOM COUNTY COUNCIL AGENDA BILL**

<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>
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<tr>
<td>Originator:</td>
<td>pj</td>
<td>5/1/14</td>
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<td>7/8/14</td>
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<td>Executive:</td>
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**TITe OF DOCUMENT:** Contract between Whatcom County and the Arc of Whatcom County

**ATTACHMENTS:**
1. Executive Memo
2. Info Sheet
3. Two copies of 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:** (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.)

Contract between the ARC of Whatcom County and Whatcom County to provide community information, education, and family support services to individuals with developmental disabilities, their families/caregivers, and the public.

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

TO: Jack Louws, County Executive

FROM: Regina A. Delahunt

RE: Arc of Whatcom County, Community Information, Education, and Support Contract

DATE: June 25, 2014

Enclosed are two (2) originals of a new contract between Whatcom County and the Arc of Whatcom County for your review and signature.

- **Background and Purpose**
  The purpose of this agreement is to provide community information and education to parents of individuals with developmental disabilities, as well as to the general public, about developmental disabilities and related services. Community information and education activities include information and referral services, activities aimed at promoting public awareness and involvement, community consultation, capacity building, and organizational activities.

- **Funding Amount and Source**
  The source of funding for this contract, in an amount not to exceed $65,000, is the Washington State Department of Social and Health Services, Developmental Disabilities Administration (DDA). Council approval is required and an agenda bill is attached.

- **Differences from Previous Contract**
  This is a new contract issued pursuant to RFP 14-27 and the contractor was the only respondent. Contracted activities are the same as contract # 201106005 which expires 6/30/14 after 3 years of service. This contract pays for about two thirds of total program costs with the remainder of funds from United Way and private donations. Changes include:
    - Increase in personnel costs. This change reflects an increase in the hourly staff wage, a correction of the composite rate formula to more accurately account for vacation and sick leave, and an increase in the FTE committed toward contract activities.
    - The payment point for the development and distribution of the newsletter was increased by 5% to reflect an increase in the number printed to accommodate demand and an increase in postage costs.
    - Funding for travel was increased to reflect current mileage and accommodation rates through the Office of Financial Management.

Please contact Jessica Lee at extension 32014, 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>Health</th>
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<tbody>
<tr>
<td>Contract or Grant Administrator:</td>
<td>Jessica Lee</td>
</tr>
<tr>
<td>Contractor's / Agency Name:</td>
<td>Arc of Whatcom County</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 ____

**Does contract require Council Approval?**
- Yes ___ X__ No ____

**Is this a grant agreement?**
- Yes ___ X__ No ____

**Is this contract grant funded?**
- Yes ___ X__ No ____

**Is this contract the result of a RFP or Bid process?**
- Yes ___ X__ No ____

**Is this agreement excluded from E-Verify?**
- No ___ X__

**If yes, indicate exclusion(s) below:**
- Professional services agreement for certified/licensed professional
- Contract work is for less than 120 days
- Contract less than $100,000.
- Contract for Commercial off the shelf items (COTS)
- Contract work is all performed outside U.S.
- Work related subcontract less than $25,000.
- Interlocal Agreement (between Govt's)
- Public Works - Local Agency/Federally Funded FHWA

**Contract Amount:**
- $65,000

**This Amendment Amount:**
- $

**Total Amended Amount:**
- $

**Summary of Scope:**
The purpose of this agreement is to provide community information and education to parents of children and adults with developmental disabilities and the general public about developmental disabilities and related services. Community information and education activities include information and referral services, activities aimed at promoting public awareness and involvement, community consultation, capacity building, and organizational activities.

**Term of Contract:** 1 Year

**Expiration Date:** 06/30/2015

**Contract Routing Steps & Signoff:**
1. Prepared by: pj Date 5/2/14 [electronic]
2. Attorney reviewed: Date [electronic]
3. AS Finance reviewed: 6/20/14 [electronic]
4. IT reviewed if IT related Date [electronic]
5. Corrections made: Date [electronic] hard copy printed
6. Attorney signoff: 6/26 Date [electronic]
7. Contractor signed: 6/25/14 Date [summary via electronic; hardcopies]
8. Submitted to Exec Office: Date [electronic]
9. Council approved (if necessary) Date
10. Executive signed: Date
11. Contractor Original Returned to dept: Date
12. County Original to Council: Date
Arc of Whatcom County, 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 11.
- Exhibit B (Compensation), pp. 12 to 13.

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 9th day of July, 2014, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 30th day of June, 2015.

The general purpose or objective of this Agreement is to provide information, education and referral to individuals with developmental disabilities, their families/caregivers, and the general public, 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 $65,000. 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 25th day of June, 2014.

CONTRACTOR:

ARC OF WHATCOM COUNTY

Bev. Perle, Executive Director

(Type in Name & Title of Signatory)

STATE OF WASHINGTON

COUNTY OF WHATCOM

On this 25th day of June, 2014, before me personally appeared Beverly Perle, to me known to be the Executive Director (title) of the Arc of Whatcom County and who executed the above instrument and was acknowledged to me the act of signing and sealing thereof.


Victoria L. McQuire

NOTARY PUBLIC
STATE OF WASHINGTON
01-18-2018
WHATCOM COUNTY:
Recommended for Approval:

Anne Deacon, Human Services Manager 6/25/14

Regina A. Delahunt, Department Director 6/25/14

Approved as to form:

Prosecuting Attorney 6/26/14

Approved:
Accepted for Whatcom County:

By: ____________________________
Jack Louws, Whatcom County Executive

STATE OF WASHINGTON  )
COUNTY OF WHATCOM  ) ss

On this ______ day of __________, 2014, 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:

Arc of Whatcom County
Beverly Porter, Executive Director
2602 McLeod Rd.
Bellingham, WA 98225
Phone: 360-715-0170
Email: beverlyp@arcwhatcom.org

HI_070914_Arc_of_Whatcom_County_Info&_Ed_Services
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, 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 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 the 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:
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 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) 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, 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:
When the Contractor creates any copyrightable materials or invents any patentable property, the Contractor may copyright or patent the same, but the County retains a royalty-free, nonexclusive and irrevocable license to reproduce, publish, recover, or otherwise use the materials or property and to authorize other governments to use the same for state or local governmental purposes. Contractor further agrees to make research, notes, and other work products produced in the performance of this Agreement available to the County upon request.

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: Not Applicable

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 and 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 (this amount may vary with circumstances)
General Liability & Property Damage for bodily injury- $1,000,000.00 (this amount may vary with circumstances)

A Certificate of insurance, that also identifies the County as an additional insured, is attached hereto as Exhibit "C". This insurance shall be considered as primary and shall waive all rights of subrogation. The County insurance shall be noncontributory.

34.2 Industrial Insurance Waiver:
With respect to the performance of this agreement and as to claims against the County, its officers, agents and employees, 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 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 the negligence 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. In case of damages caused by the concurrent negligence of Contractor, its subcontractors, its successors or assigns, or its agents, servants, or employees, and the County, its appointed or elected officers, employees or their agents, then this indemnification provision is enforceable only to the extent of the negligence of the Contractor, its agents, or its 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. The parties specifically agree that this agreement is for the benefit of the parties only and this agreement shall create no rights in any third party.

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 insure 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 subcontractors 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/its receipt 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: Not Applicable

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:

Jessica Lee
Developmental Disabilities Program Specialist
Whatcom County Health Department
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: Not Applicable

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: 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 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.
I. **Background**

This contract funds Information, Education, and Referral services through the Parent Coalition. The Parent Coalition is a program of the Arc of Whatcom County and one of 16 such programs statewide whose purpose is to:

1. Develop and raise community awareness about the issues and needs of persons with developmental disabilities and their families;
2. Serve as a resource to increase understanding of the developmental disability service system, and
3. Provide advocacy, public education, and organization to persons with developmental disabilities and their parents and caregivers.

Services under this contract are designed to meet the definition for Community Information Activities found within the Budgeting, Accounting and Reporting Systems (BARS) Code 568.40.

II. **Statement of Work**

The contractor will provide information, education and referral to individuals with developmental disabilities, their families, caregivers, and the community at large about developmental disabilities issues in the following ways:

a. Publish and distribute a monthly newsletter at least ten (10) times during each contract period that consists of four or more pages.

b. Develop and distribute monthly electronic mailings to a minimum of 100 families and service providers which offer information and analysis of issues relevant to developmental disabilities.

c. Develop, update, and distribute informational packets related to guardianship, future planning, the hiring of caregivers and other topics related to the support of individuals with disabilities upon request.

d. Respond to family requests for assistance in development of Individual Education Plans (IEPs), completion of Supplemental Security Income (SSI) applications and resolution of other service system access issues.

e. Provide one on one support, advocacy, and referral assistance to individuals with developmental disabilities and their families in navigating the social service and special education systems.

f. Provide a minimum of ten (10) family centered training events during the contract period. Each training will be at minimum two (2) hours in length and will focus on better understanding and navigating service systems, and advocating for the rights and needs of individuals with developmental disabilities.

g. Arrange for Whatcom County Parent Coalition members to attend the statewide parent coalition meeting in Olympia, WA at least once a year.

h. Provide education, and consultation on inclusive practices, self-determination, the transition from school to work, and the adult service system to Whatcom County School Districts and special education departments which include the following:

1. Schedule and coordinate up to seven (7) parent and educator presentations in collaboration with the County, the Division of Vocational Rehabilitation (DVR) and the Developmental Disabilities Administration (DDA) during the contract period.
2. Coordinate a Whatcom County Transition Fair, in collaboration with County and State staff, at least once during the contract period

3. Provide one on one consultation with school district staff, as requested, on inclusive practices, self-determination, and transition from school to the adult service system.
   i. Provide a minimum of 10 disability awareness presentations within general education classrooms and the community during the contract period.

III. Program Requirements

1) The contractor will designate a Parent Coalition coordinator or co-coordinators to be responsible for the targeted outcomes of the contract, and to coordinate with the County related to contracted activities.

2) The parent coalition coordinator will be the parent of a child with a developmental disability, unless otherwise approved by the County. The contractor will maintain current job descriptions for Parent Coalition coordinators;

3) The contractor will maintain a description of Parent Coalition activities, as distinct from those of the Arc and Parent-to-Parent;

4) Coalition Activities will be governed by a Steering Committee, which consists of, at a minimum, representation from the Arc of Whatcom County, the Parent Coalition, and at least two family members of individuals with developmental disabilities. The committee will meet at minimum 3 times a year.

5) Information, education, and referral will be provided in ways that promote the values of the County guidelines as outlined in (http://www1.dshs.wa.gov/pdf/adsa/ddd/c_guidelines.pdf)

6) Information and education services will assist individuals and families in defining and utilizing available natural supports in the community. "Natural supports" are those personal associations and relationships that enhance the quality of life for individuals with developmental disabilities and are not based on a paid service relationship.

7) Information and education services will promote understanding of legislative issues relevant to developmental disabilities and assist individuals in communicating their needs and priorities to elected representatives and government agencies. The Contractor will not endorse or oppose pending legislation, ballot initiatives, or specific candidates running for elected office in any publication or with any resource made available through public funds under this contract.

8) Support and advocacy will be provided in ways that promotes individual choice and the self-direction of services.

9) The contractor will make targeted efforts to increase outreach to individuals and their families who come from ethnically and linguistically diverse communities.

10) The contractor shall administer a participant survey to evaluate all training events. An annual satisfaction survey of the newsletter will also be completed.

11) Staff assigned to this contract are considered mandated reporters under RCW 74.34.020 and must comply with reporting requirements described under RCW 74.34.035, 040 and Chapter 26.44.
12) A background clearance, free of disqualifying convictions identified by DSHS will be completed for staff assigned to this contract. If the contractor elects to hire or retain an individual after receiving notice that the applicant has a conviction for an offense that would disqualify the applicant from having unsupervised access to vulnerable adults, then the County shall deny payment for any subsequent service rendered by the disqualified individual. A list of disqualifying convictions may be found at the following. http://www.dshs.wa.gov/bccu/bccucrimeslist.shtml

IV. Reporting and Documentation

(1) The Contractor will report on Parent Coalition activities and outcomes, monthly, in a format approved by the County. The monthly report should accompany the invoice for services. The monthly reporting form is attached for reference as Exhibit "D" and may be revised with agreement from the County.

(2) Attendance and sign-in sheets or logs, handouts and other materials provided to participants as part of the above activities shall not be submitted with the monthly invoice, but shall be on file for review by the County.
I. **Source of Funding**

This contract, in an amount not to exceed $65,000 is funded by a contract with the Washington Department of Social and Health Services, Developmental Disabilities Administration (DSHS/DDA).

II. **Contract Budget**

<table>
<thead>
<tr>
<th>Activity</th>
<th>Unit Cost</th>
<th>Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parent Coalition Newsletter</td>
<td>10 newsletters x $1,375 per newsletter</td>
<td>$13,750</td>
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<tr>
<td></td>
<td>(BARS 568.40)</td>
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<tr>
<td>Information, Education, and Referral activities,</td>
<td>1661 hrs X $28.11/hr. (.80FTE)</td>
<td>$46,691</td>
</tr>
<tr>
<td>including electronic mailings, distribution and</td>
<td>(BARS 568.40)</td>
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<tr>
<td>development of future planning packets, assistance</td>
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<tr>
<td>with IEP, SSI, and other service system access issues,</td>
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<td>presentations to school districts</td>
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<td></td>
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<tr>
<td>Family Training events</td>
<td>10 workshops @ $427 per event</td>
<td>$4,270</td>
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<td></td>
<td>(BARS 568.40)</td>
<td></td>
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<tr>
<td>Annual Statewide Parent Coalition Meeting in Olympia</td>
<td>Reimbursement of actual travel costs, including mileage and lodging.</td>
<td>$289</td>
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<tr>
<td></td>
<td>Current Office of Financial Management (OFM) Per diem rates apply.</td>
<td>(BARS 568.40)</td>
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<tr>
<td>Total Budget</td>
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<td>$65,000</td>
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</table>

III. **Invoicing**

1. The Contractor shall submit itemized invoices on a monthly basis in a format approved by the County. Monthly invoices must be submitted by the 15th of the month following the month of service. Invoices submitted for payment must include the items identified in the table above. The contractor shall, upon request of the County, provide additional reports related to the services provided through this contract.

2. The Contractor shall submit invoices to *(include contract/PO #)*:

Attention: Business Office  
Whatcom County Health Department  
509 Girard Street  
Bellingham, WA 98225

3. Payment by the County will be considered timely if it is made within 30 days of the receipt and acceptance of billing information from Contractor. The County may withhold payment of an invoice if the Contractor submits it more than 30 days after the expiration of this contract.

4. Invoices must include the following statement, with an authorized signature and date:
I certify that the materials have been furnished, the services rendered, or the labor performed as described on this invoice.

5. **Duplication of Billed Costs or Payments for Service:** The Contractor shall not bill the County for services performed or provided under this contract, and the County shall not pay the Contractor, if the Contractor has been or will be paid by any other source, including grants, for those costs used to perform or provide the services in this contract. The Contractor is responsible for any audit exceptions or disallowed amounts paid as a result of this contract.
# Certificate of Liability Insurance

**Date**: 6/2/2014

**Producer**: Wycoff Insurance Agency Inc.
501 South 2nd Street
P. O. Box 1010
Mount Vernon WA 98273

**Insured**: The Arc of Whatcom County
2602 McLeod Road
Bellingham WA 98225

**Coverages**

**Certificate Number**: 13-14

<table>
<thead>
<tr>
<th>Insurer</th>
<th>Type of Insurance</th>
<th>Additional Insured</th>
<th>Policy Number</th>
<th>Policy Effective</th>
<th>Policy Expired</th>
<th>Limits</th>
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<tbody>
<tr>
<td>A</td>
<td>General Liability</td>
<td>X</td>
<td>MEPRK1050676</td>
<td>8/18/2013</td>
<td>8/18/2014</td>
<td>EACH OCCURRENCE</td>
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<td>$1,000,000</td>
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<tr>
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<td>MEPRK1050676</td>
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<td>8/18/2014</td>
<td>EACH OCCURRENCE</td>
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</table>

**Description of Operations/Locations/Uses (Attach ACORD 101, Additional Exclusions Schedule, if more space is required)**

Whatcom County is listed as Additional Insured for the Insured Chapter, The Arc of Whatcom County as per the attached form 21-GLD-HS (10/11) pages 6-10.

**Certificate Holder**: Whatcom County
311 Grand Ave
Bellingham, WA 98225

**Cancellation**

Should any of the above described policies be cancelled before the expiration date, notice will be delivered in accordance with the policy provisions.

Authorized Representative
EXHIBIT "C"
(INSURANCE)
### Parent Coalition Monthly Report

**Service Description**

<table>
<thead>
<tr>
<th>Service Description</th>
<th>Jan</th>
<th>Feb</th>
<th>March</th>
<th>April</th>
<th>May</th>
<th>June</th>
<th>July</th>
<th>Aug</th>
<th>Sept</th>
<th>Oct</th>
<th>Nov</th>
<th>Dec</th>
<th>YTD</th>
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<tbody>
<tr>
<td>Parent coalition newsletter</td>
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<td>Electronic Informational Mailings</td>
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<td>Family/Caregiver training</td>
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<td>School TA and Presentations</td>
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<td>Disability Awareness presentations</td>
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<td>Guardianship and future planning information</td>
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<td>Assistance with IEP, SSI and other service system access</td>
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<td>Family/Caregiver training</td>
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<tr>
<td>Assistance and presentations to school districts including &quot;road shows&quot;</td>
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<td>Transition Fair</td>
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<td>Disability Awareness presentations</td>
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</table>

#### Mailing list summary

<table>
<thead>
<tr>
<th>Mailing list summary</th>
<th>Jan 1</th>
<th>Dec 1</th>
<th>Survey Results Due by January 30</th>
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<tr>
<td><strong>Newsletter</strong></td>
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<td><strong>Survey type</strong></td>
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<td># on mailing list</td>
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<td></td>
<td></td>
<td>% satisfied</td>
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<td>% somewhat satisfied or unsatisfied</td>
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<tr>
<td><strong>Electronic mailings</strong></td>
<td></td>
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<td><strong>Mailing List</strong></td>
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<tr>
<td># on Mailing List</td>
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<td>Survey type</td>
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<td>Training Surveys</td>
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<td>Newsletter Survey</td>
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<tr>
<td>CLEARANCES</td>
<td>Initial</td>
<td>Date</td>
<td>Date Received in Council Office</td>
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<tr>
<td>Originator:</td>
<td>Barbara Br</td>
<td>7/1/2014</td>
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<tr>
<td>Division Head:</td>
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<tr>
<td>Dept. Head:</td>
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<td>7/1/2014</td>
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<td>Prosecutor:</td>
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<tr>
<td>Purchasing/Budget:</td>
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</tbody>
</table>

**TITLE OF DOCUMENT:**
Discussion regarding proposed Point Roberts Scenic Loop

**ATTACHMENTS:**
E-mail, information

**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.)

Discussion regarding proposed Point Roberts Scenic Loop - The Point Roberts Community Advisory Committee has approved in principle using gas tax dollars to create a scenic loop in Point Roberts.

**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.
PRCAC approves Point Roberts scenic loop proposal
Published on Thu, Jun 19, 2014
Read More

The Point Roberts Community Advisory Committee (PRCAC) has approved in principle using gas tax dollars to create a scenic loop in Point Roberts.

At their June 17 meeting, committee members voted unanimously to support the proposal by the Point Roberts Conservation Society to have the county approve the loop and install signage to direct visitors.

"We want to have more day tourism," said Armene Belless, who along with John Lesow presented the proposal on behalf of the conservation society. The loop, she said, would draw people to experience more of Point Roberts than gas stations and parcel services, and encourage them to stay longer.

The loop runs down Tyee Drive and Gulf Road, turns left to take in Lighthouse Park and continues along APA Road to Lily Point, returning to Tyee via Boundary Bay Road and Johnson Road.

After first presenting the plan to PRCAC on May 6, Belless asked for public comment on the proposed loop and received 53 responses. Two were opposed to the loop and one wanted gas tax funds refunded to those who purchased gas on the Point, but 50 supported the creation of the scenic loop. Of those, 15 wanted to see Maple Beach included, or Monument Park, or both.

"I listened," Belless said. "Once we've set a precedent with the current proposed loop we can move to step two and designate a perimeter loop: four parks, four corners."

"I think it's very smart we have a scenic loop that focuses on Tyee and Gulf but I like that the plan down the road is to include the whole Point," said committee member Jennifer Urquhart.

Lesow said they had initially approached the state to designate the loop a scenic byway. "Apparently there are no federal or state funds available at this time," he said. By using the gas tax funds collected through the Point Roberts Transportation Benefit District for signage and having the route designated at the county level, the plan is both economically and practically feasible.

County councilmember Barbara Brenner is prepared to introduce a resolution to county council, according to Lesow. "She is very supportive of the idea," he said.
In their submission to Brenner, Belless and Lesow included a list of 22 reasons a scenic loop would be good for Point Roberts. These included civic pride, tourism and assisting visitors in discovering the Point's assets and businesses. The list highlights historical points of interest, view corridors such as southbound Tyee Drive, the four county parks, amenities such as the golf course and marina, and the peaceful, natural setting. Lesow said with PRCAC approval the proposal can move to the county for review and approval, which he said he hopes to see move ahead in as little as 30 days.

If this e-mail is about county business, it is a public record subject to public disclosure upon request. Please send all e-mails related to county business to my official county e-mail address, bbrenner@co.whatcom.wa.us. Thank you.
24 GOOD REASONS WHY POINT ROBERTS WANTS TO HAVE A SCENIC LOOP

• Civic Pride

• A reminder to cherish and protect Point Robert’s natural beauty

• The Scenic Loop starts at the U.S. border at the beginning of the AWESOME “Tyee Drive View Corridor.” As you enter this evergreen lined roadway stretching 2 miles to the Marina and the ocean beyond, the San Juan Islands are clearly visible 25 miles in the distance.

• Tourism: On average, about 95,000 cars come into Point Roberts any given month. (5th busiest northern U.S. border crossing) About 90% are visitors and according to a recent university study, the average visit is 15 minutes. We feel that a Scenic Loop could lure a few of these visitors off the Tyee Drive vicinity to enjoy and explore our ...

• “Four-Corners” Whatcom County Parks:

• Monument Park (Historic Boundary Marker #1 built in 1861)

• Maple Beach Park
• Lighthouse Park

• Lily Point Park

• At numerous locations on the route, visitors can enjoy views of:
  • Mt. Baker
  • Vancouver Island
  • Sparkling ocean waters and beaches on 3 sides-the very definition of a peninsula

• A Scenic Loop would create a heightened awareness of our 6 restaurants, art gallery, bike sales/repair shop, general store, wine shop and MORE.

• Historic sites on the Loop include our Church that is over 100 years old and our circa 1935 WPA built Community Center and library.

• Take a walk on our park beaches and forests where one can easily observe our multitude of eagles, Blue Heron, gulls and dozens of other bird species.
• Watch for seals and occasional whale spouts.

• Enjoy our plentitude of deer, raccoons, rabbits, squirrels, and coyotes.

• Take a stroll around the Marina’s 900+ boats of every size and shape.

• 8 months of the year, be awed by the beauty of the APA Tree Canopy, literally a majestic “Green Tunnel.”

• Many are unaware that we have a small airport and a championship 18 hold golf course!

• Encourage commercial activity in the Small Town Commercial district of Gulf Road between Tyee and Marine Drive by routing traffic along the proposed Scenic Loop.

• Assist motorists by providing directional information to points of interest in Point Roberts.

• We want to SHARE this “Wild and Wonderful” place we call home...Come and take a drive on our Point Roberts Scenic Loop!

Total 24
# Resolution commencing the Coordinated Water System Plan update process.

**ATTACHMENTS:**
- Cover Memorandum
- Resolution

**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 staff is planning to update the Whatcom County Coordinated Water System Plan. The plan was last updated in 2000. The attached resolution calls for convening the Water Utility Coordinating Committee, sets the boundaries of the Critical Water Supply Service Area, and establishes a scope for the update.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

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

THROUGH: Frank M. Abart, Director

FROM: Gary S. Stoyka, Natural Resources Program Manager

RE: Resolution Commencing the Coordinated Water System Plan Update Process

DATE: June 13, 2014

Requested Action
Enclosed is one original of a resolution to commence the Coordinated Water System Plan update process. Public Works staff requests that Council approve this resolution in order to start the update.

Background and Purpose
Public Works staff is initiating an update of the Whatcom County Coordinated Water System Plan (CWSP). The current plan was last updated in 2000. In accordance with RCW 70.116, the County will convene the Water Utility Coordinating Committee (WUCC) which will be responsible for the development of an updated plan. Whatcom County has contracted with RH2 Engineering, Inc. to facilitate the WUCC meetings and prepare the updated CWSP. Funding for the CWSP update is provided in the 2014 budget. As part of the update process, the following items need to be addressed:

- Council must designate the boundaries of the Critical Water Supply Service Area. Staff recommends that the boundaries remain the same as they have been since 1991.
- The WUCC needs to be convened.
- The Council needs to designate a representative to serve on the WUCC.

The attached resolution addresses these issues and also provides a scope for the update process.

Please contact Gary Stoyka at extension 50618, if you have any questions or concerns regarding this resolution.

Encl.
RESOLUTION NO. ______

COMMENCING THE COORDINATED WATER SYSTEM PLAN UPDATE PROCESS

WHEREAS, on November 13, 1990, Whatcom County adopted a resolution establishing Critical Water Supply Service Area boundaries to meet the requirements for developing a Coordinated Water System Plan (CWSP) under RCW 70.116; and

WHEREAS, these boundaries were modified by resolution on July 9, 1991 and September 24, 1991 to generally include all lands west of the National Forest Boundary excluding certain portions of the Lummi and Nooksack Indian reservations; and

WHEREAS, the first CWSP was developed in 1993; and

WHEREAS, an update of the 1993 CWSP was prepared and adopted by the Whatcom County Council by resolution on May 2, 2000; and

WHEREAS, the CWSP recommends that it be updated every five years to stay current; and

WHEREAS, it has been over 14 years since the last update of the CWSP and much has changed regarding water systems and water issues in Whatcom County since the last update such that some provisions of the 2000 CWSP are now obsolete.

NOW THEREFORE BE IT RESOLVED, that the Whatcom County Council does hereby call for updating of the Whatcom County Coordinated Water System Plan to address the following issues:

1. Water demand forecasting consistent with the 2016 update of the County’s Comprehensive Plan
2. Minimum design standards for water systems including emergency interties and fire flow requirements
3. Service area boundary designations and identification of contested service areas
4. A review of the utility service review procedure
5. Satellite management agencies
6. Nitrate contamination issues
7. Relevant terms of the Lummi Peninsula groundwater settlement agreement
8. Incorporation of relevant provisions of the state Municipal Water Supply – Efficiency Requirements Act of 2003; and

BE IT FURTHER RESOLVED, that the boundaries of the Critical Water Supply Service Area shall remain unchanged; and
BE IT FURTHER RESOLVED, that the Whatcom County Council hereby convenes the Whatcom County Water Utility Coordinating Committee (WUCC) to assist in developing an update to the CWSP. In accordance with RCW 70.116.040, Whatcom County shall invite representatives of all public water systems serving more than 50 customers to participate on the WUCC as voting members along with representatives of the Health Department, Planning and Development Services Department, and County Council. To get the broadest base of input, Whatcom County shall also invite representatives of all other public water systems in the county and representatives of Lummi Nation and the Nooksack Indian Tribe to participate on the WUCC as non-voting members; and

BE IT FINALLY RESOLVED, that the Whatcom County Council shall select a councilmember to represent the entire County Council on the Water Utility Coordinating Committee.

APPROVED this _____ day of __________, 2014.

ATTEST:

Dana Brown Davis, Clerk of the Council

Carl Weimer, Council Chair

APPROVED AS TO FORM:

Civil Deputy Prosecutor
CALL TO ORDER

Council Vice-Chair Ken Mann called the meeting to order at 7:00 p.m. in the Council Chambers, 311 Grand Avenue, Bellingham, Washington.

ROLL CALL

Present: Barbara Brenner, Ken Mann, Sam Crawford, Pete Kremen, Rud Browne and Barry Buchanan.
Absen: Carl Weimer.

FLAG SALUTE

ANNOUNCEMENTS

(7:01:46 PM)

Mann announced there was discussion with Chief Civil Deputy Prosecutor Daniel Gibson regarding potential Flood Control Zone District property purchase (AB2014-018) in executive session during the Committee of the Whole meeting. The Committee provided guidance to staff about doing some initial research.

MINUTES CONSENT

(7:02:23 PM)

Brenner moved to approve the Minutes Consent items.

The motion carried by the following vote:
Ayes: Brenner, Mann, Crawford, Buchanan, and Kremen (5)
Nays: None (0)
Abstains: Browne (1)
Absent: Weimer (1)

1. SURFACE WATER WORK SESSION FOR APRIL 29, 2014

2. COMMITTEE OF THE WHOLE FOR MAY 6, 2014

PUBLIC HEARINGS
1. **ORDINANCE ESTABLISHING CHARGES/FEES FOR PROVIDING ADVANCED LIFE SUPPORT (ALS) AMBULANCE TRANSPORT SERVICES IN WHATCOM COUNTY (AB2014-121A) (7:03:20 PM)**

Mann opened the public hearing and, hearing no one, closed the public hearing.

Crawford moved to adopt the ordinance. He is the Council representative on the Medic One board. This has been the product of considerable analysis and discussion. The City of Bellingham, Whatcom County, and fire districts are cooperating and communicating at an unprecedented level. There is a unified approach to various issues. He’s encouraged about how the Medic One situation has evolved over the last few years.

This includes an increase in fees. With so much increase in medical costs while they get less and less compensation from the federal health system, he is in favor of shifting those costs to the users of the service. If they don’t shift costs, all taxpayers will have to pay. An increase in ambulance service cost for the user is tough, but they must acknowledge that maintaining the past system of funding will not provide a financially sustainable system into the future. This is necessary. Users will have to absorb more of the cost.

Brenner stated Medicare, and possibly Medicaid, only allows charges of a certain amount.

The motion carried by the following vote:

**Ayes:** Brenner, Mann, Crawford, Browne, Buchanan, and Kremen (6)

**Nays:** None (0)

**Absent:** Weimer (1)

**OPEN SESSION**

(7:07:48 PM)

The following people spoke:

- Greg Brown, Lummi Island Ferry Advisory Committee, submitted and read from a handout (*on file*) to thank the County Public Works Department Director and staff and County Council for good works during National Public Works Week.
- Frank Abart, Public Works Department Director, thanked the LIFAC members and general Lummi Island community for the appreciation.

**CONSENT AGENDA**

(7:11:22 PM)

Crawford reported for the Finance and Administrative Services Committee and moved to approve Consent Agenda items one through seven.
The motion carried by the following vote:

Ayes: Brenner, Mann, Crawford, Browne, Buchanan, and Kremen (6)
Nays: None (0)
Absent: Weimer (1)

1. REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO ENTER INTO A GRANT AGREEMENT BETWEEN WHATCOM COUNTY AND WASHINGTON STATE DEPARTMENT OF ECOLOGY FOR DEVELOPMENT OF WISER LAKE INTEGRATED AQUATIC VEGETATION MANAGEMENT PLAN, IN THE AMOUNT OF $15,450 (AB2014-187)

2. REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT AMENDMENT BETWEEN WHATCOM COUNTY AND ELDRED & ASSOCIATES, LLC, TO PERFORM FACILITATION SUPPORT SERVICES FOR THE WRIA 1 PLANNING UNIT, IN THE AMOUNT OF $20,000, FOR A TOTAL AMENDED CONTRACT IN THE AMOUNT OF $42,000 (AB2014-188)

3. REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO AWARD CONSTRUCTION CONTRACT BID #14-28 FOR 2014 HOT MIX ASPHALT PRELEVEL AT VARIOUS LOCATIONS TO THE LOWEST BIDDER, WHATCOM BUILDERS, INC., IN THE AMOUNT OF $1,083,838 (AB2014-189)

4. REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO AWARD BID #14-23 FOR THE ANNUAL DRYDOCK REPAIRS AND MAINTENANCE OF THE WHATCOM CHIEF FERRY TO THE LOW BIDDER, VIGOR MARINE, IN THE AMOUNT OF $221,433 (AB2014-190)

5. REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO AWARD BID #14-18 FOR RENTAL CONSTRUCTION EQUIPMENT TO ALL BIDDERS, IN AN AMOUNT THAT MAY EXCEED $35,000 WITH A SINGLE VENDOR (AB2014-191)

6. REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT BETWEEN WHATCOM COUNTY AND NORTHWEST YOUTH SERVICES FOR HOUSING CASE MANAGEMENT SERVICES, IN THE AMOUNT OF $108,054 (AB2014-199)

7. REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT BETWEEN WHATCOM COUNTY AND LYDIA PLACE FOR HOUSING CASE MANAGEMENT SERVICES, IN THE AMOUNT OF $216,675 (AB2014-200)

OTHER ITEMS

1. ORDINANCE AMENDING THE 2014 WHATCOM COUNTY BUDGET, TENTH REQUEST, IN THE AMOUNT OF $1,911,591 (AB2014-178) (7:12:25 PM)

Crawford reported for the Finance and Administrative Services Committee and moved to adopt the ordinance.
The motion carried by the following vote:

Ayes: Brenner, Mann, Crawford, Browne, Buchanan, and Kremen (6)
Nays: None (0)
Absent: Weimer (1)

2. ORDINANCE AMENDING WHATCOM COUNTY CODE SECTION 3.08, PURCHASING SYSTEM, TO MODIFY THE REQUIREMENTS FOR BID SPECIFICATIONS, DEPOSITS, AND AWARDS (AB2014-183) (7:13:16 PM)

Crawford reported for the Finance and Administrative Services Committee and stated this item has been held in committee.


(Council acting as the Whatcom County Flood Control Zone District Board of Supervisors.)

Crawford reported for the Finance and Administrative Services Committee and moved to approve the resolution.

The motion carried by the following vote:

Ayes: Brenner, Mann, Crawford, Browne, Buchanan, and Kremen (6)
Nays: None (0)
Absent: Weimer (1)

4. REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT BETWEEN WHATCOM COUNTY AND 2020 ENGINEERING, INC. FOR THE BIRCH POINT STORMWATER MANAGEMENT STUDY, IN THE AMOUNT OF $60,000 (AB2014-186) (7:14:38 PM)

(Council acting as the Whatcom County Flood Control Zone District Board of Supervisors.)

Crawford reported for the Finance and Administrative Services Committee and moved to approve the request.

The motion carried by the following vote:

Ayes: Brenner, Mann, Crawford, Buchanan, and Kremen (5)
Nays: None (0)
Abstains: Browne (1)
Absent: Weimer (1)

5. ORDINANCE AMENDING WHATCOM COUNTY CODE TITLE 20 TO ALLOW PACKINGHOUSES AND SLAUGHTERHOUSES IN THE AGRICULTURE (AG), HIGH IMPACT INDUSTRIAL (HII), LOW IMPACT INDUSTRIAL (LII), AND RURAL AND INDUSTRIAL MANUFACTURING (RIM) ZONING DISTRICTS (AB2014-060B) (7:15:36 PM)
This item has been withdrawn from the agenda and will be rescheduled.

6. REQUEST CONFIRMATION OF THE COUNTY EXECUTIVE’S APPOINTMENT OF CHRISTINA KOBDISH TO THE BELLINGHAM-WHATCOM COUNTY COMMISSION AGAINST DOMESTIC VIOLENCE (AB2014-192) (7:16:03 PM)

*Buchanan moved* to confirm the appointment.

The motion carried by the following vote:

*Ayes:* Brenner, Mann, Crawford, Browne, Buchanan, and Kremen (6)

*Nays:* None (0)

*Absent:* Weimer (1)

7. REQUEST CONFIRMATION OF THE COUNTY EXECUTIVE’S APPOINTMENT OF SUE SULLIVAN TO THE WHATCOM COUNTY PUBLIC HEALTH ADVISORY BOARD (AB2014-193) (7:16:22 PM)

*Kremen moved* to confirm the appointment.

The motion carried by the following vote:

*Ayes:* Brenner, Mann, Crawford, Browne, Buchanan, and Kremen (6)

*Nays:* None (0)

*Absent:* Weimer (1)

8. REQUEST CONFIRMATION OF THE COUNTY EXECUTIVE’S APPOINTMENT OF AMBER POULEY TO THE BICYCLE/PEDESTRIAN ADVISORY COMMITTEE (AB2014-194) (7:16:43 PM)

*Browne moved* to confirm the appointment.

The motion carried by the following vote:

*Ayes:* Brenner, Mann, Crawford, Browne, Buchanan, and Kremen (6)

*Nays:* None (0)

*Absent:* Weimer (1)

9. RESOLUTION OF BELLINGHAM CITY COUNCIL AND WHATCOM COUNTY COUNCIL RECOGNIZING WHATCOM MEDIC ONE FOR 40 YEARS OF PROVIDING ADVANCED LIFE SUPPORT SERVICE THROUGHOUT THE CITY OF BELLINGHAM AND WHATCOM COUNTY (AB2014-195) (7:17:00 PM)

Mann read the resolution into the record.

*Buchanan moved* to approve the resolution.

Kremen stated Whatcom County has the best emergency medical services (EMS) system in the state. He described the history of the EMS system in Whatcom County. The total cost for the service when they began in 1974 was $60,000. Today the cost is $8
The community is fortunate to have the system. He supports the resolution.

The motion carried by the following vote:
Ayes: Brenner, Mann, Crawford, Browne, Buchanan, and Kremen (6)
Nays: None (0)
Absent: Weimer (1)

INTRODUCTION ITEMS

Browne moved to accept Introduction Items one through five.

The motion carried by the following vote:
Ayes: Brenner, Mann, Crawford, Browne, Buchanan, and Kremen (6)
Nays: None (0)
Absent: Weimer (1)

1. ORDINANCE REPEALING THE 1994 ELIZA ISLAND PLAN AND AMENDING PROVISIONS IN THE WHATCOM COUNTY COMPREHENSIVE PLAN AND ZONING CODE RELATING TO THE PLAN (AB2014-196)

2. ORDINANCE REPEALING THE 1991 SOUTH FORK VALLEY SUBAREA PLAN AND AMENDING PROVISIONS IN THE WHATCOM COUNTY COMPREHENSIVE PLAN RELATING TO SUBAREA PLANS (AB2014-197)

3. ORDINANCE REPEALING THE 1982 LAKE WHATCOM SUBAREA PLAN AND AMENDING PROVISIONS IN THE WHATCOM COUNTY COMPREHENSIVE PLAN RELATING TO SUBAREA PLANS (AB2014-198)

4. ORDINANCE AMENDING ORDINANCE 2013-027, TO ESTABLISH THE SUPERIOR COURT FOURTH JUDGE COURTROOM RENOVATION PROJECT FUND AND ESTABLISH A PROJECT BASED BUDGET FOR THE SUPERIOR COURT FOURTH JUDGE COURTROOM RENOVATION PROJECT (AB2013-206)

5. ORDINANCE AMENDING THE 2013-2014 WHATCOM COUNTY BUDGET, 11TH REQUEST, TO APPROPRIATE $1,422,464 TO FUND A TRANSFER FROM NON-DEPARTMENTAL TO SUPERIOR COURT 4TH JUDGE REMODEL PROJECT FUND (AB2014-207)

COMMITTEE REPORTS, OTHER ITEMS, AND COUNCILMEMBER UPDATES

Browne reported that the Airport Advisory Committee is reorganizing into two groups that consist of a citizen group and a technical group. The citizen group will primarily
concern itself with noise complaints. He suggested to Port Commissioners that they and the Council should interact on economic development issues and transportation issues, possibly through a different meeting group. Councilmember participation is currently in limbo.

DISCUSSION OF FLOOD CONTROL ZONE DISTRICT ADVISORY COMMITTEE RECOMMENDATION ON SYRE PROPERTY EROSION (AB2014-185)

Buchanan reported for the Natural Resources Committee and stated the committee discussed the Syre property. He moved to provide direction to Public Works Department staff to move forward with the Syre farm bank stabilization project.

Crawford stated he would like the Council to be kept informed about whether or not it’s practical to do this project this year. He is open to the idea that they may have to delay through the winter if it’s in the best judgment of staff. He supports moving forward. He was originally not in favor of this project because it was far down on the priority list of water projects and flood projects. However, the advisory committee deliberated on this for a few months, and the majority agreed that this project move forward. He respects their judgment, particularly the agricultural interests on the advisory committee. These citizens are very aware of the County’s limited resources. He will support the project.

Browne stated he is concerned that the ordinance that lists the priorities for the use of these funds doesn't support this project. Also, the repair and maintenance program requires a citizen to contribute a minimum of 30 percent to any citizen-requested project. There has been no discussion of landowner contribution to the project. There are unanswered questions about whether this is within the purview of what the flood monies are supposed to be used for.

Paula Cooper, Public Works Department, stated the project site is within the Sumas/Nooksack/Everson Flood Subzone. Typically the subzone district would contribute 30 percent. Right now, that subzone advisory committee has only two members, and they haven’t discussed this. They would be approached for the 30 percent match.

Crawford asked if staff would contact them if the Board approves this item tonight. Cooper stated she’s let them know the County is discussing this project.

Mann stated he is against the proposal. The site is beautiful with valuable farmland, which they all want to protect and preserve. However, the Council must make difficult choices. It is wrong to use at least $750,000 public dollars to preserve a small piece of private property. It sets a precedent for anyone to ask the County to bail out a private landowner with eroding river frontage. He’s been consistent about opposing these types of projects. For this project, it would be cheaper to buy the property than try to protect or armor it in a way that could be washed downstream one year later.

While on those committees, heartstrings get pulled because people sympathize with farmers and property owners. However the Council must guard public tax dollars. There isn’t a compelling public interest in this case. There is a State highway there. The State will be responsible for that when the time comes. There aren’t any legitimate scientific fish
issues about whether this erosion is somehow contributing sediment to the river at this location. They haven’t heard from anyone, and there are plenty of environmentalists in this county trying to protect fish. None have stepped forward to say there is a compelling problem. The landowner is sophisticated and knew what he was getting into when he bought it. For all of those reasons, he opposes this item. Most importantly is the principle of using public dollars to bail out a private landowner’s property. That is not the County’s job. The Council cannot disaster-proof the County in advance and will not bail out everyone after the fact. The County can’t afford it. It’s not right. It’s not the government’s job. Oppose this item.

Brenner stated she supports this project. It isn’t about bailing out anyone. It’s about protections on the river that have more to do with salmon habitat. Environmentalists can say whatever they want. This is little to them. There is a bigger issue to them. She’s an environmentalist and cares about this. She visited the site. The river is filthy brown because they’ve lost so much land in the last year or two. Salmon won’t be able to spawn in that part of the river with that kind of sediment. From the beginning, Public Works staff didn’t want to do this. She’s heard nothing but negative things about the project. The County caused that problem when it stopped dredging the river, and a huge island formed next to the property, which is funneling the water right into it. It is an important issue to protect salmon.

Browne read the criteria for choosing the projects from Whatcom County Code (WCC) 100.050.010 to .060. This project doesn’t meet those criteria. The Code also says that property owners or local sponsors should pay 30 percent of the total cost of any flood control repair and maintenance project, including design and permitting. His biggest issue is that they are jumping around the established process in the County Code. If the established process doesn’t result in the decisions the Council wants, the Council should change the code, not just make a decision outside the code.

Brenner stated another section of the code probably applies to this project. They deal with all kinds of flood issues using flood control money. This is not outside that realm. The County even has regulations and codes that contradict each other. Don’t rely on the language in that one section of the code that says they can’t use the funds for this particular project.

Mann stated he agrees that this has gone outside the ranking process. They have an excellent process they established for this reason. Whenever they get familiar with the details of a project, they want to help people and save people’s properties. However, they must rank these projects, and this was 150th on the list. This project moved up on its own and has gotten special treatment. It doesn’t follow the established process.

Browne stated using any resources to do this project, even if it is just to manage an independent contractor, takes resources away from other projects. The department has a finite amount of labor. The County has major issues in this area, including Swift Creek, Deming, and Jones Creek. Deming and Jones Creek have impacts to schools and kids, which is a higher priority for him than vacant land.

Crawford stated he is trying to address the resources conflict with other projects by saying that Public Works could delay the project to the summer of 2015 if necessary. They
must keep moving forward on those major projects. Staff should consider that internal resources are a legitimate reason for a delay of this Syre property project. He switched his opinion on the use of the money. He respects prioritization, but it’s not as simple as setting a bunch of priorities on a list. If it were, they could hand the list to staff and quit talking about it. There’s more to it than that. The situation with the river and the decision on where to put resources are dynamic and changing. This is not the first time they’ve diverted projects. The Council and the advisory committee are trying to respond to a changing situation. He hopes they all respect the priority list, but is not opposed to raising a particular project if necessary.

Kremen stated there is merit to arguments on both sides of the issue. The Council needs to give credence to the prioritization of the advisory committee, even though it wasn’t a super-majority vote. It’s hard now to get volunteers to serve on these kinds of decision-making organizations and committees. If the Council disregards their discussion, time, and recommendations, it will be even harder to get people to serve on these kinds of advisory committees. Councilmember Brenner’s concern about impacts of sediment debris to salmon habitat is valid. The sediment also creates potential flooding situations downriver. Councilmember Browne’s points also are valid. However, he disagrees that this is the County’s fault for not dredging the river. He’s frustrated that the State Department of Fish and Wildlife could have given the County a permit eight years ago to address the erosion problem at this property when the problem was small, but didn’t. The cost to address the problem at the time was approximately $7,000, not $750,000. That was a bad decision they have to live with. He supports this project.

Buchanan asked for a legal opinion about the code recitals that Councilmember Browne read.

Karen Frakes, Prosecutor’s Office, stated she’s not prepared to give a legal opinion now. If there is a concern about it, she would like to take time to study it.

Brenner stated there is potential to wash out the State highway. They can say it’s the State’s responsibility, but the State doesn’t always come through when it is supposed to. County residents live out there. That road is extremely important.

Mann stated it is infrastructure. If the County begins to preemptively help the State pay for things, that will get expensive quickly.

Browne stated he is the Council representative on the Flood Control Zone District Advisory Committee and attended all the meetings on this topic. When this decision was made at the last meeting, many different committee members had different interpretations of the mandate. He asked to provide a clear set of guidelines on the mandate of how this money should be spent. Given that there is a lot of confusion on the committee, know that the committee vote was 7-5. Five members of the committee, many of whom have been on the committee for years, don’t believe this is a good use of funds.

Buchanan asked if this expense is authorized based on the code recitals that Councilmember Browne read. Frakes stated that according to the code, property owners or local sponsors shall pay at least 30 percent of the total cost of the project, but there is a provision that allows the Board of Supervisors to approve a different formula.
Crawford stated the code says that financial participation of the subzone district shall be determined by the Board of Supervisors on a case-by-case basis.

Mann stated that regardless of the percent contributed by the County, this is not an appropriate use of public funds. They haven’t heard any technical evidence or testimony about whether or not the erosion at this site is good or bad for salmon. He hasn’t heard any testimony about downstream effects of fixing this problem. Once they start messing with the river, all kinds of unintended consequences happen.

Browne asked if this project does not meet any of the four guidelines listed in the code. That question needs to be answered.

Brenner stated they discussed the potential for eroding away the road during the surface water work session, which meets three of those priorities. It also will affect the economy of everyone east of the location.

Kremen stated this and prior councils have put a high priority on protecting agricultural land. Councilmember Mann’s suggestion that the County just buy it and let it erode may be valid. The County has spent millions on protecting agricultural land because it is a high priority of the Council. That’s why this difficult issue should be supported. The County, its economy, and its people support and depend on the agricultural industry. Support the resolution.

Mann stated that if they’re interested in protecting agricultural land, there are many other ways to get a return on an investment of $750,000 that would be better than a temporary repair on the Nooksack River.

Browne stated the original project proposed to accomplish the goal cost $2.2 million. This proposal is an attempt to lower the cost, but offers no guarantee that it will actually work.

Kremen moved to conclude debate and vote on the motion.

The motion to conclude debate carried by the following vote:

Ayes: Brenner, Mann, Crawford, Browne, Buchanan, and Kremen (6)
Nays: None (0)
Absent: Weimer (1)

The motion to approve staff direction carried by the following vote:

Ayes: Brenner, Crawford, Buchanan, and Kremen (4)
Nays: Mann and Browne (2)
Absent: Weimer (1)

Brenner reported for the Public Works, Health, and Safety Committee on the presentation by Puget Sound Energy on infrastructure updates planned for Whatcom County (AB2014-204).
DISCUSSION REGARDING A CITIZEN PROPOSAL TO INSTALL A CROSSWALK AT THE INTERSECTION OF LAKEWAY DRIVE AND PARKSTONE LANE (AB2014-203)

Brenner reported for the Public Works, Health, and Safety Committee and moved to request that the administration and Public Works Department develop and provide the Council with the top three crosswalk plans, including price estimates, with at least one model using the Kirkland Pedflag, in the vicinity of Parkstone Lane as mentioned by the proponents.

Crawford asked if this would be part of the six-year plan.

Frank Abart, Public Works Department, stated the staff is supposed to come back with options for further discussion. There isn’t a project yet to put into the plan. If it becomes a project, they will want to incorporate it into the six-year plan.

Kremen stated they also want to know the costs of the options, which will determine whether or not it will go onto the six-year plan.

Abart stated he’s already talked to staff about this direction.

The motion carried by the following vote:

Ayes: Brenner, Mann, Crawford, Browne, Buchanan, and Kremen (6)
Nays: None (0)
Absent: Weimer (1)

Brenner stated she attended an awards events presented by Northwest Washington Sustainability Challenge for Western Washington University students who invented things. She described some of the inventions. She invited the students to present their inventions to the Public Works Committee.

Crawford stated he will be absent from the Council meeting on August 5.

ADJOURN

The meeting adjourned at 8:01 p.m.

The Council approved these minutes on ____, 2014.

ATTEST: WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON
DISCLAIMER: This document is a draft and is provided as a courtesy. This document is not to be considered as the final minutes. All information contained herein is subject to change upon further review and approval by the Whatcom County Council.
CALL TO ORDER

Council Chair Carl Weimer called the meeting to order at 6:15 p.m. in the Council Conference Room, 311 Grand Avenue, Bellingham, Washington.

ROLL CALL

Present: Barbara Brenner, Sam Crawford, Rud Browne, Barry Buchanan, Ken Mann, Pete Kremen and Carl Weimer

Absent: None

COMMITTEE DISCUSSION

1. DISCUSSION WITH SENIOR DEPUTY PROSECUTOR KAREN FRAKES REGARDING APPEAL OF GROWTH MANAGEMENT HEARINGS BOARD CASE NO. 12-2-0013 (AB2014-018)

Attorney Present: Karen Frakes

Weimer stated that discussion of agenda item one may take place in executive session pursuant to RCW42.30.110 (1)(i). Executive session will conclude no later than 7:00 p.m. If the meeting extends beyond the stated conclusion time, he will step out of the meeting to make a public announcement.

Kremen moved to go into executive session until no later than 7:00 p.m. to discuss the agenda items pursuant to RCW citations as announced by the Council Chair.

The motion carried by the following vote:

Ayes: Crawford, Brenner, Browne, Buchanan, Mann, Kremen and Weimer (7)

Nays: None (0)

OTHER BUSINESS

ADJOURN

The meeting adjourned at 7:00 p.m.

The Council approved these minutes on ____, 2014.

ATTEST: WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

______________________________  ______________________________
Dana Brown-Davis, Council Clerk   Carl Weimer, Council Chair
WHATCOM COUNTY COUNCIL
Regular County Council

June 3, 2014

CALL TO ORDER

Council Chair Carl Weimer called the meeting to order at 7:00 p.m. in the Council Chambers, 311 Grand Avenue, Bellingham, Washington.

ROLL CALL

(7:04:45 PM)

Present: Barbara Brenner, Ken Mann, Sam Crawford, Carl Weimer, Pete Kremen, Rud Browne and Barry Buchanan.

Absent: None.

FLAG SALUTE

ANNOUNCEMENTS

Weimer announced there was discussion with Senior Deputy Prosecutor Karen Frakes regarding appeal of Growth Management Hearings Board Case No. 12-2-0013 (AB2014-018) in executive session during the Committee of the Whole meeting. (7:05:13 PM)

MINUTES CONSENT

(7:05:44 PM)

Browne stated the Council received a corrected page for the Council minutes of May 6, 2014.

Kremen moved to approve the minutes as corrected.

The motion carried by the following vote:

Ayes: Brenner, Mann, Crawford, Browne, Buchanan, Weimer and Kremen (7)
Nays: None (0)

1. REGULAR COUNTY COUNCIL FOR MAY 6, 2014

2. SPECIAL COUNTY COUNCIL FOR MAY 13, 2014
3. COMMITTEE OF THE WHOLE FOR MAY 20, 2014

OPEN SESSION

(7:06:40 PM)

The following people spoke:
- Greg Brown spoke about meetings regarding a Hearings Board case.
- Paul Schissler spoke about regional cooperation on affordable housing issues.
- Gaythia Weiss spoke about the discussion regarding the use of Roundup to control roadside vegetation (AB2014-221).

CONSENT AGENDA

(7:11:50 PM)

Crawford reported for the Finance and Administrative Services Committee and moved to approve Consent Agenda items one through five.

Brenner withdrew item one.

The motion to approve Consent Agenda items two through five carried by the following vote:
- Ayes: Brenner, Mann, Crawford, Browne, Buchanan, Weimer and Kremen (7)
- Nays: None (0)

1. REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT BETWEEN WHATCOM COUNTY AND KIBBLE & PRENTICE, A USI COMPANY, FOR BENEFIT CONSULTATION SERVICES FOR THE COUNTY’S SELF-INSURED MEDICAL PROGRAM, IN THE AMOUNT OF $48,500 IN 2015; $51,000 IN 2016; AND $53,500 IN 2017 (AB2014-211)

Crawford reported for the Finance and Administrative Services Committee and moved to approve the request.

Brenner stated she and many employees have been unimpressed with the group.

The motion carried by the following vote:
- Ayes: Mann, Crawford, Browne, Buchanan, Weimer and Kremen (6)
- Nays: Brenner (1)

2. RESOLUTION AMENDING CRP NO. 914004 AND APPROVAL FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT BETWEEN WHATCOM COUNTY AND LOW BIDDER, ORION MARINE CONTRACTORS, INC. FOR THE GOOSEBERRY POINT FERRY DOLPHIN REPLACEMENT PROJECT, IN THE AMOUNT OF $698,631.50 (AB2014-212)
3. RESOLUTION SUPPORTING INTERLOCAL COOPERATION IN REGIONAL CONSORTIUM REQUIRED FOR HOME INVESTMENT PARTNERSHIPS PROGRAM FEDERAL FUNDING FOR AFFORDABLE HOUSING (AB2014-213)

4. REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO AWARD BID #14-24 AND ENTER INTO A CONTRACT BETWEEN WHATCOM COUNTY AND THE LOW BIDDER, FABER CONSTRUCTION CORPORATION, FOR WHATCOM COUNTY COURTHOUSE COURTROOM RENOVATIONS, IN THE AMOUNT OF $949,309.71 (AB2014-214)

5. REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT BETWEEN WHATCOM COUNTY AND REICHHARDT & EBE ENGINEERING, INC. FOR PROFESSIONAL DESIGN SERVICES FOR SOUTH FORK PARK, IN THE AMOUNT OF $55,522.94 (AB2014-215)

OTHER ITEMS

1. RESOLUTION APPROVING THE PORTAGE BAY SHELLFISH RECOVERY PLAN 2014 UPDATE (AB2014-210) (7:13:45 PM)

   Buchanan reported for the Natural Resources Committee and moved to approve the resolution.

   The motion carried by the following vote:
   Ayes: Brenner, Mann, Crawford, Browne, Buchanan, Weimer and Kremen (7)
   Nays: None (0)

2. ORDINANCE AMENDING WHATCOM COUNTY CODE SECTION 3.08, PURCHASING SYSTEM, TO MODIFY THE REQUIREMENTS FOR BID SPECIFICATIONS, DEPOSITS, AND AWARDS (AB2014-183) (7:14:10 PM)

   Crawford reported for the Finance and Administrative Services Committee and stated the committee did not act on this item. No specific change is proposed in the draft ordinance.

   Brenner stated her intent is not to decide the limit, but to have the discussion about what the limit should be. They should not allow hundreds of thousands of dollars to be spent without coming to the County Council for approval, even if it’s grant money, general fund money, or road fund money.

   Crawford stated the Executive can’t just spend hundreds of thousands of dollars, but there are some exceptions that allow continuation of contracts. He prefers there be a more specific proposed ordinance. They will vet any specific proposal through the administration for an analysis of impacts regarding whether the time and review facilitates County purchasing. Before scheduling in Finance Committee, get all the information to the Executive so they can have a good discussion in Finance Committee.

Whatcom County Council, 6/3/2014, Page 3
Brenner stated she would like to have the full 2014 contract list, not just January. As soon as she gets that information, she will schedule it in Finance Committee.

3. ORDINANCE AMENDING ORDINANCE 2013-027, TO ESTABLISH THE SUPERIOR COURT FOURTH JUDGE COURTROOM RENOVATION PROJECT FUND AND ESTABLISH A PROJECT BASED BUDGET FOR THE SUPERIOR COURT FOURTH JUDGE COURTROOM RENOVATION PROJECT (AB2014-206) (7:17:53 PM)

Crawford reported for the Finance and Administrative Services Committee and moved to adopt the ordinance.

The motion carried by the following vote:
Ayes: Brenner, Mann, Crawford, Browne, Buchanan, Weimer and Kremen (7)
Nays: None (0)

4. ORDINANCE AMENDING THE 2013-2014 WHATCOM COUNTY BUDGET, 11TH REQUEST, TO APPROPRIATE $1,422,464 TO FUND A TRANSFER FROM NON-DEPARTMENTAL TO SUPERIOR COURT 4TH JUDGE REMODEL PROJECT FUND (AB2014-207) (7:18:57 PM)

Crawford reported for the Finance and Administrative Services Committee and moved to adopt the ordinance.

The motion carried by the following vote:
Ayes: Brenner, Mann, Crawford, Browne, Buchanan, Weimer and Kremen (7)
Nays: None (0)


Mann reported for the Planning and Development Committee and moved to forward for concurrent review.

The motion carried by the following vote:
Ayes: Brenner, Mann, Crawford, Browne, Buchanan, Weimer and Kremen (7)
Nays: None (0)

6. ORDINANCE REPEALING THE 1991 SOUTH FORK VALLEY SUBAREA PLAN AND AMENDING PROVISIONS IN THE WHATCOM COUNTY COMPREHENSIVE PLAN RELATING TO SUBAREA PLANS (AB2014-197) (7:20:55 PM)

Mann reported for the Planning and Development Committee and moved to forward for concurrent review.

The motion carried by the following vote:
Ayes: Brenner, Mann, Crawford, Browne, Buchanan, Weimer and Kremen (7)
Nays: None (0)

Mann reported for the Planning and Development Committee and moved to forward for concurrent review.

The motion carried by the following vote:
| Ayes: | Brenner, Mann, Crawford, Browne, Buchanan, Weimer and Kremen (7) |
| Nays: | None (0) |

BOARD, COMMISSION, AND COMMITTEE APPOINTMENTS

1. NOMINATION AND APPOINTMENT TO FILL A VACANCY ON THE PORTAGE BAY SHELLFISH PROTECTION DISTRICT ADVISORY COMMITTEE - APPLICANT(S): ANDY ROSS (AB2014-209) (7:21:59 PM)

Brenner moved to nominate and appoint Andy Ross.

The motion carried by the following vote:
| Ayes: | Brenner, Mann, Crawford, Browne, Buchanan, Weimer and Kremen (7) |
| Nays: | None (0) |

INTRODUCTION ITEMS

(7:22:40 PM)

Crawford moved to accept Introduction Items one through eight.

Mann withdrew item eight.

The motion carried by the following vote:
| Ayes: | Brenner, Mann, Crawford, Browne, Buchanan, Weimer and Kremen (7) |
| Nays: | None (0) |

1. ORDINANCE GRANTING ASTOUND BROADBAND, LLC A NON-EXCLUSIVE FRANCHISE FOR THE PROVISION OF TELECOMMUNICATIONS SERVICES AND OTHER SERVICES (AB2013-331)

2. ORDINANCE GRANTING PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY, A WASHINGTON MUNICIPAL CORPORATION, A FRANCHISE AND THE RIGHT, PRIVILEGE, AND AUTHORITY THEREUNDER TO LOCATE, SET, ERECT, LAY, CONSTRUCT, EXTEND, SUPPORT, ATTACH, CONNECT,
MAINTAIN, REPAIR, REPLACE, ENLARGE, OPERATE AND USE FACILITIES IN, UPON, OVER, UNDER, ALONG, ACROSS AND THROUGH THE FRANCHISE AREA TO ALLOW FOR THE PROVISION OF WATER SERVICES (AB2014-180)

3. ORDINANCE AMENDING ORDINANCE 2012-050 (AMENDMENT #1) ESTABLISHING THE BIRCH BAY DRIVE AND PEDESTRIAN FACILITY PROJECT FUND AND ESTABLISHING A PROJECT BASED BUDGET FOR THE BIRCH BAY DRIVE AND PEDESTRIAN FACILITY PROJECT (AB2014-216)

4. ORDINANCE AMENDING WHATCOM COUNTY CODE 8.10 SOLID WASTE AND RESIDENTIAL RECYCLING COLLECTION (AB2014-217)

5. ORDINANCE AMENDING ORDINANCE 2014-13 (AMENDMENT #1) ESTABLISHING THE TELECOMMUNICATIONS SYSTEM REPLACEMENT FUND AND RELATED CAPITAL BUDGET APPROPRIATION (AB2014-218)

6. ORDINANCE AMENDING ORDINANCE 2008-025 (AMENDMENT #5), PROJECT BUDGET NO. 2, WHICH ESTABLISHED THE INITIAL EAST WHATCOM REGIONAL RESOURCE CENTER PROJECT BUDGET (AB2014-219)

7. ORDINANCE AMENDING THE 2014 WHATCOM COUNTY BUDGET, TWELFTH REQUEST, IN THE AMOUNT OF $2,312,053 (AB2014-220)

8. ORDINANCE AMENDING WHATCOM COUNTY CODE TITLE 20 TO ALLOW PACKINGHOUSES AND SLAUGHTERHOUSES IN THE AGRICULTURE (AG), HIGH IMPACT INDUSTRIAL (HII), AND RURAL AND INDUSTRIAL MANUFACTURING (RIM) ZONING DISTRICTS (AB2014-060C)

Mann reported for the Planning and Development Committee and stated the committee recommends a substitute version of the ordinance. He moved to accept the substitute version for introduction. Everything is the same except a slaughterhouse in an agricultural zone would require a conditional use permit, it would no longer need to be an accessory use, and they would not limit of the number of facilities allowed.

Brenner stated she is against the substitute draft ordinance because it would be too difficult and expensive for small operations to go through the conditional use process. There should be a threshold under which the County would permit by administrative approval.

Mann stated an administrative approval permit can also be appealed and go to the Hearing Examiner anyway. Given how controversial this use is, any administrative permit request will be appealed. The process will be difficult no matter what. There isn’t an easy permitting process for one of these operations. He can’t support something that doesn’t have a high degree of review.

Brenner stated an administrative approval goes through County staff. A conditional use permit goes through a longer process directly through the Hearing Examiner.
The motion to accept the substitute ordinance for Introduction carried by the following vote:

**Ayes:** Mann, Crawford, Browne, Buchanan, Weimer and Kremen (6)

**Nays:** Brenner (1)

**COMMITTEE REPORTS, OTHER ITEMS, AND COUNCILMEMBER UPDATES**

*(7:27:33 PM)*

**DISCUSSION REGARDING THE USE OF ROUNDUP TO CONTROL ROADSIDE VEGETATION (AB2014-221)**


Weimer stated the Council hears the same concerns about pesticide and herbicide use whenever this program is discussed. Whatcom County has won awards for working to reduce the level of spraying. People have an opportunity to opt out of having their property sprayed. They use it as little as possible. They have not found a good alternative that is cost-effective. The Washington Toxics Coalition acknowledged the County for its plan in 2006. Some counties have not been spraying at all, so he will check with them to see what’s changed in eight years.

Brenner stated County staff will provide responses to the comments received today.

**DISCUSSION REGARDING A CITIZEN PROPOSAL TO INSTALL A CROSSWALK AT THE INTERSECTION OF LAKEWAY DRIVE AND PARKSTONE LANE (AB2014-203)**

*Brenner* reported for the Public Works, Health, and Safety Committee. The Committee recommended and she *moved* that the Council request the Public Works staff bring forward a recommendation on the best location for a crosswalk on that stretch of Lakeway Drive.

Crawford asked that they leave open all options for design and location. They must apply accepted engineering standards for the design. Make sure the crosswalk doesn’t create a hazard.

Mann stated the committee recommended that the Council request the Public Works Department staff to study a crossing design according to option B, a flashing amber light crosswalk. They ruled out option A because it clearly is not safe enough, and option C was too expensive. He prefers that they study a location at Oriental Avenue and bring back a recommendation to the committee.

Jack Louws, County Executive, stated no vote is necessary. The Public Works Department staff and administration will work on the committee’s request.

*Brenner withdrew* her motion.
Browne submitted a draft letter (on file) and moved to write a letter to the Washington State Recreation and Conservation Office supporting the Washington State Parks and Recreation Commission’s grant application to help fund sno-parks and trails as part of the State Parks Winter Recreation Program.

Brenner asked if this commits the County to spending money.

Browne stated it does not.

The motion carried by the following vote:

Ayes: Brenner, Mann, Crawford, Browne, Buchanan, Weimer and Kremen (7)

Nays: None (0)

Browne reported that he acknowledges the owner of Brigadoon Service Dogs, who received an award from Senator Patty Murray for providing dogs to wounded warriors for rehabilitation.

Brenner reported that she encourages councilmembers to attend the First Salmon Ceremony, the YWCA celebrated 35 years, and she attended meeting in Lynden about an alternative water plan proposal. Birch Bay has access to another aquifer, which they could use to offset and increase the water flow that goes to the Nooksack River. She would like to schedule a briefing for the Council.

Crawford reported he emailed councilmembers about dog kennels being allowed in agricultural areas in the county. He would like to continue that discussion. Implementation of culvert replacement for fish passage throughout the county has been delayed. It is going to be a big deal and very costly. He suggests there be a presentation about impacts and what the County will need.

Browne reported the next water forum will be held in the Council Chambers on Saturday, June 14 at 9:30 a.m. It is a Grange forum, and he will moderate.

Brenner stated that she suggests that councilmembers attend next year’s Taste of Tourism event.

ADJOURN

The meeting adjourned at 7:48 p.m.

The Council approved these minutes on ____, 2014.

ATTEST: WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

______________________________  ______________________________
Dana Brown-Davis, Council Clerk   Carl Weimer, Council Chair

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DISCLAIMER: This document is a draft and is provided as a courtesy. This document is not to be considered as the final minutes. All information contained herein is subject to change upon further review and approval by the Whatcom County Council.
WHATCOM COUNTY COUNCIL
Committee Of The Whole

June 17, 2014

CALL TO ORDER

Council Chair Carl Weimer called the meeting to order at 6:00 p.m. in the Council Conference Room, 311 Grand Avenue, Bellingham, Washington.

ROLL CALL

Present: Barbara Brenner, Sam Crawford, Rud Browne, Barry Buchanan, Ken Mann, Pete Kremen and Carl Weimer
Absent: None (Councilmember Brenner absent during discussion of item one)

COMMITTEE DISCUSSION

1. DISCUSSION WITH CIVIL DEPUTY PROSECUTING ATTORNEY LIZ GALLERY (OR DESIGNEE) REGARDING PENDING LITIGATION FILED IN FEDERAL DISTRICT COURT (AB2014-018)
   Attorney Present: Liz Gallery
   (Clerk’s Note: Councilmember Brenner recused herself from this discussion.)

2. CONSIDERATION OF AN APPEAL OF THE HEARING EXAMINER’S DECISION ON FILE NO. APL2013-010, FILED BY DANNON TRAXLER, ATTORNEY FOR ROBERT WILSON REGARDING APPLICANT’S REQUEST FOR A HARDSHIP EXTENSION REGARDING THE EXPIRATION OF THE SHORT PLAT (AB2014-137)
   Attorney Present: Karen Frakes

3. DISCUSSION REGARDING POTENTIAL PROPERTY ACQUISITION FOR THE FLOOD CONTROL ZONE DISTRICT (AB2014-018)
   Attorney Present: None
   (Council acting as the Whatcom County Flood Control Zone District Board of Supervisors)

4. DISCUSSION REGARDING POTENTIAL PARK PROPERTY ACQUISITION (AB2014-018)
   Attorney Present: None

5. DISCUSSION WITH SENIOR DEPUTY PROSECUTOR KAREN FRAKES REGARDING APPEAL OF GROWTH MANAGEMENT HEARINGS BOARD CASE NO. 12-2-0013 (AB2014-018)
   Attorney present: Karen Frakes
Weimer stated that discussion of agenda items one, two, and five may take place in executive session pursuant to RCW42.30.110 (1) (i), and discussion of agenda items three and four may take place in executive session pursuant to RCW42.30.110 (1) (b). Executive session will conclude no later than 7:00 p.m. If the meeting extends beyond the stated conclusion time, he will step out of the meeting to make a public announcement.

_Buchanan moved_ to go into executive session until no later than 7:00 p.m. to discuss the agenda items pursuant to RCW citations as announced by the Council Chair.

The motion carried by the following vote:

_Ayes:_ Crawford, Browne, Buchanan, Mann, Kremen and Weimer (6)

_Nays:_ None (0)

_Absent:_ Brenner (out of the room) (1)

### OTHER BUSINESS

### ADJOURN

The meeting adjourned at approximately 6:59 p.m.

The Council approved these minutes on ______ 2014.

ATTEST: WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Council Clerk
Carl Weimer, Council Chair

Jill Nixon, Minutes Transcription
WHATCOM COUNTY COUNCIL

Regular County Council

June 17, 2014

CALL TO ORDER

Council Chair Carl Weimer called the meeting to order at 7:03 p.m. in the Council Chambers, 311 Grand Avenue, Bellingham, Washington.

ROLL CALL

Present: Barbara Brenner, Ken Mann, Sam Crawford, Carl Weimer, Pete Kremen, Rud Browne and Barry Buchanan.

Absent: None.

FLAG SALUTE

ANNOUNCEMENTS

Weimer announced there was discussion of Council Office 2015-2016 budget priorities (AB2014-205A) during today’s special Committee of the Whole meeting.

(From Council Committee of the Whole – Executive Session)

Weimer announced the following items were discussed in executive session during the Committee of the Whole meeting.

1. Discussion with Civil Deputy Prosecuting Attorney Liz Gallery (or designee) regarding pending litigation filed in Federal District Court (AB2014-018)

   Weimer announced that Councilmember Brenner recused herself during review of this case. The County Council members reviewed this matter pursuant to Whatcom County Code 2.56 and affirmatively find the following:
   • The official or employee was acting in a matter in which the County had an interest,
   • The official or employee was acting in the discharge of a duty imposed or authorized by law, and
   • The official or employee did act in good faith.

   The officers, officials, agents or employees will have counsel pursuant to and consistent with all the provisions in WCC 2.56.

2. Consideration of an appeal of the Hearing Examiner’s decision on File No. APL2013-010, filed by Dannon Traxler, attorney for Robert Wilson regarding applicant’s request for a hardship extension regarding the expiration of the short plat (AB2014-137)
Mann moved to uphold the Hearing Examiner’s decision.

The motion carried by the following vote:

Ayes: Brenner, Mann, Crawford, Browne, Buchanan, Weimer and Kremen (7)
Nays: None (0)

3. Discussion regarding potential property acquisition for the Flood Control Zone District (AB2014-018)

(Council acting as the Whatcom County Flood Control Zone District Board of Supervisors.)

Crawford moved to authorize the County Executive, acting on behalf of the Whatcom County Flood Control Zone District Board of Supervisors, to move forward with and complete acquisition of the property as long as the purchase price of the parcel does not exceed the amount discussed in executive session.

The motion carried by the following vote:

Ayes: Brenner, Crawford, Browne, Buchanan, Weimer and Kremen (6)
Nays: Mann (1)

4. Discussion regarding potential park property acquisition (AB2014-018)

5. Discussion with Senior Deputy Prosecutor Karen Frakes regarding appeal of Growth Management Hearings Board Case No. 12-2-0013 (AB2014-018)

MINUTES CONSENT

Weimer stated these items were withdrawn from the agenda.

1. REGULAR COUNTY COUNCIL FOR MAY 20, 2014

2. COMMITTEE OF THE WHOLE FOR JUNE 3, 2014

3. REGULAR COUNTY COUNCIL FOR JUNE 3, 2014

PUBLIC HEARINGS

1. ORDINANCE AMENDING WHATCOM COUNTY CODE 8.10 SOLID WASTE AND RESIDENTIAL RECYCLING COLLECTION (AB2014-217) (7:07:26 PM)

Weimer opened the public hearing and, hearing no one, closed the public hearing.

Brenner moved to adopt the ordinance.

Weimer stated the reporting requirements have been removed. That information used to be very important for the County, because it shows how much garbage is being
generated versus how much is being recycled. They know if the recycling rates are going
up or down and whether the program is working. He asked how they measure program
success if the County doesn’t receive this information anymore.

Gary Stoyka, Public Works Department, stated change came from the Solid Waste
Advisory Committee (SWAC). The Public Works Department doesn’t need the information
for its operations. They were told by the Health Department that they normally did not
receive the information and never used the information. All the information the Health
Department received was information reported directly to the State to meet State reporting
requirements.

Weimer asked if the Council can amend the proposed plan to include the language.
The Public Works Department used to operate the waste reduction and recycling program.
That’s where this information was used. It was a way to know whether things were getting
better or worse through the Solid Waste Comprehensive Plan. Stoyka stated the Solid
Waste Coordinator said they didn’t use it for any Public Works Department purposes. The
Council can include the language in the plan. Staff isn’t using the information right now.

**Weimer suggested a friendly amendment** to not delete the reporting language in
section 8.10.070(B) on Council packet page 302. The information can be used if they want
to start looking at recycling rates. The information may be valuable in the future for
contracts with waste disposal companies.

**Brenner accepted** the friendly amendment. She recalled that they could take out
the language because it exists somewhere else. However she doesn’t have any problem
leaving it in. Stoyka stated that is correct. The information is also provided in a different
format to the State. The haulers asked if the County needed this information in this format,
which is duplicative of State requirements. There didn’t seem to be a need for the
information by the Public Works Department or Health Department, so the haulers asked
that the requirement be removed if they didn’t need it.

Weimer referenced section 8.10.060(C) on Council packet page 301. He asked why
the language about nonresidential collection is deleted and why they aren’t encouraging
waste reduction and recycling for commercial use. Stoyka stated that recommendation
came from the Washington Utilities and Transportation Commission (WUTC) because the
federal government does not regulate recycling. Businesses are free to use whichever
collection company they want. They may use one company that they’re required to use for
solid waste collection, but they may use a different company for recycling. There is no way
to tie those two rates together, and it’s probably not legal according to the WUTC.

Browne stated there is no structural reason why they wouldn’t require them to
encourage waste recycling and reduction for a business in the rate structure. He is opposed
to taking the incentive language out unless it is illegal. Stoyka stated the purpose is to
have the rate structure of the solid waste hauler set up to encourage recycling. In some
areas, people charge for recycling and solid waste. According to this system of curbside
recycling, the rate structure could not charge extra for recycling. In this case, if the solid
waste company and the recycling company are different, it’s impossible for the solid waste
compny to incorporate a rate structure that encourages recycling.
Browne stated he ran a business in the community that was recycling-centric. They used Sanitary Service Company (SSC) for garbage, food recycling, and other products. SSC was the only option for recycling food waste for the business. He is reluctant to remove the language. He asked the difference between the data the County asked for and the data provided to the State. Stoyka stated it was a different reporting schedule in a different format.

Browne stated he supports not requiring someone to provide the same data in a different format. If they are providing it in a State format, that’s fine. He would like to see what that format is. Stoyka stated he can get that information.

Weimer withdrew his friendly amendment and moved to not delete the reporting language in section 8.10.070(B) on Council packet page 302.

Mann stated the definition for “Certificated hauler” was deleted from section 8.10.030(B). He suggested a friendly amendment to the motion to amend to include the definition, “Certificated hauler’ means solid waste collection companies.”

Weimer accepted the friendly amendment.

The motion to amend carried by the following vote:

Ayes: Brenner, Mann, Crawford, Browne, Buchanan, Weimer and Kremen (7)
Nays: None (0)

Browne moved to amend section 8.10.060(C) to reinstate the original language.

Weimer stated this is about rate structures. Neither the WUTC nor the County can regulate rate structures on commercial hauling. They can’t create an incentive in the rate structure. It’s a free market for commercial pickup.

Browne stated they can’t dictate the structure due to a risk of price fixing.

Brenner stated that’s what this would do.

Browne stated they aren’t dictating the price or the differential. He’s not sure it’s illegal.

Crawford stated the business he works at contracts for garbage service and also recycles a lot of other things, such as steel, cardboard, and lumber wrappers. He asked what Councilmember Browne is suggesting the County regulate in terms of the business rates and how that would impact the County. He doesn’t understand the connection between the garbage rate and using that rate to create an incentive for recycling.

Browne stated the argument is that it’s illegal, but the language says that rate structures for multifamily garbage collection can be designed to encourage recycling.

Weimer stated it’s because the WUTC sets the rates for multifamily garbage collection.
Crawford stated multifamily waste is residential waste. There are benefits of encouraging recycling. Many people won’t go to the trouble of separating their recyclables and taking them somewhere. He doesn’t know how that would work with a business.

Browne stated that his business got to zero waste and 100 percent recycling because they had services from SSC for food waste recycling and post-consumer packaging, which aren’t given to an industrial recycler because the volume is too small. A residential provider would do that.

Crawford stated most businesses generate enough waste to create their own incentive to minimize the amount of garbage. In the meantime, they separate certain products that are recycled elsewhere and may even get paid for that material. They still have a certain amount of garbage. He doesn’t know how to tell the person who picks that up to structure a rate system that is going to somehow encourage the business to recycle. The benefits of recycling are already evident.

Browne stated the key to recycling is remembering that there are multiple waste streams, not a single waste stream, depending on the type of material being recycled. The question is whether there is someone to take those multiple waste streams. In the case of SSC, they were wonderful to work with to take each waste stream. He asked why they don’t want to do that for nonresidential waste.

Brenner stated the County doesn’t have the authority.

Weimer stated he agrees that it’s something businesses ought to want to do, but there is a legal line.

Browne stated that if it’s illegal, he’s done arguing about it, but it’s the principle. He withdrew his motion. Stoyka read language from the WUTC that said the WUTC is exempted from establishing rates for commercial recycling by the federal government, and the WUTC requires all commercial recyclers to apply for and receive a common carrier permit.

Browne stated that statement from the WUTC doesn’t conflict with the language in that section, because they aren’t establishing the rates. They’re just asking for a differential.

The motion to adopt as amended carried by the following vote:

Ayes: Brenner, Mann, Crawford, Browne, Buchanan, Weimer and Kremen (7)

Nays: None (0)

2. PUBLIC HEARING TO ALLOW AN OPPORTUNITY FOR CITIZENS TO COMMENT ON A PROPOSED GRANT AGREEMENT BETWEEN WHATCOM COUNTY AND THE CITY OF BELLINGHAM FOR THE PURCHASE OF BALLISTIC ARMOR PLATES, IN THE AMOUNT OF $15,201 (PUBLIC HEARING IS A REQUIREMENT OF THE GRANT) (AB2014-228)

Weimer opened the public hearing, and the following person spoke:

Bill Elfo, Sheriff, gave a staff report and stated he is available to answer questions.
Hearing no one else, Weimer closed the public hearing.

The motion carried by the following vote:

**Ayes:** Brenner, Mann, Crawford, Browne, Buchanan, Weimer and Kremen (7)

**Nays:** None (0)

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**OPEN SESSION**

*(7:26:42 PM)*

The following person spoke:

- Patrick Alesse spoke about property available for sale in Birch Bay that can be used as a park.

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**CONSENT AGENDA**

*(7:30:24 PM)*

Crawford reported for the Finance and Administrative Services Committee and moved to approve Consent Agenda items one through nine.

The motion carried by the following vote:

**Ayes:** Brenner, Mann, Crawford, Browne, Buchanan, Weimer and Kremen (7)

**Nays:** None (0)

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1. REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT BETWEEN WHATCOM COUNTY AND PIONEER HUMAN SERVICES FOR OPERATION OF THE WHATCOM COUNTY BEHAVIORAL HEALTH TRIAGE CENTER, IN THE AMOUNT OF $545,140 (AB2014-230)

2. REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO ENTER INTO A FIVE-YEAR LEASE AGREEMENT BETWEEN WHATCOM COUNTY AND MERIDIAN SCHOOL DISTRICT FOR SHERIFF’S OFFICE SUB-STATION, IN THE AMOUNT OF $46,170 (AB2014-231)

3. REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT BETWEEN WHATCOM COUNTY AND WHATCOM FAMILY AND COMMUNITY NETWORK FOR DELIVERY OF PREVENTION STRATEGIES TO REDUCE RISK FACTORS FOR SUBSTANCE ABUSE, IN THE AMOUNT OF $25,000 (AB2014-232)

4. REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT BETWEEN WHATCOM COUNTY AND KULSHAN SERVICES, LLC, FOR DRY WEATHER OUTFALL INSPECTIONS AND PRIVATE STORMWATER FACILITY MAINTENANCE EDUCATION AND INSPECTIONS, IN THE AMOUNT OF $45,949 (AB2014-233)
5. REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT BETWEEN WHATCOM COUNTY AND WILSON ENGINEERING, LLC, FOR CONSTRUCTION SERVICES FOR CORONADO-FREMONT STORMWATER IMPROVEMENTS, IN THE AMOUNT OF $65,852 (AB2014-234)

6. REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT BETWEEN WHATCOM COUNTY AND SARGENT ENGINEERS, INC., FOR DESIGN OF PAINTING SYSTEM AND CREATION OF PLANS AND SPECIFICATIONS FOR THE SLATER ROAD/NOOKSACK RIVER BRIDGE NO. 512 PAINTING PROJECT, IN THE AMOUNT OF $28,449.49 (AB2014-235)

7. REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO AWARD BID #14-21 AND ENTER INTO A CONTRACT BETWEEN WHATCOM COUNTY AND THE LOW BIDDER, ANDGAR CORPORATION, FOR CENTRAL PLAZA HVAC UPGRADES, IN THE AMOUNT OF $69,176.68 (AB2014-237)

8. REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT BETWEEN WHATCOM COUNTY AND OPPORTUNITY COUNCIL FOR PROGRAMMATIC AND ADMINISTRATIVE SERVICES ASSOCIATED WITH THE OPERATION OF THE HOUSING AND ESSENTIAL NEEDS PROGRAM, IN THE AMOUNT OF $1,354,277 (AB2014-238)

9. REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO ENTER INTO A COMMERCIAL LEASE AGREEMENT TO RENT PARKING SPACES AT THE CORNWALL CENTER FOR THE BELLINGHAM SENIOR ACTIVITY CENTER (AB2014-242)

OTHER ITEMS

1. ORDINANCE AMENDING ORDINANCE 2012-050 (AMENDMENT #1) ESTABLISHING THE BIRCH BAY DRIVE AND PEDESTRIAN FACILITY PROJECT FUND AND ESTABLISHING A PROJECT BASED BUDGET FOR THE BIRCH BAY DRIVE AND PEDESTRIAN FACILITY PROJECT (AB2014-216)

   Crawford reported for the Finance and Administrative Services Committee and moved to adopt the ordinance.

   The motion carried by the following vote:
   
   Ayes: Brenner, Mann, Crawford, Browne, Buchanan, Weimer and Kremen (7)
   Nays: None (0)

2. ORDINANCE AMENDING ORDINANCE 2014-13 (AMENDMENT #1) ESTABLISHING THE TELECOMMUNICATIONS SYSTEM REPLACEMENT FUND AND RELATED CAPITAL BUDGET APPROPRIATION (AB2014-218) (7:31:46 PM)

   Crawford reported for the Finance and Administrative Services Committee and moved to adopt the ordinance.
The motion carried by the following vote:
Ayes: Brenner, Mann, Crawford, Browne, Buchanan, Weimer and Kremen (7)
Nays: None (0)

3. ORDINANCE AMENDING ORDINANCE 2008-025 (AMENDMENT #5), PROJECT BUDGET NO. 2, WHICH ESTABLISHED THE INITIAL EAST WHATCOM REGIONAL RESOURCE CENTER PROJECT BUDGET (AB2014-219) (7:32:11 PM)

Crawford reported for the Finance and Administrative Services Committee and moved to adopt the ordinance. He stated this is funded from the Economic Development Investment (EDI) fund because the County’s portion of the original project to build the center was entirely funded by EDI funds. This item is part of the ongoing initial construction to deal with issues that stem from the initial construction.

The motion carried by the following vote:
Ayes: Brenner, Mann, Crawford, Browne, Buchanan, Weimer and Kremen (7)
Nays: None (0)


Crawford reported for the Finance and Administrative Services Committee and moved to adopt the ordinance.

The motion carried by the following vote:
Ayes: Brenner, Mann, Crawford, Browne, Buchanan, Weimer and Kremen (7)
Nays: None (0)

5. RESOLUTION IN THE MATTER OF THE SALE OF SURPLUS PROPERTY AND SETTING OF A DATE FOR PUBLIC HEARING PURSUANT TO WCC 1.10 (AB2014-229) (7:34:06 PM)

Crawford reported for the Finance and Administrative Services Committee and moved to approve the resolution.

Brenner stated she would like to see the documentation include mileage for all items in the future.

The motion carried by the following vote:
Ayes: Brenner, Mann, Crawford, Browne, Buchanan, Weimer and Kremen (7)
Nays: None (0)

Browne stated certain devices on the list don’t have an odometer.

6. REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO AWARD BID #14-31 AND ENTER INTO A CONTRACT BETWEEN WHATCOM COUNTY AND THE LOW BIDDER, JANSEN, INC., FOR THE LOWER CANYON CREEK PHASE 2, SCHEDULE B RESTORATION PROJECT, IN THE AMOUNT OF $888,963.29 (AB2014-236) (7:35:42 PM)
DISCLAIMER: This document is a draft and is provided as a courtesy. This document is not to be considered as the final minutes. All information contained herein is subject to change upon further review and approval by the Whatcom County Council.

(Council acting as the Whatcom County Flood Control Zone District Board of Supervisors.)

Crawford reported for the Finance and Administrative Services Committee and moved to approve the request.

Mann stated he’s opposed to this project. This is not a great use of County funds, which benefits a few properties built in an obvious flood and landslide area.

The motion carried by the following vote:
Ayes: Brenner, Crawford, Browne, Buchanan, Weimer and Kremen (6)
Nays: Mann (1)


Brenner reported for the Public Works, Health, and Safety Committee and moved to approve the resolution.

Weimer stated the plan policy is to require people with septic systems around the lake to hook up to sewer, however that’s not the County’s policy, even though the Council is approving the plan. Council approval of the plan also does not endorse the District’s financing ideas for dealing with the total maximum daily load (TMDL). The Health Department assured him that approving this plan does not endorse the District’s policies.

The motion carried by the following vote:
Ayes: Brenner, Mann, Crawford, Browne, Buchanan, Weimer and Kremen (7)
Nays: None (0)

COUNCIL APPOINTMENTS TO BOARDS, COMMISSIONS, AND COMMITTEES

1. NOMINATION AND APPOINTMENT TO FILL A VACANCY ON THE SOLID WASTE ADVISORY COMMITTEE REPRESENTING A PUBLIC INTEREST GROUP - APPLICANT(S): MARK PETERSON (AB2014-222) (7:38:51 PM)

Browne moved to nominate and appoint Mark Peterson.

The motion carried by the following vote:
Ayes: Brenner, Mann, Crawford, Browne, Buchanan, Weimer and Kremen (7)
Nays: None (0)

EXECUTIVE APPOINTMENTS TO BOARDS, COMMISSIONS, AND COMMITTEES

1. REQUEST CONFIRMATION OF THE COUNTY EXECUTIVE’S APPOINTMENT OF ELEANOR HINES TO THE WHATCOM COUNTY MARINE RESOURCES COMMITTEE (AB2014-239) (7:39:17 PM)
Brenner moved to confirm the request.

The motion carried by the following vote:
Ayes: Brenner, Mann, Crawford, Browne, Buchanan, Weimer and Kremen (7)
Nays: None (0)

INTRODUCTION ITEMS

(7:39:42 PM)

Browne withdrew Introduction Item one. He stated they should follow the Council process by asking the recipients to make the 30 percent contribution to the project as is normal and customary and defined in the Code.

Weimer moved to accept Introduction Items two through four.

The motion to accept Introduction Items two through four carried by the following vote:
Ayes: Brenner, Mann, Crawford, Browne, Buchanan, Weimer and Kremen (7)
Nays: None (0)

1. RESOLUTION AMENDING THE 2014-2019 SIX-YEAR WATER RESOURCES IMPROVEMENT PROGRAM TO ADD THE SYRE PROPERTY BANK STABILIZATION AND ADD ADDITIONAL FUNDING FOR EMERGENCY REPAIR WORK AT SWIFT CREEK (AB2014-240)

(Council acting as the Whatcom County Flood Control Zone District Board of Supervisors.)

Mann stated he argued against funding this, but he supports introducing it because he wants to hear what people have to say at the public hearing.

Brenner stated she also supports introduction and the resolution. They appointed an advisory committee. It’s hard to get people to commit to this kind of work. A majority of the members said they wanted to upgrade this project. If they had done this years ago, they would have paid much less. The longer they wait, the more expensive it will get. This is a huge burden on salmon habitat.

Browne stated that he would like to see or hear expert testimony on whether this situation does or does not affect salmon habitat. Regarding boards and committees, the expectation is that the advisory committees follow the guidelines of the code in their decision-making. This decision is outside the criteria of the code. He doesn’t support a decision that is contrary to the code.

Brenner stated the code is clear that the Council has the authority to reprioritize projects for other reasons.

Weimer moved to accept this item for introduction and stated he supports introduction because he wants to hear what the public has to say.
Crawford stated Councilmember Brenner is referring to turbidity, and Councilmember Browne is asking for evidence that turbidity in this situation is affecting salmon habitat.

The motion carried by the following vote:
Ayes: Brenner, Mann, Crawford, Browne, Buchanan, Weimer and Kremen (7)
Nays: None (0)


3. RESOLUTION AUTHORIZING THE SALE OF SURPLUS PROPERTY PURSUANT TO WCC 1.10 (AB2014-229A)

4. ORDINANCE AMENDING WHATCOM COUNTY CODE TITLE 20 TO ALLOW PACKINGHOUSES AND SLAUGHTERHOUSES IN THE AGRICULTURE (AG), HEAVY IMPACT INDUSTRIAL (HII), AND RURAL AND INDUSTRIAL MANUFACTURING (RIM) ZONING DISTRICTS (AB2014-060D)

COMMITTEE REPORTS, OTHER ITEMS, AND COUNCILMEMBER UPDATES

(7:46:17 PM)

Brenner reported about a packet of information she received from Bob Carmichael at Thurston Zender about the Joint Board, which does not have authority to authorize and expend money without prior Council review and approval. Councilmembers should read Mr. Carmichael’s report.

Crawford stated the Executive and Prosecuting Attorney are reviewing it and intend on discussing it with Council at a future date.

Brenner reported she attended a VIP luncheon for the airport and waterfront plans. She was very impressed with all the improvements and upgrades. She also attended the Women in Timber Woods Tour. It was a good tour that focused on geology in different parts of the county.

(From Natural Resources Committee)

UPDATE BY WHATCOM COUNTY PUBLIC WORKS AND PLANNING & DEVELOPMENT SERVICES STAFF ON GEOLOGIC HAZARDS AND LANDSLIDE AREAS IN WHATCOM COUNTY (AB2014-169) (7:50:42 PM)

Buchanan reported for the Natural Resources Committee.

(From Finance and Administrative Service Committee)

(7:51:26 PM)
Crawford reported for the Finance and Administrative Services Committee and stated the Executive has proposed scheduling an Executive update with the full Council about what is happening in the Executive’s Office. He asked if it should be scheduled before the full Council or Finance Committee.

Jack Louws, County Executive, stated the Bellingham City Council has a Mayor update scheduled at the beginning of the regular City Council meeting. He could present his update at the Finance Committee or the beginning of the Council meeting.

Crawford stated that since changing the Council meeting format requires a change to the code, it might be better to have the report in Finance Committee.

Weimer stated this is a way for the Executive to provide greater transparency, get his message out to the community, and communicate more with the Council. Try an update process in Finance Committee for awhile. If it works, they can update the Code and move it to the evening meeting. However, a brief Executive update could easily turn into a lengthy Council discussion at every meeting. They’ll have to figure out how to receive an update without creating a long discussion, which isn’t the intent of the update.

Louws gave a brief summary of the report he presented during Finance Committee today, including an update of recent events regarding an Executive Order reflecting State law SBB 5173 that created two new unpaid calendar holidays per year for religious purposes, a purchase and sale agreement on park property in Birch Bay, closing on the State Street property in June, signing the contract for dolphin replacement at Gooseberry Point, and completion of the Executive-authorized contract report through May.

Buchanan stated he prefers ultimately having the update at the evening meeting so the public at-large can get the information. A concise summary is good information. At the City Council, the Mayor updates were helpful. Once in a while the reports turned into discussions, but not always.

Browne stated an option is to publish the report before the update.

Brenner stated the Executive can give a full report at the end of Finance Committee and a brief summary at the full Council meeting.

Kremen stated he supports scheduling the update in Finance Committee. Additionally, he would like the Executive to post a written report on the County website.

Weimer stated he supports scheduling the update in Finance Committee and, if it works well, moving it to full Council meetings in the future.

Crawford stated he will work with the Executive and add it to the committee agenda.

(8:02:35 PM)

Browne reported about the East County Regional Resource Center. There is a strong sense of community and resilience in that area.
Browne also reported that there is insufficient time for review after people submit their applications for consideration for Council-appointed committees. The public has said they don’t have enough time to see who those applicants are. He asked if they want to change the application deadline to the same day as the packet deadline to give the councilmembers and public enough time to review and contact all the applicants. In some cases, they receive applications on the day of the meeting, which doesn’t give them time to review them. He moved to bring forward a change to the Code regarding Council-appointed board and commission application deadlines.

Brenner stated she understands both sides of the issue. She doesn’t like to receive last-minute information, but sometimes it’s hard to get people to apply.

Browne stated the worst case is that they vote on it at the following meeting. He asked if the only potential problem is with the Planning Commission.

Weimer stated Planning Commission appointments are done the first meeting of the year, and people ought to have that figured out.

Mann stated he agrees that last-second applications aren’t helpful. He will support the motion.

The motion carried by the following vote:

**Ayes:** Brenner, Mann, Browne, Buchanan, Weimer and Kremen (6)

**Nays:** Crawford (1)

*(8:05:54 PM)*

Weimer reported he attended a water forum hosted by the Rome Grange last Saturday. It was well-attended. There is a lot of interest in water issues around the county.

Kremen reported on his trip with the National Association of Counties (NACO) in Washington, D.C. Key issues discussed were a transportation bill, continuing to maintain tax-exempt status for municipal bonds, the Marketplace Fairness Act regarding collecting sales tax from commerce conducted over the internet, and other issues. The time was well-spent.

**ADJOURN**

The meeting adjourned at 8:14 p.m.

The Council approved these minutes on ______________, 2014.

**ATTEST:** WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON
**Behavioral Revenue Advisory Committee 2013 annual and 2014 Second Quarter reports to County Council.**

**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.)

*Behavioral Revenue Advisory Committee 2013 annual and 2014 Second Quarter reports to County Council.*

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**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
FROM: Bill Elfo, Sheriff and Committee Chair
       Chris Phillips, Committee Vice-Chair
DATE: June 27, 2014
RE: Behavioral Health Revenue Advisory Committee (BHRAC)
    2013 Annual Report to County Council and Second Quarterly Report for 2014

This presentation includes the reports noted above and required per County Code 3.37. We look forward to presenting these reports to the County Council at their July 8th evening meeting.

Annual Report:
During 2013, we collected over $3.6 million in fund revenue, and expended all but $236,225 to support programs and services throughout the year. The attached annual report shows the program areas served and some highlights from the year.

We were fortunate to serve 8451 Whatcom County residents with these local behavioral health funds. We continued to focus our programming efforts along a Continuum of Care called PITA. Services were delivered within this continuum from Prevention, Intervention, Treatment and Aftercare. A few of those services are noted here.

Prevention programs included the Nurse Family Partnership which promotes healthy pregnancies through the first few years of life. Training was provided to law enforcement and fire districts to improve their skills working with residents with mental illness. And school community programs were offered to build healthy school communities, and provide positive options for struggling youth.

Intervention services included the Crisis Triage program, outreach to individuals challenged with addiction and engaging them with treatment, and on-site programs in the schools to identify problems early and connecting students to effective services.
We provided Treatment services in the community, in our schools, in the jail, in juvenile detention, and in the courts. Programs focused on mental health and recovery from addiction. These services were invaluable to our residents who needed the care, but could not afford it.

Our Aftercare programs were critical in promoting the recovery efforts of our residents. We increased our support to housing programs that offer on-site support and treatment. We also continue to support the Rainbow Recovery Center and are working with regional and local providers to improve the programming opportunities offered there.

Our gradual increase in programming over the last few years is nearing a plateau as our expenditures mirror our revenue. We intend to focus on strategic planning in the coming year as we review the needs of our community, the changing landscape brought by Health Care Reform, and our guiding principles.

Quarterly Report, Second quarter 2014:
We have funded a number of training events this year and in past years. Recently we coordinated efforts with the Bellingham Police Department to offer a week-long Crisis Intervention Team training. Last year we funded training for our Sheriff Deputies in Crisis Hostage Negotiations. All local law enforcement jurisdictions, our Border Patrol, Immigration and Customs Enforcement officials, as well as our fire districts have received training in working successfully with individuals struggling with mental illness.

We have also sponsored ongoing trainings for social service professionals and treatment providers working in our community. Topics included Motivational Interviewing, de-escalation techniques, and understanding mental illness.

County and city staff are in the process of designing a Mental Health Court for our community. We sent staff to the national conference on specialty courts to learn from the experts about designing and operating effective Mental Health Courts. Our District Court Probation’s Behavioral Health Unit receives monthly consultation from a Licensed Psychologist with expertise in forensic psychology, behavior change and treatment planning. His contribution to our court has helped achieve impressive results for our probationers living with mental illness.

We know that a skilled and educated workforce is essential for positive outcomes when working with our vulnerable residents. Therefore, we have dedicated up to $20,000 annually for training and consultation. We will continue to offer training opportunities to our community professionals as an investment in quality behavioral health care.
Manager’s Comments

We dedicated our efforts in 2013 to increasing and enhancing programs, especially in two areas. Our Jail Behavioral Health Program made significant improvements, helping those individuals struggling with addiction and mental illness to find a pathway to treatment rather than the treadmill that continues to return them to the criminal justice system. Our school programs experienced an increase in services. The importance of prevention and early intervention is paramount in promoting our youth to become healthy, productive citizens. We have worked with our school superintendents and their staff to ensure student connection to support, treatment and a positive school and community environment. These early experiences pave the way to a hopeful perspective of the future and the confidence to reach for one’s dreams. We continue to be grateful for the opportunity to offer these local programs with our local funds.

Guiding Principles

- Delivering Cost Effective Programs and Services
- Blending Funding with Other Resources
- Promoting Quality Programs and Services

People Served by Program Area
(for individual client services)

![Graph showing people served by program area for 2013]

Service Expenditures for 2013

![Pie chart showing percentage by service area for 2013]

Highlights of 2013:

- Provided training to local law enforcement and fire districts in working successfully with individuals experiencing acute symptoms of mental illness.
- Increased services to housing programs that provide on-site support and treatment to adults living with mental illness and addiction and improved stability of debilitating symptoms as well as sustainable housing.
- Jail Behavioral Health Professionals received accolades from the National Commission on Correctional Health Care (NCCHC) for effective and successful services in the jail.
- School programs helped to reduce student truancies, suspensions, discipline problems, and helped to improve academic achievement.
- District Court Probation’s Behavioral Health Unit significantly improved the successful completion of probation for adults living with mental illness, and reduced their criminal justice involvement as a result.
# Behavioral Health Sales Tax Fund Activity

For the year ending December 31, 2013

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## Expenditures

- **Prevention**: $138,888
- **Behavioral Health School Programs**: $464,131
- **Opiate Intervention Programs**: $82,832
- **Primary Care Integration**: $119,468
- **Training and Consultation**: $16,614
- **Crisis Stabilization**: $238,579
- **Adult Court Services**: $658,558
- **Juvenile Court Services**: $90,389
- **Jail Psych Services and Medications**: $324,157
- **Community Treatment**: $505,977
- **Housing Support Services**: $371,024
- **Recovery Support Services**: $156,920
- **Direct Program Support**: $53,229
- **Administrative Costs**: $216,584

**Total expenditures**: $3,437,350

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## Vision and Goals

**Develop a comprehensive infrastructure of behavioral health care that will**:

1. Provide effective recovery-oriented services that mitigate the need for citizens to default to utilization of the emergency room, hospital beds and the county jail.
2. Provide access and availability for intervention and treatment services to citizens who may have no funding support that affords independent access.
3. Promote the provision of services in natural environments in order to reduce the incidence and severity of chemical dependency and mental and emotional disorders of our citizens.
4. Provide interventions that divert mentally ill and chemically dependent citizens from the criminal justice system to more appropriate options of care.

---

## PITA Continuum

The PITA Model continues to serve as the framework for creating a comprehensive foundation for service-delivery.

- **Prevention** - Community Prevention/ Education/Support - Training/Consultation
- **Intervention** - Behavioral Health School Programs - Crisis Stabilization/ Triage Facility - Detox
- **Treatment** - Court Services - Jail Services - Community Treatment
- **Aftercare** - Housing Support Services - Recovery Support Services

*"It's easier to build a child than mend an adult"*
**WHATCOM COUNTY COUNCIL AGENDA BILL**

**NO.** 2013-331

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**TITLE OF DOCUMENT:** Ordinance granting Astound Broadband, LLC, a non-exclusive franchise for the provision of telecommunications services and other services.

**ATTACHMENTS:**
1. Cover Memo
2. Ordinance

<table>
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<th>SEPA review required?</th>
<th>( ) Yes</th>
<th>(X) NO</th>
<th>Should Clerk schedule a hearing?</th>
<th>(X) Yes</th>
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<td>( ) Yes</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.)

RCW 36.55.040, Whatcom County Charter Section 9.30, and Whatcom County Code 12.24 provides for the granting of franchises to public and private utility companies for use of County Rights-of-Way. This is a new franchise allowing for use and presence in County Rights-of-Way in order to provide telecommunications services and other services.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

6/3/2014: Introduced 7-0

**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, County Executive, Honorable Members of the Whatcom County Council

THROUGH: Frank M. Abart, Public Works Director

FROM: Andrew Hester, Public Works Real Estate Coordinator

RE: Franchise for Astound Broadband, LLC

DATE: May 12, 2014

Requested Action
Adopt an ordinance that grants a franchise to Astound Broadband, LLC allowing it to use and be present in County Rights of Way in order to provide telecommunication services per the terms of the franchise Agreement, under RCW 36.55 and § 9.30 of the Home Rule Charter.

Background and Purpose
Astound Broadband, LLC purchased Black Rock Cable which has an existing franchise that was approved under Ordinance 99-046. That franchise will expire on 9-17-2014. Astound Broadband wishes to provide telecommunications services under a different agreement and is not going to renew that franchise and is instead applying for a new franchise for the purposes of providing telecommunication services within County rights of way.

Please contact Dan Gibson at extension 50703 if you have any questions or concerns regarding the terms of this agreement.

Encl.
GRANTING ASTOUND BROADBAND, LLC, A NON-EXCLUSIVE FRANCHISE FOR THE PROVISION OF TELECOMMUNICATIONS SERVICES AND OTHER SERVICES.

WHEREAS, Astound Broadband, LLC ("Grantee") has applied to Whatcom County ("County") for a non-exclusive franchise for the right of entry, use, and occupation of the public Rights-of-Way within the County, expressly to install, construct, erect, operate, maintain, repair, relocate and remove its Facilities in, on, upon, along and/or across those Rights-of-Way for purposes of offering and providing Telecommunications Services and other services utilizing said Facilities ("Grantee Services"); and

WHEREAS, RCW 36.55.010, Whatcom County Charter Section 9.30, and Whatcom County Code Chapter 12.24 address the requirements pertaining to the granting of franchises by the County; and

WHEREAS, said application has come on regularly to be heard by the County Council on the ___ day of ______, 2014, and notice of this hearing having been duly published on the ___ day of ______, 2014, and the ___ day of ______, 2014, in the Bellingham Herald, a daily newspaper published in Whatcom County having county-wide circulation; and

WHEREAS, from information presented at such public hearing, and from facts and circumstances developed or discovered through independent study and investigation, the County Council now deems it appropriate and in the best interest of the County and its inhabitants that a franchise be granted to Grantee.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that a non-exclusive franchise set forth in the language hereinbelow, Sections 1 through 24, is hereby granted to Astound Broadband, LLC, for a period of fifteen (15) years in order that it may install, construct, erect, operate, maintain, repair, relocate and remove its Facilities in, on, upon, along and/or across those Rights-of-Way for purposes of offering and providing Telecommunications Services and other services utilizing said Facilities.

Section 1. Grant of Franchise Right to Use Franchise Area.

A. Subject to the terms and conditions stated herein, County hereby grants Grantee a franchise as set forth in this Ordinance (this "Franchise"), including permission to enter, use and occupy the Rights-of-Way within the County as now or hereafter constituted (the "Franchise Area").
B. Grantee is authorized to install, remove, construct, erect, operate, maintain, relocate and repair the Facilities necessary or convenient for Grantee Services and all appurtenances thereto (collectively, "Grantee Facilities") in, along, under and across the Franchise Area.

C. This Franchise does not authorize the use of the Franchise Area for any facilities or services other than Grantee Facilities and Grantee Services as provided herein, and it extends no rights or privilege relative to any facilities or services of any type, including Grantee Facilities and Grantee Services, on private property within County. This Franchise does not authorize the Grantee to provide "cable services" (as such term is defined in federal law), and if Grantee or anyone using Grantee's Facilities desires to offer "cable services" in the future, a further agreement with the County will be required prior to providing such service.

D. This Franchise is non-exclusive and does not prohibit County from entering into other agreements, including other franchises, impacting the Franchise Area, unless County determines that entering into such agreements interferes with Grantee's rights set forth herein.

E. Except as explicitly set forth herein, this Franchise does not waive any rights that County has or may hereafter acquire with respect to the Franchise Area or any other County roads, Rights-of-Way, property, or any portions thereof. This Franchise shall be subject to the power of eminent domain, and in any proceeding under eminent domain, Grantee acknowledges its use of the Franchise Area shall have no value.

F. County reserves the right to change, regrade, relocate, abandon, or vacate any Right-of-Way within the Franchise Area. If, at any time during the term of this Franchise, County vacates any portion of the Franchise Area containing Grantee Facilities, County shall reserve an easement for public utilities within that vacated portion within which Grantee may continue to operate any existing Grantee Facilities under the terms of this Franchise for the remaining period set forth under Section 3.

G. Grantee agrees that its use of Franchise Area shall at all times be subordinated to and subject to County and the public's need for municipal infrastructure, travel, and access to the Franchise Area, except as may be otherwise required by law.
Section 2. Notices.

A. Written notices to the parties shall be sent by certified mail to the following addresses, unless a different address shall be designated in writing and delivered to the other party.

County: County Executive
Whatcom County Courthouse
311 Grand Ave., Suite 108
Bellingham, WA 98225

Grantee: Astound Broadband, LLC
401 Kirkland Parkplace
Suite 500
Kirkland, WA 98033
Attention: Steve Weed, CEO, and Jim Penney, EVP

B. Any changes to the Grantee’s information shall be sent to County’s Public Works Director referencing the title of this agreement.

C. The Grantee’s voice numbers shall be staffed at least during normal business hours of 8am to 5pm, Pacific Time zone.

Section 3. Term of Franchise.

A. This Franchise shall run for a period of fifteen (15) years, from the date of execution specified in Section 5.

B. If the parties fail to formally renew this Franchise prior to the expiration of its term or any extension thereof, the obligations and privileges of this Franchise shall nonetheless continue in full force and effect until renewed or otherwise terminated by either party through written notice to that effect.

Section 4. Definitions.

For the purpose of this Franchise:

“Affiliate” means, with respect to any Person, any other Person controlling, controlled by or under common control with such Person. For purposes of this definition, the term “control” (including the correlative meanings of the terms “controlled by” and “under common control with”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct, or cause the direction of, the management policies of such Person, whether through the ownership of voting securities, by contract or otherwise.
"Emergency" means a condition of imminent danger to the health, safety and welfare of persons or property located within County including, without limitation, damage to persons or property from natural consequences, such as storms, earthquakes, riots, acts of terrorism or wars.

"Facilities" means such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the telecommunications system.

"Maintenance" or "Maintain" means examining, testing, inspecting, repairing, maintaining and replacing the existing Grantee Facilities or any part thereof as required and necessary for safe operation.

"Person" means any individual, sole proprietorship, partnership, association, corporation or other form of organization authorized to do business in the State of Washington, and includes any natural person.

"Relocation" means permanent movement of Grantee Facilities required by County, and not temporary or incidental movement of such facilities, or other revisions Grantee would accomplish and charge to third parties without regard to municipal request.

"Right-of-Way" (pluralized as "Rights-of-Way") means the surface and the space above and below streets, roadways, highways, avenues, courts, lanes, alleys, sidewalks, easements, rights-of-way and similar public properties and areas.

"State" means the State of Washington.

"Telecommunications Service" has the same meaning as "Telecommunications service" as defined under 47 U.S.C. § 153 (2012).

Section 5. Acceptance of Franchise.

A. This Franchise, and any rights granted hereunder, shall not become effective for any purpose unless and until Grantee files with the Whatcom County Council the Statement of Acceptance, attached hereto as Exhibit A (the "Franchise Acceptance"). The date that the Franchise Acceptance is filed with the County Council shall be the effective date of this Franchise.

B. Should Grantee fail to file the Franchise Acceptance with the County Council within 30 days after the effective date of this ordinance, the Franchise will automatically terminate and shall be null and void.
Section 6. Construction and Maintenance.

A. Grantee shall apply for, obtain, and comply with the terms of all permits required under Whatcom County Code 12.24, 12.27, 12.28, 12.30, and any other pertinent provisions of law as may hereafter apply, for any work done on Grantee Facilities. Grantee shall comply with all applicable County, State, and federal codes, rules, regulations, and orders in undertaking such work, which shall be done in a thorough and proficient manner consistent with the standards of the telecommunications industry.

B. Grantee agrees to use commercially reasonable efforts to coordinate its activities with County and all other utilities located within the Franchise Area.

C. County expressly reserves the right to prescribe how and where Grantee Facilities shall be installed within the Franchise Area and may from time to time, pursuant to the applicable sections of this Franchise, require the removal, Relocation and/or replacement thereof in the public interest and safety at the expense of Grantee.

D. Before commencing any work within the Franchise Area, Grantee shall comply with the One Number Locator provisions of RCW Chapter 19.122 to identify existing utility infrastructure.

E. Upon prior written approval of County and in accordance with County ordinances, Grantee shall have the authority (but not the obligation) to reasonably trim trees upon and overhanging streets, Rights-of-Way and places in the Franchise Area so as to prevent the branches of such trees from coming in physical contact with Grantee Facilities. Grantee shall be responsible for debris removal from such activities. If such debris is not removed within twenty-four (24) hours of completion of the trimming, County may, at its sole discretion, remove such debris and charge Grantee for the cost thereof. This section does not, in any instance, grant automatic authority to clear vegetation for purposes of providing a clear path for radio signals. Any such general vegetation clearing will require a land clearing permit.

F. Consistent with Section 12.24, 12.27, 12.28, and 12.30 of the Whatcom County Code, in case of any disturbance of any road, pavement, sidewalk, driveway or other surfacing, the Grantee shall, at its own cost and expense and in a manner approved by the County, replace and restore all paving, sidewalk, driveway, landscaping or surface, promptly and in as good condition as before said work was commenced and in accordance with standards for such work set by the County and the County Code. If Grantee fails, neglects or refuses to make restorations as required under this Section, then the County may do such work or cause it to be done, and the cost thereof to the County shall be paid by Grantee.

G. Grantee shall maintain all aboveground improvements that it places on County Rights-of-Way pursuant to this franchise. In order to avoid interference with the County’s ability to maintain its roads and associated Rights-of-Way, Grantee shall provide a clear zone of five feet on all sides of such improvements. For these purposes, “clear zone” means an area
that is mowed or otherwise maintained so that the Facilities are readily visible to County
maintenance operations. If Grantee fails to comply with this provision, and by its failure,
property is damaged, then Grantee shall be responsible for all damages caused thereby.

Section 7. Repair and Emergency Work.

In the event of an Emergency, Grantee may commence such repair and Emergency
response work as required under the circumstances, provided that Grantee shall notify the
County Public Works Director in writing as promptly as possible, before such repair or
Emergency work commences, or as soon thereafter as possible, if advance notice is not
practical. County may act, at any time, without prior written notice in the case of Emergency,
but shall notify Grantee in writing as promptly as possible under the circumstances.

Section 8. Damages to County and Third-Party Property.

Grantee agrees that should any of its actions under this Franchise materially impair or
damage any County property, survey monument, or property owned by a third-party, Grantee
will restore, at its own cost and expense, said property to a safe condition. Such repair work
shall be performed and completed to the reasonable satisfaction of the County Engineer.

Section 9. Location Preference.

A. Any structure, equipment, appurtenance or tangible property of a utility, other
than Grantee’s, which was installed, constructed, completed or in place prior in time to
Grantee’s application for a permit to construct Grantee Facilities under this Franchise shall have
preference as to positioning and location with respect to Grantee Facilities. However, to the
extent that Grantee Facilities are completed and installed prior to another utility’s submittal of
a permit for new or additional structures, equipment, appurtenances or tangible property, then
Grantee Facilities shall have priority. These rules governing preference shall continue in the
event of the necessity of relocating or changing the grade of any County road or Right-of-Way.
A relocating utility shall not necessitate the relocation of another utility that otherwise would
not require Relocation. This Section shall not apply to any County facilities or utilities that may
in the future require the Relocation of Grantee Facilities. Such Relocations shall be governed by
Section 11.

B. Grantee shall maintain a minimum underground horizontal separation of five (5)
teet from County water facilities and ten (10) feet from above-ground County water facilities;
provided, that for development of new areas, County, together with Grantee and other utility
paveyors or authorized users of Rights-of-Way, will develop and follow the Public Works
Director’s determination of a consensus for guidelines and procedures for determining specific
utility locations, subject additionally to this Franchise.
Section 10. Grantee Information.

A. Grantee agrees to supply, at no cost to County, any information reasonably requested of the Director of Public Works to coordinate municipal functions with Grantee's activities and fulfill any municipal obligations under State law. Said information shall include, at a minimum, as-built drawings of Grantee Facilities, installation inventory, and maps and plans showing the location of existing or planned facilities within County. Said information may be requested either in hard copy and/or electronic format, if reasonably possible in a format compatible with County's database system, as now or hereinafter existing, including County's geographic information Service (GIS) data base. Grantee shall use its commercially reasonable efforts to keep the Public Works Director informed of its long-range plans for coordination with County's long-range plans.

B. The parties understand that Washington law limits the ability of County to shield from public disclosure any information given to County. Accordingly, the County will endeavor in good faith to provide Grantee reasonable notice of any request for public disclosure of information of Grantee to allow Grantee to take such actions as Grantee may determine and at Grantee's sole cost and expense to prevent or limit such disclosure. Grantee shall indemnify and hold harmless County for any loss or liability for costs and for attorneys' fees because of non-disclosures requested by Grantee under Washington's open public records law, provided reasonable notice and opportunity to defend was given to Grantee or Grantee is made aware of a pending request or claim.

Section 11. Relocation of Grantee Facilities.

A. Except as otherwise so required by law, Grantee agrees to Relocate, remove, or reroute its facilities as ordered by the County Engineer at no expense or liability to County and within the time frame established by the County Engineer, which time frame shall be reasonably determined and which shall in no event be less than sixty (60) days following the date of written notice of such order. Any determination to require the Relocation of Grantee Facilities shall be made in a reasonable, uniform and non-discriminatory manner. Any County funds used to reimburse costs incurred by any Person in connection with any relocation shall be allocated in a reasonable, uniform and non-discriminatory manner. Pursuant to the provisions of Section 14, Grantee agrees to protect and save harmless County from any customer or third-party claims for service interruption or other losses in connection with any such change, Relocation, abandonment, or vacation of public property.

B. If a readjustment or Relocation of Grantee Facilities is necessitated by a request to Grantee from a Person other than County, that party shall pay Grantee the actual costs thereof.

C. Design locate marks will be placed in the same three (3) day time frame as construction locate marks.
Section 12. Abandonment and or Removal of Grantee Facilities.

A. Within one hundred and eighty (180) days of Grantee’s permanent cessation of use of Grantee Facilities, or any portion thereof, Grantee shall, at County’s discretion, either abandon in place or remove the affected facilities.

B. The parties expressly agree that this Section shall survive the expiration, revocation or termination of this Franchise.

Section 13. Undergrounding.

A. The parties agree that this Franchise does not limit County’s authority under federal law, State law, or local ordinance, to require the undergrounding of utilities.

B. Whenever County requires the undergrounding of aerial utilities in the Franchise Area, Grantee shall underground Grantee Facilities in the manner specified by the County Engineer at no expense or liability to County. Where other utilities are present and involved in the undergrounding project, Grantee shall be required to pay only its fair share of common costs borne by all utilities, in addition to the costs specifically attributable to the undergrounding of Grantee Facilities. Common costs shall include necessary costs for common trenching and utility vaults. Fair share shall be determined in comparison to the total number and size of all other utility facilities being undergrounded.

Section 14. Indemnification and Hold Harmless.

A. Grantee shall defend, indemnify and hold the County and its officers, officials, agents, employees, and volunteers harmless from any and all claims, demands, suits, actions, costs and expenses, including but not limited to attorney’s fees, made against it by any third party on account of injury or damage to the person or property of another, but only to the extent such injury or damage is caused by the actions or failure to act of Grantee, its agents, servants or employees in exercising the rights granted to Grantee in this Franchise; provided, however, that in the event any such claim or demand be presented to or filed with the County, the County shall promptly notify Grantee thereof, and Grantee shall have the right, at its election and at its sole cost and expense, to settle and compromise such claim or demand; provided further, that in the event any suit or action is begun against the County based upon any such claim or demand, the County shall likewise promptly notify Grantee thereof, and Grantee shall have the right, at its election and its sole cost and expense, to settle and compromise such suit or action, or defend the same at its sole cost and expense, by attorneys of its own election.

Notwithstanding the foregoing, if damages to another or others result from concurrent negligence of Grantee and the County, Grantee and the County shall each be responsible for, and this indemnification provision shall be operative so that each party bears, the proportionate share attributable to its own negligence. In case judgment which is not appealed shall be rendered against the County in such suit or action, Grantee shall fully satisfy said judgment within ninety (90) days after said suit or action shall have finally been determined.
Upon Grantee’s failure to satisfy said judgment within ninety (90) days, the County may elect to terminate this Franchise pursuant to the terms of Section 19 herein. The provision for reimbursement of the County shall survive the termination of this Franchise.

B. County shall defend, indemnify and hold Grantee harmless from any liability arising out of or in connection with any damage or loss to Grantee Facilities caused by the willful misconduct or gross negligence of County, except to the extent any such damage or loss is directly caused by the negligence of Grantee, or its agents.

C. Grantee acknowledges that neither County nor any other public agency with responsibility for firefighting, Emergency rescue, public safety or similar duties within County has the capability to provide trench, close trench or confined space rescue. Grantee, and its agents, assigns, successors, or contractors, shall make such arrangements as Grantee deems fit for the provision of such services. Grantee shall hold County harmless from any liability arising out of or in connection with any damage or loss to Grantee for County’s failure or inability to provide such services, and, pursuant to the terms of Section 14(A), Grantee shall indemnify County against any and all third-party costs, claims, injuries, damages, losses, suits, or liabilities based on County’s failure or inability to provide such services.

D. Acceptance by County of any work performed by Grantee shall not be grounds for avoidance of this section.

Section 15. Insurance.

A. Grantee shall procure and maintain for the duration of this Franchise, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by Grantee, its agents, representatives, or employees in the amounts and types set forth below:

1. Automobile Liability insurance covering all owned, non-owned, hired, and leased vehicles with a minimum combined single limit for bodily injury and property damage of $1,000,000 per accident.

2. Commercial General Liability insurance with limits no less than $1,000,000 each occurrence, $2,000,000 general aggregate and a $2,000,000 products-completed operations aggregate limit. Coverage shall cover liability arising from premises, operations, independent contractors, products-completed operations, stop gap liability, and personal injury and advertising injury and liability assumed under an insured contract. County shall be named as an additional insured under Grantee’s Commercial General Liability insurance policy with respect to the work performed under this Franchise.

3. Workers’ Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
B. Grantee’s insurance coverage shall be primary and non-contributory insurance as respects County. Any insurance, self-insurance, or insurance pool coverage maintained by County shall be in excess of Grantee’s insurance and shall not contribute to or with it to satisfying any claim or judgment covered hereunder. Grantee’s insurance shall also waive any rights of subrogation against the County and its agents as it pertains to the scope of this agreement.

C. Grantee shall furnish County with certificates of the foregoing insurance coverage with a copy of amendatory endorsements, including but not necessarily limited to the additional insured endorsement.

D. Grantee shall have the right to self-insure any or all of the above-required insurance. Any such self-insurance is subject to approval by County, and in the event such approval is not obtained, Grantee shall carry such coverage as is herein provided.

E. Grantee’s maintenance of insurance as required by this Franchise shall not be construed to limit the liability of Grantee to the coverage provided by such insurance, or otherwise limit County’s recourse to any remedy to which County is otherwise entitled at law or in equity.


Grantee shall provide County with a surety bond in the amount of Fifty Thousand Dollars ($50,000) running or renewable for the term of this Franchise, in a form and substance reasonably acceptable to County. In the event Grantee shall fail to substantially comply with any one or more of the provisions of this Franchise following notice and a reasonable opportunity to cure, then there shall be recovered jointly and severally from the principal and any surety of such surety bond any damages suffered by County as a result thereof, including but not limited to staff time, material and equipment costs, compensation or indemnification of third parties, and the cost of removal or abandonment of facilities hereinabove described. Grantee specifically agrees that its failure to comply with the terms of Section 19 shall constitute damage to County in the monetary amount set forth therein. Such a financial guarantee shall not be construed to limit Grantee’s liability to the guarantee amount, or otherwise limit County’s recourse to any remedy to which County is otherwise entitled at law or in equity.

Section 17. Successors and Assignees.

A. All the provisions, conditions, regulations and requirements herein contained shall be binding upon the successors, assigns of, and independent contractors of Grantee, and all rights and privileges, as well as all obligations and liabilities of Grantee shall inure to its successors, assignees and contractors equally as if they were specifically mentioned herein wherever Grantee is mentioned.
B. This Franchise shall not be leased, assigned or otherwise alienated, except to an Affiliate of Grantee, without the express consent of County by ordinance, which approval shall not be unreasonably withheld.

C. Grantee and any proposed assignee or transferee shall provide and certify the following to County not less than sixty (60) days prior to the proposed date of transfer: (a) complete information setting forth the nature, term and conditions of the proposed assignment or transfer; (b) all information required by County of an applicant for a Franchise with respect to the proposed assignee or transferee; and, (c) an application fee which shall be set by County, plus any other costs actually and reasonably incurred by County in processing and investigating the proposed assignment or transfer.

D. Prior to County’s consideration of a request by Grantee to consent to a Franchise assignment or transfer, the proposed assignee or transferee shall file with County a written promise to unconditionally accept all terms of this Franchise, effective upon such transfer or assignment of this Franchise. County is under no obligation to undertake any investigation of the transferor’s state of compliance and failure of County to insist on full compliance prior to transfer does not waive any right to insist on full compliance thereafter.

Section 18. Dispute Resolution.

A. In the event of a dispute between County and Grantee arising by reason of this Franchise, the dispute shall first be referred to the operational officers or representatives designated by Grantor and Grantee to have oversight over the administration of this Franchise. The officers or representatives shall meet within thirty (30) calendar days of either party’s request for a meeting, whichever request is first, and the parties shall make a good faith effort to achieve a resolution of the dispute.

B. If the parties fail to achieve a resolution of the dispute in this manner, either party may then pursue any available judicial remedies. This Franchise shall be governed by and construed in accordance with the laws of the State of Washington. In the event any suit, arbitration, or other proceeding is instituted to enforce any term of this Franchise, the parties specifically understand and agree that venue shall be exclusively in Whatcom County, Washington.

Section 19. Enforcement and Remedies.

A. If Grantee shall violate, or fail to comply with any of the provisions of this Franchise, or should it fail to heed or comply with any notice given to Grantee under the provisions of this Franchise, County shall provide Grantee with written notice specifying with reasonable particularity of the nature of any such breach and Grantee shall undertake all commercially reasonable efforts to cure such breach within thirty (30) days of receipt of notification. If County reasonably determines the breach cannot be cured within (30) thirty days, County may specify a longer cure period, and condition the extension of time on
Grantee’s submittal of a plan to cure the breach within the specified period, commencement of work within the original thirty (30) day cure period, and diligent prosecution of the work to completion. If the breach is not cured within the specified time, or Grantee does not comply with the specified conditions, County may, at its discretion, either (1) revoke this Franchise with no further notification, or (2) claim damages of One Thousand Dollars ($1,000.00), or actual damages if demonstrably greater, against the financial guarantee set forth in Section 16.

B. Should County determine that Grantee is acting beyond the scope of permission granted herein for Grantee Facilities and Grantee Services, County reserves the right to cancel this Franchise and require Grantee to apply for, obtain, and comply with all applicable County permits, franchises, or other County permissions for such actions, and if Grantee’s actions are not allowed under applicable federal and state or County laws, to compel Grantee to cease such actions.

Section 20. Compliance with Laws and Regulations.

A. This Franchise is subject to, and Grantee shall comply with all applicable Federal and State or County laws, regulations and policies (including all applicable elements of County’s comprehensive plan), in conformance with federal laws and regulations, affecting performance under this Franchise. Furthermore, notwithstanding any other terms hereof to the contrary, Grantee shall be subject to the police power of County to adopt and enforce general ordinances necessary to protect the safety and welfare of the general public in relation to the rights granted in the Franchise Area.

B. County reserves the right at any time to amend this Franchise to conform to any hereafter enacted, amended, or adopted federal or state statute or regulation relating to the public health, safety, and welfare, or relating to roadway regulation, or a County Ordinance enacted pursuant to such federal or state statute or regulation upon providing Grantee with thirty (30) days written notice of its action setting forth the full text of the amendment and identifying the statute, regulation, or ordinance requiring the amendment. Said amendment shall become automatically effective upon expiration of the notice period unless, before expiration of that period, Grantee makes a written call for negotiations over the terms of the amendment. If the parties do not reach agreement as to the terms of the amendment within thirty (30) days of the call for negotiations, County may enact the proposed amendment, by incorporating Grantee’s concerns to the maximum extent County deems possible.

Section 21. Consideration.

As consideration for this Franchise, Grantee commits to pay a County franchise fee of six percent (6%) on revenues, determined in accordance with Generally Accepted Accounting Principles, derived from Grantee’s provision of Telecommunications Service and other services utilizing the Grantee Facilities in the County, net of bad debt or other uncollectable amounts.
Section 22. Consequential Damages Limitation.

Notwithstanding any other provision of this Franchise, in no event shall either party be liable for any special, incidental, indirect, punitive, reliance, consequential or similar damages.

Section 23. Severability.

If any portion of this Franchise is deemed invalid, the remainder portions shall remain in effect.

Section 24. Titles.

The section titles used herein are for reference only and should not be used for the purpose of interpreting this Franchise.

ADOPTED this ______ day of _____________ 2014.

ATTEST

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown Davis, Clerk of the Council
Carl Weimer, Council Chair

APPROVED AS TO FORM:

WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON

Daniel Gibson
Chief Civil Deputy Prosecutor

Jack Louws, County Executive

( )Approved ( ) Denied

Date Signed: _____________
**TITLE OF DOCUMENT:** Granting Public Utility District No. 1 of Whatcom County, a Washington Municipal Corporation, a franchise and the right, privilege, and authority thereunder to locate, set, erect, lay, construct, extend, support, attach, connect, maintain, repair, replace, enlarge, operate and use facilities in, upon, over, under, along, across and through the franchise area to allow for the provision of water services.

**ATTACHMENTS:**
1. Cover Memo
2. Ordinance

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

**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:**

RCW 36.55.040, Whatcom County Charter Section 9.30, and Whatcom County Code 12.24 provides for the granting of franchises to public and private utility companies for use of County Rights-of-Way. This is a new franchise allowing for use and presence in County Rights-of-Way to allow for the provision of water services.

**COMMITTEE ACTION:**
5/1/14: This ordinance was withdrawn from introduction on 5/6 at the request of the attorney for the PUD. To be rescheduled at a later date.

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**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, County Executive, Honorable Members of the Whatcom County Council

THROUGH: Frank M. Abart, Public Works Director

FROM: Andrew Hester, Public Works Real Estate Coordinator

RE: Franchise for Public Utility District No. 1 of Whatcom County

DATE: April 22, 2014

Requested Action
Adopt an ordinance that grants a franchise to Public Utility District No. 1 of Whatcom County allowing it to use and be present in County Rights of Way in order to provide water services, per the terms of the franchise Agreement, under RCW 36.55 and § 9.30 of the Home Rule Charter.

Background and Purpose
Public Utility District No. 1 of Whatcom County has existing franchises for its water lines and facilities within County Rights-of-Way. Those franchises are nearing the end of their terms. This proposed franchise will terminate and replace those existing agreements.

Please contact Dan Gibson at extension 50703 if you have any questions or concerns regarding the terms of this agreement.

Encl.
RE: Public Utility District No. 1 of Whatcom County Requesting Approval of Franchise Agreement for District's Water Utility

Dear Chairperson Weimer:

Public Utility District No. 1 of Whatcom County (District) formally requests that the Whatcom County Council approve the Franchise Agreement with the District that would provide the authority for the District to locate, construct, operate, and maintain District water facilities as presented in the franchise application. The Commission for the District approved this Franchise Agreement in open session at its regular meeting on May 13, 2014 following over a month notice of the pending action.

In September of 2010, the District filed a combined application for a water franchise and an electrical franchise. During subsequent discussions between District staff and legal counsel, and Whatcom County staff and legal counsel, it was decided to split the request into one franchise for the electric utility and one franchise for the water utility. The electric franchise was approved by Whatcom County Council in June 2011. The electric utility franchise provided the authority for the District to locate, construct, operate, and maintain District electric facilities throughout Whatcom County as designated in the franchise. The District is now requesting consideration of its water utility franchise. Please accept this letter and accompanying material and filing fee as the District’s franchise application.

Approval of this Franchise does NOT authorize any extension of any water service. The Franchise will only establish the terms, rules and requirements related to the use of the County’s right of way, and is not an approval of any extension of water service or facilities. This Franchise, similar to recently approved Franchise agreements for other utilities, provides the terms and conditions related to the District’s use of the County right of way when locating District owned facilities in a County Right of Way throughout Whatcom County, but no more.

Other utilities that have had a similar franchise approved by Whatcom County include Puget Sound Energy, Trans Mountain Pipeline, the District’s recently approved electrical Franchise, Comcast, among other utilities.
By way of background, the voters of Whatcom County authorized and empowered the District to provide water service throughout Whatcom County in 1937. While the approval of this Franchise does not expand or limit this authority, pursuant to the Coordinated Water System Act, the District is not able to extend retail water service anywhere in Whatcom County unilaterally.

Whatcom County’s Coordinated Water System Plan (“Coordinated Plan”) limits the District’s retail service area to the Grandview and Cherry Point Service Areas. The District cannot extend retail water service into another service area without the consent of the designated retail water provider, unless the designated provider is unable or unwilling to serve the property seeking service. The Coordinated Plan does designate the entire County as the District’s wholesale service area and the District may provide water on a wholesale basis throughout Whatcom County.

Moreover, the County’s zoning code further regulates the extension of water mains in Whatcom County requiring a zoning conditional use permit for any extension of a water line in 8” or greater in diameter, with few exceptions. See WCC 20.82.030(3).

Presently the District has three water utility franchises with Whatcom County.

- The first water franchise, granted in 1965, allowed the District’s water utility to construct the District’s Douglas Road water pipeline to serve Cherry Point industrial customers. It has a 50 year term expiring in 2015 and delineates specific county roads as the franchise area.
- The second franchise, granted in 1970, allowed the District’s water utility to construct its second water pipeline on Aldergrove Road to serve Cherry Point industrial customers. It has a 50 year term expiring in 2020 and delineates specific county roads as the franchise area.
- The third franchise was originally granted to General Petroleum Corporation in 1953 allowing General Petroleum to build a water pipeline from the Nooksack River near Ferndale to its property at Cherry Point. In 1995, at the request of the then current owner, Tosco (now Phillip 66), the District assumed the franchise, became Tosco’s water purveyor and took ownership of the water pipeline. The franchise had a 50 year term expiring in 2003 and delineated specific county roads as the franchise area.

The District owns and operates the water system serving the Grandview-Northgate Industrial Park, I-5 Industrial Park, and Grandview Business Center. Portions of the water system infrastructure are located in County right of ways and are not specifically included in the current franchise agreements.

Additionally the District currently serves approximately 50 irrigation customers, including Elder Road Water Association, off of the District’s Douglas Road and Aldergrove water pipelines. In some cases the District may have or may need waterline extensions in the County right of ways to serve current and future irrigation customers. If separate franchises are required for each project the costs could be prohibitive for the customers seeking service.
PUBLIC UTILITY DISTRICT NO. 1
of Whatcom County

As stated in the application, the District believes that it is appropriate to consolidate all of the franchises into one franchise document for the water utility. We believe the consolidation is practical for the administration of the franchise for both the County and the District. A single franchise will ensure that the County and the District have consistent terms, regulations and requirements related to the District’s use of the County Right of Way consistent with the County Comprehensive Plan and the County’s Coordinated Water System Plan.

If any of the Council members have questions regarding the application, I and District Staff would be available to meet at your convenience. Thank you for your consideration.

Sincerely,

Stephan Jilk
General Manager

C: District Commission
   Whatcom County Council
   Jon Sitkin, District Legal Counsel
   Dan Gibson, Chief Civil Deputy Prosecuting Attorney
APPLICATION FOR FRANCHISE

TO THE WHATCOM COUNTY COUNCIL

COMES NOW, Public Utility District No. 1 of Whatcom County

and respectfully petitions the Whatcom County Council for a twenty-five (25) year franchise to lay, construct, maintain, and repair one or more waterlines for the conveyance and distribution of water and all necessary appurtenances along, over, and across the following roads situated in Whatcom County, Washington: every and all of the roads, right of ways, streets, easements, avenues, alleys, highways, grounds and public places of the County as now laid out, platted, dedicated, or improved; and any, every and all of the road, right of ways, streets, avenues, easements, alleys, highways, ground and public places that may hereafter be laid out, platted, dedicated or improved within the present limits of the County west of the Mt. Baker Snoqualmie National Forest boundary, north of the Whatcom/Skagit County boundary and south of the United States/Canadian Border.

The petitioner further requests that the Whatcom County Council fix a time and place for a public hearing on the granting of this non-exclusive franchise, and that public notice be given, at the expense of the petitioner, as provided by law; and that, at said hearing, petitioner be granted the franchise as herein requested.

DATED: 5/19/2014

Public Utility District No. 1 of Whatcom County
Company Name

1705 Trigg Road
Mailing Address

Ferndale Washington 98248
City State Zip

Stephan Jilk
Print or type name

(360) 384-4288
Phone Number
ORDINANCE NO. ______

GRANTING PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY, A WASHINGTON MUNICIPAL CORPORATION, A FRANCHISE AND THE RIGHT, PRIVILEGE, AND AUTHORITY THEREUNDER TO LOCATE, SET, ERECT, LAY, CONSTRUCT, EXTEND, SUPPORT, ATTACH, CONNECT, MAINTAIN, REPAIR, REPLACE, ENLARGE, OPERATE AND USE FACILITIES IN, UPON, OVER, UNDER, ALONG, ACROSS AND THROUGH THE FRANCHISE AREA TO ALLOW FOR THE PROVISION OF WATER SERVICES.

WHEREAS, Public Utility District No. 1 of Whatcom County (hereinafter referred to as "Whatcom PUD"), a Washington municipal corporation, has applied for a twenty-five (25) year franchise; and

WHEREAS, RCW 36.55.010, Whatcom County Charter Section 9.30, and Whatcom County Code Chapter 12.24 address the requirements pertaining to the granting of franchises by the County; and

WHEREAS, Whatcom PUD desires a non-exclusive franchise to construct, erect, alter, lay, support, connect, improve, renew, replace, repair, operate and maintain water transmission and distribution facilities upon, under, over, across and along certain roads and other areas in Whatcom County, Washington; and

WHEREAS, said application has come on regularly to be heard by the County Council on the ___ day of ________, 2014, and notice of this hearing having been duly published on the ___ day of ________, 2014, and the ___ day of ________, 2014, in the Bellingham Herald, a daily newspaper published in Whatcom County having county-wide circulation; and

WHEREAS, it appears to the Council that notice of said application and hearing thereon has been given as required by law in RCW 36.55.040; and

WHEREAS, this Council finds, after having considered said application and being otherwise fully advised in the premises, that it is in the public interest for this Council to grant the franchise; and

WHEREAS, Whatcom County and PUD #1 intend that the previous franchises granted to Whatcom PUD that pertain to water lines for the provision of water services shall be terminated and be replaced by this Franchise;

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that the language set forth hereinbelow, Sections 1 through 20, shall constitute the franchise agreement between Whatcom County and Whatcom PUD, which shall be and become effective as set forth in Section 13 thereof:
Section 1. Definitions.

1.1 Where used in this franchise agreement ("Franchise"), the following terms shall mean:

1.1.1 "County" means the County of Whatcom, a political subdivision of the State of Washington, and its successors and assigns.

1.1.2 "Whatcom PUD" means Public Utility District No. 1 of Whatcom County, a Washington municipal corporation, and its successors and assigns.

1.1.3 "Franchise Area" means any, every and all of the public roads, streets, avenues, alleys, highways, grounds, and other public places of the County as now laid out, platted, dedicated, or improved; and any, every and all of the public roads, streets, avenues, alleys, highways, grounds and other public places that may hereafter be laid out, platted, dedicated or improved within the present limits of the County and as such limits may be hereafter extended.

1.1.4 "Facilities" means, collectively, any and all water transmission and distribution systems, including but not limited to tanks, meters, pipes, mains, services, valves, manholes, pressure reducing valves ("PRVs"), pump stations, meter stations and any and all other equipment, appliances, attachments, appurtenances and other items necessary, convenient, or in any way appertaining to any and all of the foregoing, whether the same be located over or under ground.

1.1.5 "Ordinance" means Ordinance No. ______, which sets forth the terms and conditions of this Franchise.

Section 2. Facilities Within Franchise Area.

2.1 The County does hereby grant to Whatcom PUD the Franchise, and the right, privilege, and authority thereunder, to locate, set, erect, lay, construct, extend, support, attach, connect, maintain, repair, replace, enlarge, operate and use Facilities in, upon, over, under, along, across and through the Franchise Area to provide for the transmission, distribution and sale of water for agricultural, municipal, domestic, commercial, industrial and any other lawful purpose for which water may be used.

Section 3. County Authority.

3.1 The County, in granting this Franchise, does not waive any rights which it now has or may hereafter acquire with respect to the Franchise Area, and this Franchise shall not be construed to deprive the County of any powers, rights, or privileges which it now has, or may hereafter acquire, to regulate the use of and to control the Franchise Area.

Section 4. Noninterference of Facilities.

4.1 As to new Facilities, Whatcom PUD's Facilities shall be placed and maintained within the Franchise Area so as not to unreasonably interfere with the free passage of traffic and in accordance with all applicable laws, rules, and regulations. Prior to the installation of new
Facilities within the Franchise Area, Whatcom PUD may request that the County determine whether the proposed placement of the Facilities will unreasonably interfere with the free and safe passage of traffic, and the County shall make such determination in writing within a reasonable period of time. If the proposed location is not approved by the County Engineer, the County Engineer shall advise in writing what reasonable modifications to the proposed location of the Facilities are necessary for the County Engineer to issue a determination that the proposed location of the Facilities will not unreasonably interfere with the free and safe passage of traffic.

If Whatcom PUD proceeds to install new Facilities without first obtaining the County Engineer's determination that the proposed location of the Facilities will then unreasonably interfere with the free and safe passage of traffic then, upon determination by the County that current placement of particular Facilities unreasonably interferes with free or safe passage of traffic, the County shall notify Whatcom PUD which shall, at its own expense, act promptly to rectify the problem in consultation with the County. Whatcom PUD shall exercise its rights under this Franchise and within the Franchise Area in accordance with all County codes and ordinances governing use and occupancy of the Franchise Area; provided, however, in the event of any conflict or inconsistency of such codes and ordinances with the terms and conditions of this Franchise, the terms and conditions of this Franchise shall govern and control to the extent authorized by law; provided, further, nothing herein shall be deemed to waive, prejudice or otherwise limit any right of appeal afforded Whatcom PUD by such County codes and ordinances.

4.2 Except as provided in Section 6 below, Whatcom PUD's existing Facilities shall be maintained within the Franchise Area so as not to unreasonably interfere with the free passage of traffic and in accordance with all applicable laws, rules, and regulations. Except as provided in Section 6 below, upon determination by the County that current placement of particular Facilities unreasonably interferes with free or safe passage of traffic, the County shall notify Whatcom PUD which shall, at its own expense, act promptly to rectify the problem in consultation with the County. Whatcom PUD shall exercise its rights under this Franchise and within the Franchise Area in accordance with all County codes and ordinances governing use and occupancy of the Franchise Area; provided, however, in the event of any conflict or inconsistency of such codes and ordinances with the terms and conditions of this Franchise, the terms and conditions of this Franchise shall govern and control to the extent authorized by law; provided, further, nothing herein shall be deemed to waive, prejudice or otherwise limit any right of appeal afforded Whatcom PUD by such County codes and ordinances.

4.3 All construction or installation of such Facilities, service, repair, or relocation of the same, performed over, above, along or under the Franchise Area shall be done in such a manner as not to interfere unreasonably with the construction and maintenance of other existing utilities, lines, public or private, drains, drainage ditches and structures, irrigation ditches and structures, located therein, nor with the grading or improvement of the Franchise Area. The owners of all utilities, public or private, installed in the Franchise Area prior in time to the Facilities of Whatcom PUD shall have preference as to the positioning and location of such utilities so installed with respect to Whatcom PUD. Such preference shall continue in the event of the necessity of relocating or changing the grade of the Franchise Area. Whatcom PUD shall have such preference as to owners of all utilities, public or private, initially installed in the Franchise Area subsequent in time to Whatcom PUD's Facilities.
4.4 The locating, laying, construction, operation and maintenance of Whatcom PUD’s Facilities authorized by this Franchise shall not preclude the County, its agents or its contractors from blasting, grading, excavating, or doing other necessary road work contiguous to Whatcom PUD’s Facilities, provided that Whatcom PUD and the County shall first check with the locator service to determine whether or not any of Whatcom PUD’s lines are located in the proposed work area. Upon finding from the locator service that Whatcom PUD does have lines located within the proposed work area, the County shall provide Whatcom PUD with seventy-two (72) hours notice of proposed work, except if a lesser time for notice is warranted by emergency, in order that the Whatcom PUD may protect its Facilities. Failure of Whatcom PUD to properly notify the locator service of the location of its lines and Facilities shall relieve County of its duty to provide Whatcom PUD the otherwise-required advance notice of proposed work. The County acknowledges that the Facilities may include high pressure water lines. As such, the County acknowledges that any work in, around or near such Facilities require the exercise of reasonable standard professional engineering and construction caution and practices in, around or near such Facilities. Accordingly, the County acknowledges that upon receipt of notice of the location of such Facilities the County shall undertake all reasonable standard professional engineering and construction caution practices and/or requirements when conducting or permitting any work in, around or near such Facilities.

4.5 Whatcom PUD shall maintain all above-ground Facilities that it places in the Franchise Area. In order to avoid interference with the County’s ability to maintain the Franchise Area, Whatcom PUD shall provide a clear zone of five (5) feet on all sides of such above-ground Facilities. If Whatcom PUD fails to comply with this provision, and by its failure, property is damaged, then Whatcom PUD shall be deemed responsible for all damages caused thereby and the County shall be released from any responsibility therefore. For these purposes, “clear zone” means an area that is mowed or otherwise maintained so that the Facilities are readily visible to County maintenance operations.

Section 5. Construction Within the Franchise Area.

5.1 All construction and installation work within the Franchise Area shall be subject to the approval and pass the inspection of the County Engineer, and shall conform to all applicable local, state and federal standards, codes or regulations, and the County expressly reserves the right to prescribe standards as to how and where Facilities shall be installed. The standards shall be consistent with reasonable standards and standard engineering practices in the applicable industries.

5.2 Prior to commencement of construction of any new Facilities, Whatcom PUD shall first file with the County Engineer its application for permits to do such work, together with plans and specifications in duplicate showing the position and location of all such Facilities sought to be constructed, laid, installed or erected at that time showing their position relative to existing County roads, rights-of-way, or other County property within the Franchise Area upon plans drawn to scale. The Facilities shall be laid in conformity with said plans and specifications of definite location, except in instances in which deviation may be allowed thereafter in writing by the County Engineer. The plans and specifications shall specify the class and type of material and equipment to be used, manner of excavation, construction, installation, backfill, erection of temporary structures, erection of permanent structures, traffic control, traffic turnouts and road obstructions, etc. No such construction shall be commenced without Whatcom PUD first
securing a written permit from the County Engineer, including approval endorsed on one set of plans and specifications returned to Whatcom PUD. All such work shall be subject to the approval of and shall pass the inspection of the County Engineer. Whatcom PUD shall pay all costs of and expenses incurred in the examination, inspection and approval of such work on account of granting the said permits.

5.3 In any work which requires breaking of soil within the Franchise Area for the purpose of laying, relaying, connecting, disconnecting, constructing, maintaining and repairing Whatcom PUD’s Facilities, and making connections between the same to structures and buildings of consumers or making connections to other Facilities now in existence or hereafter constructed, Whatcom PUD shall be governed by and conform to the general rules adopted by the County Engineer; and Whatcom PUD at its own expense and with due diligence shall complete the work for which the soil has been broken and forthwith replace the work and make good the Franchise Area and leave the same in as good condition as before the work was commenced; provided, however, that no such breaking of the soil within the Franchise Area shall be done prior to the obtaining of a permit issued by the County Engineer. Applications for such a permit shall be accompanied by specifications for the restoration of the Franchise Area to the same condition as it was in prior to such breaking, and such specifications must be approved by the County Engineer before such breaking of the soil is commenced; provided further, that the County Engineer may require a performance bond in a reasonable sum sufficient to guarantee that such Franchise Area shall be restored to the same condition as it was in prior to such breaking of the soil, the amount of said bond to be fixed by the County Engineer. Whatcom PUD shall pay all costs of and expenses incurred in the examination, inspection and approval of such restoration. The County Engineer may at any time do, order, or have done, any and all work that the County Engineer considers necessary to restore to a safe condition any Franchise Area left by Whatcom PUD or its agents in a condition dangerous to life or property, and Whatcom PUD upon demand shall pay to the County all costs of such work, the County having first provided notice of such condition to Whatcom PUD and a reasonable time to cure such unsafe condition, provided however, in the event of damage to the Franchise Area caused by Whatcom PUD that necessitates immediate repair by the County or its agents on an emergency basis where notice to Whatcom PUD or providing an opportunity to cure is not feasible considering nature of the emergency and necessary repair, as determined by the County Engineer using professional engineering standards, no such notice and reasonable time to cure shall be required as a condition of repayment by the PUD.

5.4 In preparing plans and specifications for the installation of Facilities within the Franchise Area, Whatcom PUD shall reasonably conform to the standards and specifications established by the County Engineer. Whatcom PUD shall consult with the County Engineer in case it plans to deviate from the established standards and specifications in the course of installing Facilities within the Franchise Area and must demonstrate to the satisfaction of the County Engineer that its plans will achieve a legal and functionally equivalent result.

5.5 All work done by and for Whatcom PUD under this Franchise shall be done in a thorough and workmanlike manner. In the construction of Facilities and the opening of trenches within and the tunneling under the Franchise Area, Whatcom PUD shall leave such trenches and tunnels in such a way as to interfere as little as possible with public travel, and shall take all due and necessary precautions to guard the same, so that damage or injury shall not occur or arise by reason of such work. Where any of such trenches, ditches, or tunnels are left open at
night, the Whatcom PUD shall place warning lights and barricades at such a position as to give adequate warning of such work, per the MUTCD (Manual on Uniform Traffic Control Devices). Whatcom PUD shall be liable for any injury to person or persons or damage to property to the extent proximately caused by its carelessness or neglect, or to the extent proximately caused by any failure or neglect to properly guard or give warning of any trenches, ditches or tunnels dug or maintained by Whatcom PUD.

5.6 Before any work is performed under this Franchise which may affect any existing monuments or markers of any nature relating to subdivisions, plats, roads and all other surveys, Whatcom PUD shall reference all such monuments and markers. The reference points shall be so located that they will not be disturbed during Whatcom PUD's operations under this Franchise. The method of referencing these monuments or other points to be referenced shall be approved by the County Engineer. The replacement of all such monuments or markers disturbed during construction shall be made as expeditiously as conditions permit, and as directed by the County Engineer. The cost of monuments or other markers lost, destroyed, or disturbed, and the expense of replacement by approved monuments shall be borne by Whatcom PUD. A complete set of reference notes for monuments and other ties shall be filed with the County Engineer's Office.

Section 6. Relocation of Facilities.

6.1 Whatcom PUD shall, at its sole expense and with due diligence, relocate or adjust the elevation of any of its Facilities upon receipt of written request from the County Engineer when determined reasonably necessary based upon sound engineering principles by the County Engineer for improvement to the County facilities in the Franchise Area, provided that the elevations required by the County are not in violation of local, state or federal law and are reasonable necessary for safety purposes. Whatcom PUD shall coordinate such relocation or adjustment of its Facilities with the County and shall perform the same in a timely fashion so that, absent conditions beyond the control of Whatcom PUD, such relocation or adjustment of Whatcom PUD's Facilities will not impede or delay pending changes to the Franchise Area.

6.1.1 Notwithstanding the foregoing, except where no other reasonable engineering alternative exists, the County shall not require Whatcom PUD to relocate or adjust the elevations of any water lines measuring twelve inches (12") or larger in diameter located in the following areas with pressure of at least 100 psi (referred to herein as the "High Pressure Water Lines") (copies of the as-built drawings were provided by Whatcom PUD to the County on May 29, 2013 and August 22, 2013 with said copies to be retained in the Whatcom County Public Works Engineering Services Records Vault):

A. Along, under or within the Douglas Road right of way
B. Along, under or within the Aldergrove Road Right of Way
C. Along, under or within the Rainbow Road Right of Way.
D. Along, under, or within the Lake Terrell Road Right of Way
E. Along, under, or within the Trigg Road Right of Way

6.1.2 In the event the County constructs or extends any roadway over any High Pressure Water Lines, the County does so at its own risk and expense. Pursuant to the terms and conditions set forth in Section 7, below and to the extent permitted by law, and to the extent consistent with all reasonable standard professional engineering and construction practices.
and/or requirements when conducting or permitting any work in, around or near such Facilities the County shall defend, indemnify and hold Whatcom PUD harmless from any and all claims arising out of or resulting from the County’s or its employees, agents and/or contractor’s negligent acts or omissions that proximately cause damage to or interruption to the operation of the High Pressure Water Lines.

6.1.3 The County may, at its sole cost and risk, and with Whatcom PUD’s prior written consent, which consent shall not be unreasonably conditioned nor withheld, relocate or adjust the elevations of the High Pressure Water Lines, provided that service to Whatcom PUD’s customers is not interrupted.

6.2 Whatcom PUD may propose to the County alternatives to reduce or eliminate the need for relocation of its Facilities pursuant to Section 6.1. Upon the County’s receipt from Whatcom PUD of such alternatives in writing, the County shall evaluate such alternatives and shall advise Whatcom PUD in writing if one or more of such alternatives are suitable to accommodate the work that would otherwise necessitate relocation of Whatcom PUD’s Facilities. In evaluating such alternatives, the County shall give each alternative proposed by Whatcom PUD full and fair consideration with due regard to all the facts and circumstances which bear upon the practicality of relocation and alternatives to relocation. In the event the County reasonably determines that such alternatives are not appropriate, Whatcom PUD shall relocate its Facilities as otherwise provided in Section 6.1. Any acceptance by the County of such alternatives shall not excuse (nor shall be construed to excuse) Whatcom PUD from future relocation or adjustment of Whatcom PUD’s Facilities pursuant to this Section 6.

6.3 As qualified in Sections 6.1 and 6.2 above, and in Section 6.4 below, whenever any person or entity, other than the County, requires the relocation of Whatcom PUD’s Facilities to accommodate the work of such person or entity within the Franchise Area, or whenever the County requires the relocation of Whatcom PUD’s Facilities within the Franchise Area for the benefit of any person or entity other than the County, then Whatcom PUD shall have the right as a condition of such relocation to require such person or entity to:

6.3.1 Make payment to Whatcom PUD, at a time and upon terms acceptable to Whatcom PUD, which acceptance shall not be unreasonably withheld, for any and all costs and expenses incurred by Whatcom PUD in the relocation of Whatcom PUD’s Facilities; and

6.3.2 Indemnify and save Whatcom PUD harmless from any and all claims and demands made against it on account of injury or damage to the person or property of another arising out of or in conjunction with the relocation of Whatcom PUD’s Facilities, to the extent such injury or damage is caused by the negligence of the person or entity requesting the relocation of Whatcom PUD’s Facilities or the negligence of the agents, servants or employees of the person or entity requesting the relocation of Whatcom PUD’s Facilities.

6.4 Any condition or requirement imposed by the County upon any person or entity, other than Whatcom PUD or the County (including, without limitation, any condition or requirement imposed pursuant to any contract or in conjunction with approvals or permits for zoning, land use, construction or development) which requires the relocation of Whatcom PUD’s Facilities shall be a required relocation for purposes of Section 6.3; provided, however:

6.4.1 If the County notifies Whatcom PUD in writing that the primary purpose of
imposing such condition or requirement upon such person or entity is to cause the grading or widening of the Franchise Area on the County’s behalf consistent with the County’s Six-Year Road Construction Program, then Whatcom PUD shall relocate its Facilities within the Franchise Area in accordance with Section 6.1 unless such Facility is otherwise exempt from relocation pursuant to Section 6.1.1 through 6.1.3.

6.4.2 Unless the relevant Facility is exempt from relocation pursuant to Section 6.1.1 through 6.1.3, if the County notifies Whatcom PUD in writing that the County will bear a portion of the costs of, or will provide funding towards, a project that includes grading or widening of the Franchise Area resulting from the imposition of such condition or requirement upon such person or entity, then Whatcom PUD agrees to bear a portion of its costs and expenses to relocate its Facilities to accommodate such grading or widening, such portion borne by Whatcom PUD being a percentage equal to that percentage of such project’s costs borne or funded by the County (the “County Contribution”); provided, however, in no event shall such portion borne by Whatcom PUD exceed the dollar amount of such County Contribution. “Project” shall mean that work directly bearing on the area that necessitates relocation by Whatcom PUD, and shall not include other off-site improvements that may be performed at the same time. In all other respects such relocation shall be a required relocation for the purposes of Section 6.3 and without limiting the foregoing, Whatcom PUD shall have the right as a condition of such relocation to require such person or entity to pay to Whatcom PUD all relocation costs and expenses in excess of the portion borne by Whatcom PUD under this Section 6.4.2.

6.4.3 If the Facilities to be relocated pursuant to this subsection 6.4 have been located at or relocated within the preceding five (5) years to a location upon which the County had agreed at the time without reservation, then Whatcom PUD shall be entitled to recovery of all its costs and expenses incurred in the relocation of its Facilities from the party on whom the condition for road improvements was placed. Documentation of any such agreement between the County and Whatcom PUD shall be kept in conjunction with the encroachment permit issued by the County for the work of relocation.

6.5 Nothing in this Section 6 shall require Whatcom PUD to bear any cost or expense in connection with the location or relocation of any Facilities then existing pursuant to easement or such other rights not derived from or addressed by this Franchise.

Section 7. Indemnification.

7.1 To the extent permitted by law, Whatcom PUD shall defend, indemnify and hold the County harmless from any and all claims, demands, suits, actions, costs and expenses, including but not limited to attorney’s fees, made against it on account of injury or damage to the person or property of another, but only to the extent such injury or damage is caused by the actions or failure to act of Whatcom PUD, its agents, servants or employees in exercising the rights granted to Whatcom PUD in this Franchise; provided, however, that in the event any such claim or demand be presented to or filed with the County, the County shall promptly notify Whatcom PUD thereof, and Whatcom PUD shall have the right, at its election and at its sole cost and expense, to settle and compromise such claim or demand; provided further, that in the event any suit or action is begun against the County based upon any such claim or demand, the County shall likewise promptly notify Whatcom PUD thereof, and Whatcom PUD shall have the
right, at its election and its sole cost and expense, to settle and compromise such suit or action, or defend the same at its sole cost and expense, by attorneys of its own election. Notwithstanding the foregoing, if damages to another or others result from concurrent negligence of Whatcom PUD and the County, Whatcom PUD and the County shall each be responsible for, and this indemnification provision shall be operative so that each party bears, the proportionate share attributable to its own negligence. In case judgment which is not appealed shall be rendered against the County in such suit or action, Whatcom PUD shall fully satisfy said judgment within ninety (90) days after said suit or action shall have finally been determined. Upon Whatcom PUD’s failure to satisfy said judgment within ninety (90) days, the County may elect to terminate this Franchise pursuant to the terms of Section 19 herein. The provision for reimbursement of the County shall survive the termination of this Franchise.

7.2 Acceptance by the County of any work performed by Whatcom PUD at the time of completion shall not be grounds for avoidance of the covenant in Section 7.1 above.

Section 8. Acquisition of Right-of-Way.

8.1 In the event that Whatcom PUD proposes to acquire easements for the location or relocation of its Facilities outside of, and adjacent to the Franchise Area, Whatcom PUD shall notify the County of the same and the County shall have the option, with the concurrence of Whatcom PUD, to acquire in place of such Whatcom PUD proposed easements, additional public rights-of-way or equivalent public utility easements for use by Whatcom PUD. Any such public rights-of-way acquired by the County shall become Franchise Area. Any such public utility easements so acquired by the County shall not be Franchise Area (and shall not be subject to the terms and conditions of this Franchise) and Whatcom PUD’s use of such public utility easements shall be subject to the terms and conditions of such public utility easements. 1

Section 9. Vacation of the Franchise Area.

9.1 If at any time the County shall seek to vacate any portion of the Franchise Area and said vacation shall be for the purpose of acquiring the fee or other property interest in said portion of the Franchise Area for the use of the County, in either its proprietary or governmental capacity, and there are no Facilities located in the Franchise Area. then the County Engineer may at his option and by giving thirty (30) days written notice to Whatcom PUD, terminate this franchise with reference to such portion of the Franchise Area so vacated, and the County shall not be liable for any damages or loss to Whatcom PUD allegedly incurred by reason of such termination. Nothing herein shall limit or prevent Whatcom PUD from exercising its powers of eminent domain. Should Whatcom PUD notify the County of its intent to consider exercising its power of eminent domain to obtain an easement for the Facilities located within the area of the Franchise to be terminated, the termination of the Franchise shall be tolled for a period of no less than one hundred and twenty (120) days from the date of notice.

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1 A distinction is drawn here between public rights-of-way which are or shall become Franchise Area and thus governed by the terms of the franchise ordinance, and public utility easements which shall not become Franchise Area, the use of which shall be governed by the terms and conditions of the easements themselves and not by the franchise ordinance.
9.2 If at any time the County shall vacate any portion of the Franchise Area in which Facilities are installed at the time of said vacation, and said vacation shall be for the purpose of acquiring the fee or other property interest in said portion of the Franchise Area by other than the County, then the County shall, in its vacation procedure, unless otherwise waived in writing by Whatcom PUD, reserve an easement to Whatcom PUD for Whatcom PUD’s Facilities as reasonably necessary for the continued use, operation, maintenance and repair of the Facilities as located in the portion of the Franchise Area to be vacated.

Section 10. Moving Buildings within the Franchise Area.

10.1 If any person or entity obtains permission from the County to use the Franchise Area for the moving or removal of any building or other object, the County shall, prior to granting such permission, direct such person or entity to arrange with Whatcom PUD for the temporary adjustment of Whatcom PUD’s Facilities necessary to accommodate the moving or removal of such building or other object. Such person or entity shall make such arrangements, upon terms and conditions acceptable to Whatcom PUD, not less than fourteen (14) days prior to the moving or removal of such building or other object. In such event, Whatcom PUD shall, at the sole cost and expense of the person or entity desiring to move or remove such building or other object, adjust any of its Facilities which may obstruct the moving or removal of such building or object.

Section 11. Locating Facilities.

11.1 Whatcom PUD and the County acknowledge and commit to fully comply with their respective obligations, as the same may arise from time to time, under Chapter 19.122 RCW (Underground Utilities Locator Statute) or any other law applicable to determining the location of utility facilities.

Section 12. Nonexclusive Franchise.

12.1 This Franchise is not and shall not be deemed to be an exclusive franchise. It shall not in any manner prohibit the County from granting other franchises of a like nature or franchises for other public or private utilities under, along, across, over, and upon any part of the Franchise Area, and shall in no way prevent or prohibit the County from constructing, altering, maintaining, using, or vacating any part thereof, or affect its jurisdiction over any part thereof with full power to make all necessary changes, relocations, repairs, maintenance, etc., the same as the County may deem fit.

Section 13. Franchise Term; Effect on Existing Franchises for Same Purpose.

13.1 This Franchise is and shall remain in full force and effect for a period of twenty-five (25) years from and after the effective date of the Ordinance; provided, however, Whatcom PUD shall have no rights under this Franchise nor shall Whatcom PUD be bound by the terms and conditions of this Franchise unless Whatcom PUD shall, within thirty (30) days after the effective date of the Ordinance, file with the County its written acceptance of the franchise agreement contained within the Ordinance.

13.1.1 No franchise hereunder shall become effective for any purpose unless and
until written acceptance therefore shall have been filed with the Whatcom County Council and County Director of Public Works and such written acceptance shall be in the form and substance as shall be prescribed and approved by the County Prosecuting Attorney and operate as an acceptance of each and every term and condition and limitation contained in this ordinance, and in such franchise; and

13.1.2 Such written acceptance shall be filed by Whatcom PUD not later than the thirtieth (30th) day following the effective date of the Ordinance granting such franchise; and in default of the filing of such written acceptance as herein required, Whatcom PUD shall be deemed to have rejected the same. In case of Whatcom PUD’s tardy acceptance of franchise, the County’s recognition thereof shall be strictly at its discretion.

13.2 The existing franchises between the Parties pertaining to the same subject matter, i.e., PUD #1’s water lines, which were granted by the County and accepted by PUD #1 on June 17, 1965, and January 29, 1970, shall be superseded and replaced by this franchise upon the effective date of this franchise as provided above.

Section 14. Assignment.

14.1 Neither this Franchise nor any interest herein shall be sold, transferred, or assigned without the prior consent in writing of the County Council, which consent shall not be unreasonably withheld, except that the Whatcom PUD may mortgage this Franchise to the trustee for its bond holders. Any approved assignee shall, within thirty (30) days of the date of any assignment, file written notice of the assignment with the County, together with its written acceptance of all terms and conditions of this Franchise.

14.2 All the provisions, conditions, and requirements herein contained shall be binding upon the successors and assigns of Whatcom PUD, and all privileges, as well as all obligations and liabilities of the grantee shall inure to its successors and assigns equally as if they were specifically mentioned wherever Whatcom PUD is mentioned.

Section 15. Amendment.

15.1 Except as addressed in and through Section 15.3 below, this Franchise may be amended only by written instrument, signed by both parties, which specifically states that it is an amendment to this Franchise and is approved and executed in accordance with the laws of the State of Washington. Without limiting the generality of the foregoing, this Franchise (including, without limitation, Section 5 above) shall govern and supersede and shall not be changed, modified, deleted, added to, supplemented or otherwise amended by any permit, approval, license, agreement or other document required by or obtained from the County in conjunction with the exercise (or failure to exercise) by Whatcom PUD any and all rights, benefits, privileges, obligations or duties in and under this Franchise, unless such permit, approval, license, agreement or other document specifically:

15.1.1 References this Franchise; and

15.1.2 States that it supersedes this Franchise to the extent it contains terms and conditions that change, modify, delete, add to, supplement or otherwise amend the terms and
conditions of this Franchise. In the event of any conflict or inconsistency between the provisions of this Franchise and the provisions of any such permit, approval, license, agreement or other document, the provisions of this Franchise shall control.

15.2 If, during the term of this Franchise, there becomes effective any change in federal or state law (including changes approved by the Washington Utilities and Transportation Commission) which:

15.2.1 Affords either party the opportunity to negotiate in good faith a term or condition of this Franchise which term or condition would not have, prior to such change, been consistent with federal or state law; or

15.2.2 Pre-empts or otherwise renders null and void any term or condition of this Franchise which has there-to-fore been negotiated in good faith;

then, in such event, either party may notify the other party in writing that such party desires to commence negotiations to amend this Franchise. Such negotiations shall encompass only the specific term or condition affected by such change in federal or state law and neither party shall be obligated to re-open negotiation on any other term or condition of this Franchise. Within thirty (30) days from and after the other party’s receipt of such written notice, the parties shall, at a mutually agreeable time and place, commence such negotiations. Pending completion of such negotiations resulting in mutually agreeable amendment of this Franchise, adoption of such amendment by Ordinance by the County and acceptance of such Ordinance by Whatcom PUD, and except as to any portion thereof which has been pre-empted or otherwise rendered null and void by such change in federal or state law, this Franchise shall remain in full force and effect.

15.3 Notwithstanding any language to the contrary contained herein, this Franchise is subject to the provisions of the Whatcom County Charter, Section 9.30, and all rights belonging to the County and its people as set forth therein are hereby reserved thereto.

Section 16. Miscellaneous

16.1 If any term, provision, condition, or portion of this Franchise shall be held to be invalid, such invalidity shall not affect the validity of the remaining portions of this Franchise, which shall continue in full force and effect. The headings of sections and paragraphs of this Franchise are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such sections or paragraphs.

16.2 This Franchise is subject to the requirements of any and all applicable laws, rules, and regulations, including the Whatcom County Code, as currently enacted or hereafter modified. In the event of any actual conflict between the provisions of this Franchise and the requirements of the Whatcom County Code or County-enacted rules or regulations, the provisions of this Franchise shall control, to the extent authorized by law.

16.3 All notices, demands, requests, consents and approvals which may, or are required to be given by any party to any other party hereunder, shall be in writing and shall be deemed to have been duly given if delivered personally, sent by facsimile, sent by a nationally recognized overnight delivery service, or if mailed or deposited in the United States mail and sent by
registered or certified mail, return receipt requested, postage prepaid to:

For County: County Executive
            Whatcom County Courthouse
            311 Grand Ave.
            Bellingham, WA 98225

For Whatcom PUD: General Manager
                  PUD # 1 of Whatcom County
                  1705 Trigg Rd.
                  Ferndale, WA 98248

or to such other address as the foregoing parties hereto may from time-to-time designate in writing and deliver in a like manner. All notices shall be deemed complete upon actual receipt or refusal to accept delivery. Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission shall be the same as delivery of an original document.

16.4 No failure by any of the foregoing parties to insist upon the strict performance of any covenant, duty, agreement, or condition of this Franchise or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or any other covenant, agreement, term or condition. No waiver shall affect or alter this Franchise, and each and every covenant, agreement, term and condition of this franchise shall continue in full force and effect with respect to other then existing or subsequent breach thereof.

Section 17. Incorporation and Annexation.

17.1 Whenever any part of the Franchise Area, by reason of the subsequent incorporation of any town or city, or extension of the limits of any town or city, shall fall within the city or town limits, this Franchise shall continue in force and effect as to all of the Franchise Area not so included in city or town limits.

Section 18. Insurance.

18.1 During the term of this Franchise Whatcom PUD shall keep in effect, a liability insurance policy covering all liability of Whatcom PUD to the County, including any assumed by contract between Whatcom PUD and any other party, with limits at least in the amount of $1,000,000. In lieu of the insurance requirement of this Section, Whatcom PUD may self-insure against such risks. At the time of Whatcom PUD's acceptance of this Franchise and otherwise upon the County's request, Whatcom PUD shall provide the County with certificate(s) of insurance or evidence of self-insurance reflecting the requirements of this section.

Section 19. Forfeiture and Termination of Franchise.

19.1 If Whatcom PUD shall willfully violate or fail, through willful or unreasonable neglect, to comply with any of the provisions of this Franchise for sixty (60) days after receipt of
Whatcom PUD's forfeiture of all rights hereunder and to declare this Franchise terminated and of no further force or effect thereafter; provided, however, if any failure to comply with this Franchise by Whatcom PUD cannot be corrected with due diligence within said sixty (60) day period (Whatcom PUD's obligation to comply and to proceed with due diligence being subject to unavoidable delays and events beyond its control), then the time within which Whatcom PUD may so comply shall be extended for such time as may be reasonably necessary and so long as Whatcom PUD commences promptly and diligently to effect such compliance.

Section 20. Effective Date.

20.1 This Ordinance shall be effective ten (10) days after being signed by the County Executive, with the Franchise granted hereunder finally effective pursuant to the terms of Section 13.1, 13.1.1, and 13.1.2, having been: (i) introduced to the County Council not less than thirteen (13) days before its passage; (ii) brought to public notice by such notice having been posted in three (3) public places in Bellingham at least fifteen (15) days before the day fixed for the public hearing; (iii) published at least twice in the official newspaper for the County and no later than five (5) days prior to the day fixed for the hearing and as otherwise required by law; and (iv) passed at a regular meeting of the legislative body of the County of Whatcom by a vote of at least __________ members of the County Council on ____________________________, 2014.

ADOPTED this ____ day of _______, 2014.

ATTEST:

Dana Brown-Davis, Clerk of the Council
Carl Weimer, Council Chair

APPROVED AS TO FORM:

Chief Civil Deputy Prosecutor

( ) Approved  ( ) Denied

Jack Louws, County Executive
**WHATCOM COUNTY COUNCIL AGENDA BILL**

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**TITLE OF DOCUMENT:**
Resolution Amending the 2014-2019 Six-Year Water Resources Improvement Program to add the Syre Property Bank Stabilization and add additional funding for emergency repair work at Swift Creek.

**ATTACHMENTS:**
1. Memo to County Executive and Council
2. Project Summary Sheet
3. 2014-2019 Six Year Water Resources Improvement Program Resolution Amendment
4. Exhibit “A” 2014-2019 Six Year Water Resources Improvement Program

**SEPA review required?** ( ) Yes  ( X ) NO
**SEPA review completed?** ( ) Yes  ( X ) NO
**Should Clerk schedule a hearing?** ( X ) Yes  ( ) NO
**Requested Date 7/8/2014**

**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 to 2014-2019 Six-Year Water Resources Improvement Program is necessary to add the Syre Property Bank Stabilization and add additional funding for emergency repair work at Swift Creek.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**
6/17/2014: Introduced to Council 7-0, proposed public hearing on July 8, 2014

**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).
Memo

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

Through: Frank M. Abart, Director

From: Roland Middleton, L.E.G., Special Projects Manager

Date: June 4, 2014

Re: Amending the 2014-2019 Six-Year Water Resources Improvement Program, Committee Work Session, Introduction, Public Hearing and Adoption

Requested Action:

The Department of Public Works requests that this proposed amendment to the 2014-2019 Six Year Water Resources Program (WRIP) be introduced at the June 17, 2014 Council meeting. We then request that a Public Hearing be advertised and held July 8, 2014 at that evening’s County Council meeting with the amendment resolution adopted at said meeting.

Background and Purpose:

The 2014-2019 WRIP was approved by Resolution 2013-030 on October 8, 2013. Amendment of the 2014-2019 WRIP is being requested to add a project and add additional funding for emergency repair work.

- Add the Syre Property Bank Stabilization project
- Add funding to the Emergency/New Projects item list for emergency repair work at Swift Creek

Information:

This modification is being requested by the Board of Supervisors of the Flood Control Zone District to add a project to stabilize an eroding bank on the Syre property. In addition, the amendment to the 2014-2019 WRIP will include the emergency repair work for Swift Creek. The emergency repair work is needed to address the significant sedimentation and erosion that occurred March of 2014. Without the emergency repair further erosion of the levee system could occur causing an avulsion of Swift Creek towards South Pass Road and into the Breckenridge Creek system.
RESOLUTION NO.  
(A RESOLUTION OF THE WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT BOARD OF SUPERVISORS)

AMENDING THE WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT SIX-YEAR WATER RESOURCES IMPROVEMENT PROGRAM FOR THE YEARS 2014 THROUGH 2019

WHEREAS, pursuant to RCW 86.15.110, flood control or storm water control improvements may be extended, enlarged, acquired, or constructed by a zone pursuant to a resolution adopted by the Board of Supervisors; and

WHEREAS, the Whatcom County Flood Control Zone District Board of Supervisors adopted the Six-Year Water Resources Improvement Program on October 8, 2013; and

WHEREAS, the Whatcom County Flood Control Zone District Board of Supervisors wishes to amend the Six-Year Water Resources Improvement Program, adding a project to stabilize an eroding bank on the Syre property and add funding for emergency repairs; and

WHEREAS, Whatcom County Public Works Department on behalf of the Flood Control Zone District has prepared a revised Six-Year Water Resources Improvement Program which includes the Syre bank stabilization project and additional funding for emergency repair; and

WHEREAS, in March of 2014 significant sedimentation and erosion occurred causing a shift in the gradient of Swift Creek which could lead to further erosion of the levee system of Swift Creek causing an avulsion towards South Pass Road and into the Breckenridge Creek system; and

WHEREAS, on March 28, 2014 an emergency proclamation as defined by the Whatcom County Comprehensive Emergency Management Plan and pursuant to the Whatcom County Charter and RCW 38.52.070(2) was issued for the repair work at Swift Creek; and

WHEREAS, pursuant to RCW 86.15.120, the supervisors shall hold a public hearing prior to adopting the resolution; and

WHEREAS, the Six-Year Water Resources Improvement Program attached hereto as Exhibit “A” has been reviewed and determined to be consistent with the County’s comprehensive plan and is consistent with the following plans:

- Lower Nooksack River Comprehensive Flood Hazard Management Plan, October 1999
- Canyon Creek Alluvial Fan Risk Assessment, September 2003
- Jones Creek Debris Flow Study, March 2004
- WRIA 1 Salmon Recovery Plan, October 2005
- Lake Whatcom Comprehensive Stormwater Plan, March 2008
- Birch Bay Comprehensive Stormwater Plan, July 2006
- Swift Creek Sediment Management Action Plan, July 2013; and
WHEREAS, pursuant to RCW 86.15.110, for constructed improvements the preliminary engineering studies are on file with the Whatcom County Public Works Department; and

WHEREAS, pursuant to RCW 86.15.110, the estimated cost of the acquisition or construction of the improvement, together with supporting data is included in the Six-Year Water Resources Improvement Program; and

WHEREAS, the improvements will benefit one or more zones, subzones and the county as a whole;

NOW, THEREFORE, BE IT RESOLVED by the Whatcom County Flood Control Zone District Board of Supervisors as follows:

1. That the Whatcom County Flood Control Zone District Six-Year Water Resources Improvement Program for the years 2014 through 2019, which is attached hereto as Exhibit “A”, is hereby adopted.

APPROVED this _____ day of __________, 2014.

ATTEST: 

FCZD BOARD OF SUPERVISORS
WHATCOM COUNTY, WASHINGTON

______________________________
Dana Brown-Davis, Clerk of the Council  Carl Weimer, Chair of the FCZD

APPROVED AS TO FORM:

______________________________
Daniel L. Gibson, Chief Civil Deputy Prosecutor
Syre Property Bank Stabilization
Database ID No. 13-002d

Construction Funding Year(s): 2014

Project Narrative:
Address ongoing erosion at Syre property near Lawrence utilizing large woody debris structures installed on the top of the bank adjacent to the eroding bank.

Project Status:
Design is being initiated in 2014 for possible construction in the fall/early winter of 2014. If conditions warrant construction may be delayed to 2015.

Total Estimated Project Cost: $760,000
Expenditures to Date: $10,000
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<th>Week No.</th>
<th>Project Description</th>
<th>Database #</th>
<th>DWS</th>
<th>Pre-Treatment Exp.</th>
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<td>1</td>
<td>Lake Whatcom Stormwater</td>
<td>07-009</td>
<td>60.5</td>
<td>PE $50,000</td>
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<td>2</td>
<td>Academy Road/Slant with CDIN (IL-CP-05)</td>
<td>07-027</td>
<td>60.5</td>
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<td>3</td>
<td>Cedar Hills/Duluth (IL-CP-08, CP-12): Install rain gardens, filter vaults, and swales</td>
<td>07-060</td>
<td>63.9</td>
<td>PE $75,000</td>
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<td>4</td>
<td>Agnes Heights Drainage (IL-CP-01, CP-13): System upgrades to improve water quality (filtration vaults, reduce ditch erosion)</td>
<td>07-102</td>
<td>60.5</td>
<td>PE $50,000</td>
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<td>5</td>
<td>Beaver Creek (IL-CP-08): Remove and repurpose sections of Beaver Creek</td>
<td>10-025</td>
<td>56.3</td>
<td>PE $50,000</td>
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<td>6</td>
<td>Sudlen Valley (IL-CP-04, CP-17): Drainage systems upgrades and install retrofits</td>
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<td>46.3</td>
<td>PE $50,000</td>
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<td>7</td>
<td>Silver Creek (IL-CP-08, CP-04): Main channel restoration below Hickory using natural vegetation</td>
<td>07-095</td>
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<td>PE $50,000</td>
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<td>Project Design (2019): Project location not yet finalized</td>
<td>N/A</td>
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<td>Amount</td>
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<td>07-002</td>
<td>Marlena Acquisition</td>
<td>$170,900 FCID</td>
<td>PE</td>
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<td>FW</td>
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<td>07-004</td>
<td>Camp Creek Restoration</td>
<td>$117,000 FCID</td>
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<td>Jones Creek Debris Flow Control</td>
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<td>High Creek - Recommended projects to address ongoing sedimentation</td>
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<td>Sediment Management- Small-scale sediment removal to support sediment management strategy</td>
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<td>City of Bellingham Aquatics Basin - Flood Hazard Reduction</td>
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<td>Emergency/Non-Projects - Typically repair projects that result from new damage, as needed</td>
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<td>07-012</td>
<td>Swift Creek Habitat Restoration Project - Passive projects to minimize erosion and improve fish habitat</td>
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<td>Swift Creek Phase I Projects - Sediment Traps, Upper Lower Creek, and Sediment Basins</td>
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<td>(estimated)</td>
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**Notes:**
1. Expenditures shown are planning-level cost estimates. The Six-Year WRIP is not a budget document and does not authorize expenditures.
2. PE = Preliminary Engineering, FW = Facility Acquisition, CN = Construction.
**TITLE OF DOCUMENT:**
Resolution Amending the 2014-2019 Six-Year Transportation Improvement Program to modify the title and project limits of an existing project.

**ATTACHMENTS:**
1. Memo to County Executive and Council
2. Project Summary Sheet
3. 2014-2019 Six Year Transportation Improvement Program Resolution Amendment
4. Exhibit “A” 2014-2019 Six Year Transportation Improvement Program

**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 to 2014-2019 Six-Year Transportation Improvement Program is necessary to modify the title and project limits of the “Gooseberry Point Pedestrian Project” to “Lummi Nation Transportation Projects”.

**COMMITTEE ACTION:**
6/17/2014: Introduced to Council 7-0, proposed public hearing on July 8, 2014

**COUNCIL ACTION:**
6/17/2014: Introduced to Council 7-0, proposed public hearing on July 8, 2014

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.

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Memo

To: The Honorable Jack Louws, Whatcom 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
Roland Middleton, L.E.G., Special Projects Manager

Date: June 4, 2014

Re: Amending the 2014-2019 Six-Year Transportation Improvement Program, PW Committee Work Session, Introduction, Public Hearing and Adoption

Requested Action:

The Department of Public Works requests that this proposed amendment to the 2014-2019 Six Year Transportation Program (STIP) be introduced at the June 17, 2014 Council meeting. We then request that a Public Hearing be advertised and held July 8, 2014 at that evenings County Council meeting with the amendment resolution adopted at said meeting.

Background and Purpose:

The 2014-2019 STIP was approved by Resolution 2013-029 on September 10, 2013. Amendment of the 2014-2019 STIP is being requested to modify the project title and limits of a project currently listed.

- Modify Title and Limits Project #8, "Gooseberry Point Pedestrian Project"
- Change project title to "Lummi Nation Transportation Projects"
- Alter project limits by removing "1.77" under "Total Length" and leave blank. Also remove "McKenzie" from "From" and "Balch" from "To".
- Change "Various Pedestrian Improvements" to "Various Locations on Reservation".

Information:

This modification is being requested by the Lummi Nation in order to meet the requirements of Exhibit "C" of the October 27, 2011 Uplands Lease Agreement for Lummi Island Ferry Use at Gooseberry Point. This modification will allow for County committed funds to be used on mutually agreed upon transportation projects throughout the Lummi Nation Reservation. It will also allow for these projects to be covered by the County's franchise agreements with utilities.
AMENDING THE WHATCOM COUNTY SIX-YEAR TRANSPORTATION IMPROVEMENT PROGRAM FOR THE YEARS 2014 THROUGH 2019

WHEREAS, pursuant to RCW 36.81.121, Whatcom County is required to prepare and adopt a Six-Year Transportation Improvement Program each year; and

WHEREAS, on September 10, 2013, the Six-Year Transportation Improvement Program (Six-Year TIP) for the years 2014 through 2019 was approved, Resolution 2013-029; and

WHEREAS, in accordance with Exhibit “C” of the October 27, 2011 Uplands Lease Agreement for Lummi Island Ferry Use at Gooseberry Point; and

WHEREAS, in order to allow for County committed funds to be used on mutually agreed transportation projects throughout the Lummi Nation Reservation it is necessary to amend the Six-Year TIP.

NOW, THEREFORE, BE IT RESOLVED by the Whatcom County Council that the 2014-2019 Six-Year Transportation Improvement Program be amended as follows:

- Project # 8: Amend title: “Gooseberry Point Pedestrian Project” to “Lummi Nation Transportation Projects”.
- Alter project limits by removing “1.77” under “Total Length” and leave blank.
NOW, THEREFORE, BE IT RESOLVED by the Whatcom County Council as follows:

1. That the Whatcom County Six-Year Transportation Improvement Program for the years 2014 through 2019, which is attached hereto as Exhibit “A”, be amended to include the amended title and limits of Project #8.

2. That the County Engineer is directed to file a copy of the same with the County Road Administration Board and the State Secretary of Transportation.

APPROVED this ___ day of ________, 2014.

ATTEST:

Dana Brown-Davis, Clerk of the Council

Carl Weimér, Council Chair

APPROVED AS TO FORM:

Dan Gibson, Chief Civil Deputy Prosecutor
Lummi Nation Transportation Projects
CRP #912017

Construction Funding Year(s): 2014

Project Narrative:
The Lummi Nation Transportation Projects is located in Section 2, T37N, R1E and Section 34, T38N, R1E. This work, in fulfillment of the ferry lease obligation, involves the construction of transportation improvement projects in accordance with Exhibit C of the October 27, 2011 Uplands Lease Agreement for Lummi Island Ferry Use at Gooseberry Point. This project is listed #8 on the 2014-2019 Six-Year Transportation Improvement Program.

Project Status:
Projects funds will be available for expenditure when funds of equal or greater value are matched by the Lummi Nation.

| Total Estimated Project Cost: | $4,000,000 |
| Expenditures to Date:         | $0         |

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## Project Identification

- **A. PIN/Federal Aid No.**
- **B. Bridge No.**
- **C. Project Title**
- **D. Street/Road Name or Number**
- **E. Beginning MP or Road - Ending MP or Road**
- **F. Describe Work to be Done**

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### Project Costs in Thousands of Dollars

- **Federal Funding**
- **State Cost by Phase**
- **Local Funds**
- **Total Funds**

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- **1st**
- **2nd**
- **3rd**
- **4th Thru 6th**
- **Total**

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**Report Date:** June 3, 2014

**Page 1**

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**Notes:**
- Birch Bay Lynden Road / Portal Way
  - Beginning MP or Road: 21580
  - Ending MP or Road: 30410
  - Status: S
  - Utility Costs: CGOPSTW
  - Project Phase: CN
  - Phase Start: 5/1/2014
  - Federal Funding: RAP
  - Total: 3120
  - Total: 3070

- Rural Road Safety Program
  - Status: S
  - Utility Costs: CGOPSTW
  - Project Phase: CN
  - Phase Start: 6/1/2014
  - Discretionary
  - Total: 450

- Birch Bay Drive & Pedestrian Facility
  - Status: P
  - Utility Costs: CPCWS
  - Project Phase: PE
  - Phase Start: 5/1/2016
  - Federal Funding: RAP
  - Total: 500

- Lake Whatcom Boulevard, Cable Street to Strawberry Point
  - Status: P
  - Utility Costs: CGOPSTW
  - Project Phase: PE
  - Phase Start: 5/1/2016
  - Federal Funding: RAP
  - Total: 5000

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**Supersedes previous editions:**

- v. 5.7
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<th>L. Federal Cost by Phase</th>
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**Six Year Transportation Improvement Program**

*From 2014 to 2019*

**Expenditure Schedule (Local Agency)**

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**Project Costs in Thousands of Dollars**

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<td>North Shore Road, Bellingham City Limits to Y Road</td>
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**Description of Work to be Done**

- Slater Road & Northwest Drive: Improvement
- Lummi View Drive Bank Stabilization: Slit repair
- North Shore Road, Bellingham City Limits to Y Road: Stormwater & spot improvements
- Lummi Nation Transportation Projects: Various locations on Reservation

**Report Date:** June 3, 2014
### Project Identification

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### Project Costs in Thousands of Dollars

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### Expenditure Schedule (Local Agency)

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### Notes

- Project location to be determined in 2013.
- Pavement rehabilitation.
- Install turn lanes at Imhof Road and Ferndale Road.
- Intersection improvements.

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**Report Date:** June 3, 2014  
**Page 3**

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### Six Year Transportation Improvement Program

**From 2014 to 2019**

#### Project Identification
- A. PIN/Federal Aid No.
- B. Bridge No.
- C. Project Title
- D. Street/Road Name or Number
- E. Beginning MP or Road - Ending MP or Road
- F. Describe Work to be Done

#### Project Costs in Thousands of Dollars

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**Report Date:** June 3, 2014

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### Six Year Transportation Improvement Program

**From 2014 to 2019**

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**Report Date:** June 3, 2014

v. 5.7 - Supersedes previous editions
### Washington State Department of Transportation

**Agency:** Whatcom County  
**Co. No.:** 37  
**Co. Name:** Whatcom Co.  
**City No.:** 0000  
**MPO/RTPO:** NONWCCG  

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**Six Year Transportation Improvement Program**

**From:** 2014  **to:** 2019

**Report Date:** June 3, 2014

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### Project Costs in Thousands of Dollars

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### Fund Source Information

- **Federal Funding**
- **State Funds**
- **Local Funds**

### Project Identification

- **A. PIN/Federal Aid No.**
- **B. Bridge No.**
- **C. Project Title**
- **D. Street/Road Name or Number**
- **A. PIN/Federal Aid No.**
- **B. Bridge No.**
- **C. Project Title**
- **D. Street/Road Name or Number**
- **A. PIN/Federal Aid No.**
- **B. Bridge No.**
- **C. Project Title**
- **D. Street/Road Name or Number**

### Utility Codes

- **CGP**
- **STW**
- **CPT**
- **PT**

### Functional Area

- **Case Priority Number**
- **A. PIN/Federal Aid No.**
- **B. Bridge No.**
- **C. Project Title**
- **D. Street/Road Name or Number**
- **A. PIN/Federal Aid No.**
- **B. Bridge No.**
- **C. Project Title**
- **D. Street/Road Name or Number**
- **A. PIN/Federal Aid No.**
- **B. Bridge No.**
- **C. Project Title**
- **D. Street/Road Name or Number**

### Status

- **03**
- **P**

### Total Length

- **0.55**

### Phase

- **PE**

### Costs

- **1/1/2019**

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**Report Date:** June 3, 2014

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v. 5.7 - Supersedes previous editions
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  - **State Fund Code:**
  - **State Funds:**
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  - **Total Funds:**

- **To Be Determined**

### Six Year Transportation Improvement Program

**From 2014 to 2019**

**Hearing Date:**

**Adoption Date:**

**Amend Date:**

**Resolution No.:**

**Report Date:** June 3, 2014
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Report Date: June 3, 2014
### Six Year Transportation Improvement Program

**From 2014 to 2019**

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#### Project Identification
- **A. PIN/Federal Aid No.**
- **B. Bridge No.**
- **C. Project Title**
- **D. Street/Road Name or Number**
- **E. Beginning MP or Road - Ending MP or Road**
- **F. Describe Work to be Done**

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- **Federal Funding**
- **State Funding**
- **Local Funding**
- **Total Funds**

#### Expenditure Schedule (Local Agency)

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- **Phase Code**
- **Federal Code**
- **State Code**
- **Local Code**
- **Total Code**

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- **Report Date:** June 3, 2014
- **Page:** 10

**Washington State Department of Transportation**

**Agency:** Whatcom County

**Co. No.:** 37  
**Co. Name:** Whatcom Co.

**City No.:** 0000  
**MPO/RTPO:** NON/WCCG

**Six Year Transportation Improvement Program**

**From 2014 to 2019**

**Hearing Date:**  
**Amend Date:**  
**Adoption Date:**  
**Resolution No.:**

**Supersedes previous editions**

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**253**
### Project Identification

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### Project Costs in Thousands of Dollars

- Federal Funding
- Federal Cost by Phase
- State Funding
- Local Funds
- Total Funds

#### Expenditure Schedule (Local Agency)

<table>
<thead>
<tr>
<th>Expenditure Schedule (Local Agency)</th>
<th>1st</th>
<th>2nd</th>
<th>3rd</th>
<th>4th</th>
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</table>

### Fund Source Information

- Federal Funding
- State Fund Code
- Local Funds
- Total Funds

#### Report Date:

June 3, 2014
### Six Year Transportation Improvement Program

**From 2014 to 2019**

**Agency:** Whatcom County  
**MPO/RTPO:** NON/WCCG

<table>
<thead>
<tr>
<th>Functional Class</th>
<th>Priority Number</th>
<th>Project Identification</th>
<th>Project Costs in Thousands of Dollars</th>
<th>Expenditure Schedule</th>
<th>Fund Source Information</th>
<th>Federally Funded Projects Only</th>
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<tbody>
<tr>
<td></td>
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<td>Project Phase</td>
<td>Federal Funding</td>
<td>Fund Source Information</td>
<td>Envr. Type</td>
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<td>B. Bridge No.</td>
<td>Phase Start</td>
<td>Federal Fund Code</td>
<td>Federal Cost by Phase</td>
<td>State Fund Code</td>
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<td></td>
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<td>C. Project Title</td>
<td>(mm/dd/yyyy)</td>
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<td></td>
<td>D. Street/Road Name or Number</td>
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<td></td>
<td>E. Beginning MP or Road - Ending MP or Road</td>
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</tr>
<tr>
<td></td>
<td></td>
<td>F. Describe Work to be Done</td>
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| 00               | 45              | Unanticipated Site Improvements | PE | 1/1/2014 | 1200 | 300 | 300 | 300 | 300 | 900 |
| 00               | 48              | Roadway Frost Depth Detectors | PE | 1/1/2014 | 100 | 100 | 50 | 50 |    |      |
| 00               | 47              | Stormwater Quality Improvements | PE | 1/1/2014 | 410 | 410 | 50 | 50 | 20 | 60 |
| 00               | 48              | Non-motorized Transportation Improvements | PE | 1/1/2014 | 600 | 600 | 100 | 100 | 100 | 300 |

| Report Date: June 3, 2014 | Page 12 | v. 5.7 - Supersedes previous editions |

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### Project Identification

<table>
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<tr>
<th>Functional Cost</th>
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<tr>
<td>00</td>
<td>49</td>
<td>Fish Passage Project: Various locations to:</td>
<td>P</td>
<td>13</td>
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<tr>
<td>00</td>
<td>50</td>
<td>Railroad Crossing Improvements: Various locations to:</td>
<td>S 07</td>
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<tr>
<td>00</td>
<td>51</td>
<td>Neighborhood Traffic Calming: Various locations to:</td>
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### Project Costs in Thousands of Dollars

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<tr>
<th>Project Phase</th>
<th>Phase Start (mm/dd/yyyy)</th>
<th>Federal Funding</th>
<th>State Funding</th>
<th>Local Funds</th>
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<td>Federal Cost by Phase</td>
<td>State Fund Code</td>
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### Expenditure Schedule (Local Agency)

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<thead>
<tr>
<th></th>
<th>1st</th>
<th>2nd</th>
<th>3rd</th>
<th>4th Through 6th</th>
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<tbody>
<tr>
<td></td>
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</tbody>
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### Grand Totals for Whatcom County

- 18,086
- 3,465
- 38,163
- 59,714
- 18,052
- 12267
- 16,046
- 13,350
### WHATCOM COUNTY COUNCIL AGENDA BILL

<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>
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<tr>
<td>Originator:</td>
<td>W</td>
<td>06/03/14</td>
<td></td>
<td>06/17/14</td>
<td>Introduction</td>
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<tr>
<td>Division Head:</td>
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<td></td>
<td></td>
<td>7/8/14</td>
<td>Hearing</td>
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<td>Dept. Head:</td>
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<td>Prosecutor:</td>
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<td>06/06/14</td>
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<tr>
<td>Purchasing/Budget:</td>
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<td>06/03/14</td>
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<td>4/9/14</td>
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**TITLE OF DOCUMENT:** Adopt a resolution to sell surplus property

**ATTACHMENTS:** Resolutions & list of property to be declared surplus

**SEPA review required?** ( ) YES (x) NO  
**SEPA review completed?** ( ) YES (x) NO  
**Should Clerk schedule a hearing?** (x) YES ( ) NO

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

The attached list of equipment has been determined to be surplus and available for disposal by public auction. The Council may find by resolution, following a public hearing that it is in the public interest to sell the property.

**COMMITTEE ACTION:**

6/17/2014: Introduced to Council 7-0, proposed public hearing on July 8, 2014

**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](http://www.co.whatcom.wa.us/council).
RESOLUTION NO. __________

A RESOLUTION AUTHORIZING
THE SALE OF WHATCOM COUNTY SURPLUS PROPERTY
PURSUANT TO WCC 1.10

WHEREAS, a public hearing was held on __________, 2014 to discuss the sale of Whatcom County property; and

WHEREAS, it was determined to be in the best interest of Whatcom County to sell the property listed in Exhibit "A" and such property shall be sold by public auction after July 2014, subsequent to compliance with the notice requirements of WCC 1.10.200: and

NOW THEREFORE BE IT RESOLVED that the property listed in Exhibit "A" be sold at public auction after July 2014 pursuant to the notice requirements of WCC 1.10.200.

APPROVED this ___________ day of _____________, 2014

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

______________________________
Carl Weimer, Council Chair

ATTEST:

______________________________
Dana Brown-Davis, Council Clerk

APPROVED AS TO FORM:

______________________________
Daniel L. Gibson
Civil Deputy Prosecuting Attorney
### PUBLIC WORKS – EQUIPMENT SERVICES

<table>
<thead>
<tr>
<th>UNIT</th>
<th>YEAR</th>
<th>MAKE</th>
<th>MODEL</th>
<th>DEPT</th>
<th>VIN #</th>
<th>EST MILES / HRS</th>
<th>COMMENTS</th>
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<td>045</td>
<td>1992</td>
<td>Dodge</td>
<td>Ram D150</td>
<td>PD&amp;S</td>
<td>1B7HE16Y3NS680754</td>
<td>134,199</td>
<td>Turned in by dept. for fleet reduction</td>
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<tr>
<td>101</td>
<td>1994</td>
<td>Chevrolet</td>
<td>S10 Ext Cab</td>
<td>ENGR</td>
<td>1GCCS19Z5R8239572</td>
<td>95,100</td>
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<td>108</td>
<td>1998</td>
<td>Ford</td>
<td>F150 1/2T 4X2</td>
<td>ENGR</td>
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<td>96,500</td>
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<td>1998</td>
<td>Ford</td>
<td>F150 1/2T 4X2</td>
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<td>Ford</td>
<td>Ranger S/C 4X4</td>
<td>FLOOD</td>
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<td>2003</td>
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<td>Chevrolet</td>
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<td>Ford</td>
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<td>Ram 150 1/2T</td>
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<td>67,003</td>
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<td>1996</td>
<td>Western Star</td>
<td>Dump Truck</td>
<td>M&amp;O</td>
<td>2WLPCCF6TK941637</td>
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<td>Western Star</td>
<td>Dump Truck</td>
<td>M&amp;O</td>
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<td>269</td>
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<td>Western Star</td>
<td>Dump Truck</td>
<td>M&amp;O</td>
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<td>New Holland</td>
<td>TS115A Tractor</td>
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<td>6,986</td>
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<td>2001</td>
<td>New Holland</td>
<td>TM115 Tractor (w/ 518 &amp; 525)</td>
<td>M&amp;O</td>
<td>176259B</td>
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<td>New Holland</td>
<td>TM115 Tractor (w/ 501)</td>
<td>M&amp;O</td>
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<td>New Holland</td>
<td>TS110 Tractor (w/ 539)</td>
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<td>Schwarze</td>
<td>Broom A7000/Sweeper</td>
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<td>Gradall</td>
<td>G3WD 4X2</td>
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<td>Zieman</td>
<td>Tilt Top Trailer</td>
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<td>22,946</td>
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<td>Bandit</td>
<td>HD1890 Chipper</td>
<td>M&amp;O</td>
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<td>501</td>
<td>1995</td>
<td>Bomford</td>
<td>1300TF Mower (on #333)</td>
<td>M&amp;O</td>
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<td>518</td>
<td>1990</td>
<td>Tiger</td>
<td>Rotary Mid-Mount Mower (on #332)</td>
<td>M&amp;O</td>
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<td>525</td>
<td>2000</td>
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<td>Rotary Mower</td>
<td>M&amp;O</td>
<td>1394L</td>
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<td>539</td>
<td>2003</td>
<td>US Mower</td>
<td>Rotary Mid-Mount Mower (on #339)</td>
<td>M&amp;O</td>
<td>0100417</td>
<td>N/A</td>
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### DESCRIPTION

- Miscellaneous broken and unusable tools, parts, and supplies
- Used & unsalvable bridge decks
- Miscellaneous inventory items (culvert, timbers, etc.)
- Miscellaneous mower items

### GENERAL FUND – SURPLUS EQUIPMENT

<table>
<thead>
<tr>
<th>UNIT</th>
<th>YEAR</th>
<th>MAKE</th>
<th>MODEL / DESCRIPTION</th>
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<td>0822</td>
<td>2010</td>
<td>Honda</td>
<td>Push Mower</td>
<td>Parks</td>
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<tr>
<td>6902</td>
<td>1999</td>
<td>Honda</td>
<td>Push Mower</td>
<td>Parks</td>
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<td>Already replaced</td>
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<td>6903</td>
<td>2010</td>
<td>Honda</td>
<td>Push Mower</td>
<td>Parks</td>
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<td>Already replaced</td>
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</tbody>
</table>

### DESCRIPTION

- Miscellaneous worn or broken office equipment & furniture
- Miscellaneous worn or broken computer components
TITLE OF DOCUMENT: Zoning amendment to allow Packinghouses and Slaughterhouses in the Agriculture (AG), Heavy Impact Industrial (HII), and Rural Industrial Manufacturing (RIM) zoning districts.

ATTACHMENTS:
1) Memo to Council
2) Proposed Ordinance
3) Exhibit A – Proposed Code Amendments
4) Attachment A – SEPA DNS Reaffirmation

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 ordinance would require all packinghouse and slaughterhouse applications in the Agriculture Zoning District to be processed as administrative approval uses (<2,000 sf) or conditional uses (2,000-7,000 sf). It would also allow packinghouses and slaughterhouses in Heavy Impact Industrial (HII) zones as permitted uses and packinghouses in the Rural Industrial Manufacturing (RIM) zone as an administrative approval use.

COMMITTEE ACTION:
6/17/2014: Approved and forwarded to the Council for introduction

COUNCIL ACTION:
6/17/2014: Introduced, proposed a public hearing for July 8

Related County Contract #: Related File Numbers: Ordinance or Resolution Number:
2012-300

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
FROM: Joshua Fleischmann, Planner
THROUGH: Mark Personius, Long Range Planning Manager
DATE: June 6, 2014
SUBJECT: PLN2014-00018 - Packinghouses

Based on comments received by petitioners and the public, and review by staff, and legal counsel and County Council Planning and Development Committee, minor changes to the previous agenda bill, ordinance, and Exhibit A were made for consistency, as well as the following changes:

- Packinghouses and Slaughterhouses are no longer proposed to be conditional uses within the Light Impact Industrial (LII) zone. References to the LII have been removed from the agenda bill summary statement, ordinance title and body, and Exhibit A.

- Included the Accessory Use permitting language (with strike outs) from the original ordinance approved in September 2013. This clarifies that the accessory use permitting language that was approved will be permanently removed from the zoning code. It was not clear that the interim language removing packinghouses as accessory uses was to be removed with the adoption of a final ordinance.

- By including the Administrative Approval Use permitting process for facilities less than 2,000 sf, limiting the Conditional Use permitting process for facilities between 2,000 and 7,000 sf, and requiring the facility be an accessory use as defined by WCC 20.97.005, the proposed amendment is more in line with the intent of the original application which was for small-scale slaughterhouses.

- Language identical to the proposed Agriculture zone criteria regarding holding pens and waste handling standards and permits has been included as criteria for packinghouses and slaughterhouses within the Heavy Impact Industrial (HII) and Rural and Industrial Manufacturing (RIM) zones.
• Amended the findings to include the Heavy Impact Industrial (HII) and Rural and Industrial Manufacturing (RIM) zones as zones where packinghouses and slaughterhouses would be allowed uses.

• Included language in the ordinance stating that upon the effective date of this ordinance, the interim ordinance shall no longer be effective.
ORDINANCE NO. 2014-
AMENDING WHATCOM COUNTY CODE TITLE 20 TO ALLOW
PACKINGHOUSES AND SLAUGHTERHOUSES IN THE AGRICULTURE (AG),
HEAVY IMPACT INDUSTRIAL (HII), AND RURAL AND INDUSTRIAL
MANUFACTURING (RIM) ZONING DISTRICTS.

WHEREAS, on September 10, 2013, the Whatcom County Council adopted
Ordinance No. 2013-051, entitled "Zoning Amendment to Allow Agricultural
Packinghouses in the Agriculture Zoning District"; and

WHEREAS, Whatcom County Planning and Development Services staff
originally proposed that all applications for packinghouses in the Agriculture Zoning
District be processed as conditional uses and a public hearing was held on staff's
proposed amendments before the Planning Commission; and

WHEREAS, the ensuing process before the Planning Commission and the
County Council leading up to the adoption of the final ordinance was lengthy,
involving numerous work sessions and public hearings, and was fraught with
controversy; and

WHEREAS, the Planning Commission recommended to the County Council
the adoption of an ordinance allowing applications for packinghouses with no more
than 20 employees, regardless of size, to be processed as permitted uses and
applications for packinghouses with more than 20 employees, regardless of size,
were to be processed as conditional uses; and

WHEREAS, the County Council ultimately adopted an ordinance allowing
applications for packinghouses no larger than 7,000 square feet to be processed as
permitted accessory uses and applications for packinghouses larger than 7,000
square feet, but less than 20,000 square feet, to be processed as conditional uses; and
WHEREAS, the County received many public comments during the adoption process expressing concerns about packinghouses and their potential threat to water quality and water quantity, as well as various other potential impacts they could have on neighboring uses. In addition, concerns were expressed about the potential loss of prime agricultural land and the impact of allowing such uses in critical areas and hazardous areas; and

WHEREAS, on November 13, 2013, Nicole Brown, Wendy Harris, and Tip Johnson filed a Petition for Review with the Growth Management Hearings Board challenging Ordinance No. 2013-051 on several grounds; and

WHEREAS, the adoption of a new ordinance could potentially resolve the appeal before the Growth Management Hearings Board, thereby saving the public resources necessary to maintain such litigation; and

WHEREAS, the proposed amendment has 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 interim zoning amendment; and

WHEREAS, the Whatcom County Planning Commission held a public hearing on the proposed amendment and considered all testimony; 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 held 3 work sessions in the Planning and Development Committee; and

WHEREAS, the Whatcom County Council held 2 public hearings on the proposed amendment and considered all testimony; and

WHEREAS, the Whatcom County Council hereby adopts the following
findings of fact and conclusions:

FINDINGS

1. The proposal is to amend the Agriculture (AG) and Heavy Impact Industrial (HII) zoning district portions of the Zoning Code, to allow for packinghouses and slaughterhouses, and the Rural and Industrial Manufacturing (RIM) zoning district to allow for packinghouses.

2. The proposal has been posted to the County website.

3. Notice of the subject amendment was submitted to the Washington State Department of Commerce on January 16, 2014.

4. Notice of the Planning Commission work session for the subject amendment was posted on the County’s website in February 2014.

5. In order to approve the zoning amendment, the County must find that it is consistent with the Growth Management Act. Additionally, the County must find that the zoning amendment is consistent with and implements the Whatcom County Comprehensive Plan.

6. The Growth Management Act includes a planning goal to “Encourage economic development throughout the state that is consistent with adopted comprehensive plans, promote economic opportunity for all citizens of this state, especially for unemployed and for disadvantaged persons, promote the retention and expansion of existing businesses and recruitment of new businesses, recognize regional differences impacting economic development opportunities, and encourage growth in areas experiencing insufficient economic growth, all within the capacities of the state’s natural resources, public services, and public facilities” (RCW 36.70A.020(5)).

This proposed zoning amendment would allow for new packinghouses and slaughterhouses within the agriculture and heavy impact industrial zoning districts, as well as packinghouses within the rural and industrial manufacturing district. Prior to the adoption of Ordinance No. 2013-051, new packinghouses and slaughterhouses were prohibited within the agriculture zoning district; and new packinghouses were prohibited within the rural and industrial manufacturing zoning district. Staff recognizes the
benefit to the agricultural industry this amendment would provide by allowing greater opportunities for farmers to get their product to the end user. The Growth Management Act allows for jurisdictions to implement innovative zoning techniques, which should be designed to conserve agricultural lands and encourage the agricultural economy. This proposed amendment would support planning goal RCW 36.70A.020(5) Economic Development.

7. The Growth Management Act also includes a planning goal 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” (RCW 36.70A.020(8)).

This proposed zoning amendment would allow for new packinghouses and slaughterhouses within the agriculture and heavy impact industrial zoning districts, as well as packinghouses within the rural and industrial manufacturing district. Staff recognizes the benefit to the agricultural industry this amendment would provide by allowing greater opportunities for farmers to get their product to the end user. This proposed amendment would support planning goal RCW 36.70A.020(8) Natural Resource Industries.

8. Consistent with RCW 36.70A.177, this amendment will allow packinghouses and slaughterhouses within the agricultural zone that will support the agricultural community by allowing production of value-added agricultural products and will not interfere with the overall agricultural use and character of the County’s designated agricultural lands of long-term commercial significance.


This proposed zoning amendment would allow for new packinghouses and slaughterhouses within the agriculture and heavy impact industrial zoning districts, as well as packinghouses within the rural and industrial manufacturing district. Presently, Keizer Meats of Lynden, which operates the only USDA approved facility north of King County that is open to the general public, has received conditional approval to operate a facility at the
location of their approved meat cutting and packing facility on Bob Hall Rd. Approval of this proposed amendment would allow other citizens within the agriculture, heavy impact industrial, and rural and industrial manufacturing zoning districts to provide slaughtering and value added services to Whatcom County farmers and allow greater opportunities for farmers to generate value-added products and get their product to the end user.

10. Policy 8B-2: Assist Whatcom County’s agricultural industry in the pursuit of its long-term economic potential. This should include the development of strategies and policies necessary to reach this potential, in terms of both production and diversity.

This proposed zoning amendment would allow for new uses not presently allowed in the agriculture, heavy impact industrial, and rural and industrial manufacturing zoning districts. Allowing this use may increase production and diversity of livestock by providing greater opportunities for livestock owners to get their product to the end user.

11. Policy 8B-4: Support methods and strategies to market Whatcom County agriculture in ways which ensure that agricultural activities (such as dairying) and entities (such as processors) will remain here in the long term.

Allowing new packinghouses and slaughterhouses within the agriculture and heavy impact industrial zoning districts, as well as packinghouses within the rural and industrial manufacturing district, would provide for additional marketing of Whatcom County livestock, as there is presently only one permitted USDA approved facility within any Whatcom County jurisdiction.

12. County-Wide Planning Policy I-5: The county and the cities should include an economic development element in their Comprehensive Plans. Economic development elements should be consistent with the CEDS. Economic development shall be coordinated with environmental concerns to protect the quality of life. Planning efforts should address economic sustainability. As part of the comprehensive planning process and through implementation of the comprehensive plan, the County shall develop and adopt goals, policies and regulations that protect resource land industries and support and encourage resource-based industries.
Approval of this proposed amendment would allow citizens within the agriculture, heavy impact industrial, and rural and industrial manufacturing zoning districts to provide slaughtering and value added services to Whatcom County farmers and allow greater opportunities for farmers to get their product to the end user. By approving the proposed amendment, comprehensive plan goals and policies and their related development regulations that support and encourage resource-based industries would be implemented.

13. County-Wide Planning Policy I-9: The County and the cities recognize the need for the protection and utilization of natural resources and resource lands including agricultural, mineral, forestry and fishing. As part of a broad based economy, productive timber, agriculture and fisheries industries should be supported in a sustainable manner.

Approval of this proposed amendment would allow citizens within the agriculture, heavy impact industrial, and rural and industrial manufacturing zoning districts to provide slaughtering and value added services to Whatcom County farmers and allow greater opportunities for farmers to get their product to the end user. Approval of this proposal would allow for an increase to the economic base for agricultural products related to livestock.

14. Packinghouses and slaughterhouses within the agriculture, heavy impact industrial, and rural and industrial manufacturing zones allow for a local, sustainable, humanely raised food supply for the citizens of Whatcom County.

15. Within the agriculture, heavy impact industrial, and rural and industrial manufacturing zoning districts, limiting holding pens to that necessary to accommodate animals intended for processing within 24 hours would prevent packinghouse and slaughterhouse holding pens from becoming feedlots, while allowing each facility the flexibility to adjust their business accordingly.

16. The proposed amendment has changed from the initial staff proposal that was reviewed through the State Environmental Policy Act (SEPA). However, review by the SEPA official and documentation of proposed and existing Whatcom County Code provisions indicates that this non-project level proposal is not likely to generate significant adverse environmental impacts,
therefore, the previously issued SEPA Threshold Determination of Determination of Nonsignificance (DNS) is still applicable.

17. The Rural Industrial Manufacturing (RIM) zone is the only zone presently in Whatcom County that specifically provides a permitting pathway to allow for slaughtering facilities. Applicability of land within the RIM zone to a new slaughterhouse is presently limited to the I-5 Rural Business RIM zone.

18. According to the 2007 USDA Census of Agriculture, Whatcom County has 95,500 cattle and calves.

19. Keizer Meats, the only USDA approved slaughtering facility in Whatcom County, is limited to slaughtering 2,000 animals per year through their Conditional Use Permit.

20. Both nationwide and locally, the percentage of livestock operations selling product directly to consumers or retailers is much smaller than that of other agricultural products (US Department of Agriculture. *Slaughter and Processing Options and Issues for Locally Sourced Meat*. USDA Economic Research Service. 2012).


22. The number of slaughter plants has decreased in recent years, both nationwide and locally (US Department of Agriculture. *Slaughter and Processing Options and Issues for Locally Sourced Meat*. USDA Economic Research Service. 2012).


24. Lack of nearby slaughter facilities can create logistical impediments to animal slaughter, particularly in being able to transport animals/meat to and from

25. Nationwide given the mismatch between smaller producers and larger plants, many individual producers marketing their meat via niche marketing arrangements must rely on smaller facilities, wherever they are located. Small producers may prefer to use a smaller slaughter and processing facility because a smaller plant is likely to be more flexible in satisfying the producer’s individual processing requests (US Department of Agriculture. *Slaughter and Processing Options and Issues for Locally Sourced Meat.* USDA Economic Research Service. 2012).

26. Nationwide sales of food sold via direct-to-consumer marketing have more than doubled over the last decade (USDA/NASS, 2007 Census of Agriculture). However, direct-to-consumer and intermediated sales of livestock products have not grown as rapidly as other food categories, despite apparent demand. Local producers continue to perceive a lack of local slaughter capacity as a hindrance in trying to meet growing demand (US Department of Agriculture. *Slaughter and Processing Options and Issues for Locally Sourced Meat.* USDA Economic Research Service. 2012).

27. Currently, the vast majority of livestock and poultry slaughter in the United States is done in a relatively small number of very large facilities (US Department of Agriculture. *Slaughter and Processing Options and Issues for Locally Sourced Meat.* USDA Economic Research Service. 2012).

28. New methods for animal slaughter and processing geared toward local markets, for example, mobile slaughter units (MSUs), can help meet some of the need for increased slaughter capacity in localized areas and enable the growth of small livestock producers marketing products to consumers in their region or community (US Department of Agriculture. *Slaughter and Processing Options and Issues for Locally Sourced Meat.* USDA Economic Research Service. 2012).

29. As part of the review process for the proposed amendments, Planning and Development Services has read numerous background documents including, but not limited to:


**CONCLUSIONS**

1. The proposed amendments are consistent with the Whatcom County Comprehensive Plan.
2. The proposed amendments serve the public interest by supporting the local agricultural industry.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that the Whatcom County Zoning Code is hereby amended as shown in Exhibit A.

BE IT FURTHER ORDAINED that upon the effective date of this ordinance, the interim ordinance as adopted by ORD2014-008 shall no longer be effective.

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 ________, 2014.

ATTEST:

Dana Brown-Davis, Clerk of the Council

Carl Weimer, Council Chair

APPROVED AS TO FORM:

Karen N. Frakes
Civil Deputy Prosecutor

Jack Louws, County Executive

( ) Approved  ( ) Denied

Date Signed: ________________
EXHIBIT A

Chapter 20.40 AGRICULTURE (AG) DISTRICT
20.40.100 Accessory Uses

114 Packinghouses, which shall be located, designed, and operated so as to not interfere with the overall agricultural character of the area, provided the following criteria are met:

1. The total allowable building area is no larger than 7,000 square feet.
2. The facility processes at least 75 percent agricultural goods produced in Whatcom, Skagit and/or Island County and that originate from uses permitted in WCC 20.40.051.
3. Holding pens associated with packinghouses shall be limited to that necessary to accommodate animals intended for processing within 24 hours.
4. For purposes of public notice, the applicant shall submit stamped envelopes with typed addresses for each property owner within 1,000 feet of the external boundaries of the subject property as shown by the records of the county assessor. A notice shall be mailed by Planning and Development Services explaining that an application is being processed for a packinghouse on the subject property as an allowed accessory use and that the notice is being provided as a courtesy only. A copy of WCC 20.40.114 shall be provided with the notice.
5. The facility will be serviced adequately by necessary facilities such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and wastewater treatment.
6. The facility shall comply with solid waste handling standards as set forth in WAC 173–350, as administered by the Whatcom County Health Department as adopted by reference in WCC 24.06.
7. An approved state waste discharge permit from the Washington State Department of Ecology with adequate storage, where required, that complies with WAC 173–216, WAC 173–226 industrial stormwater permit (general permits), and/or an NPDES Permit (RCW 90.48 and WAC 173–220), if required by the Washington State Department of Ecology.
8. The facility will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public streets.
9. The building shall avoid prime agricultural soils to the extent feasible. Where the site is predominantly in prime soils and avoidance is not feasible, the applicant shall demonstrate that the buildings:
   a. Are sized to be as small as feasible; and
   b. Located to maximize the agricultural use of the remaining area; and
Achieve the most suitable locations in terms of minimizing roads, impervious surfaces, and allowing for water availability and septic suitability.

(10) The packinghouse, as identified in WCC 20.97.282.1, shall emit no noxious emissions that are detectable, at or beyond the property line for the use concerned, in such a concentration or of such duration as to cause a public nuisance, or threaten health or safety, or to unreasonably infringe upon the use of adjacent property.

20.40.130 Administrative Approval Uses

Packinghouses, as identified in WCC 20.97.282.1, and slaughterhouses, as identified in WCC 20.97.423.1, which shall be located, designed, and operated so as to not interfere with the overall agricultural character of the area, provided the following criteria are met:

(1) "Administrative approval use" approval criteria located in WCC 20.84.235(3) shall be satisfied.

(2) The facility is an accessory use, as identified in WCC 20.97.005 "Accessory Use”

(3) The total allowable building area is no larger than 2,000 square feet.

(4) Holding pens associated with packinghouses and slaughterhouses shall be limited to that necessary to accommodate animals intended for processing within 24 hours.

(5) The facility shall comply with solid waste handling standards as set forth in WAC 173-350, as administered by the Whatcom County Health Department as adopted by reference in WCC 24.06

(6) If required by the Washington State Department of Ecology, the following permits shall be obtained:
   a. State waste discharge permit (WAC 173-216)
   b. Industrial stormwater permit – general permit (WAC 173-226)
   c. An NPDES Permit (RCW 90.48 and WAC 173-220)

(7) The building shall avoid prime agricultural soils to the extent feasible. Where the site is predominantly in prime soils and avoidance is not feasible, the applicant shall demonstrate that the buildings:
   a. Are sized to be as small as feasible; and
   b. Located to maximize the agricultural use of the remaining area; and
   c. Achieve the most suitable locations in terms of minimizing roads, impervious surfaces, and allowing for water availability and septic suitability.

(8) The packinghouse or slaughterhouse shall emit no noxious emissions that are detectable, at or beyond the property line for the use concerned, in such a concentration or of such duration as to cause a public nuisance, or threaten health or safety, or to unreasonably infringe upon the use of
adjacent property.

(9) Packinghouses and slaughterhouses, approved under WCC 20.40.139 within the Agricultural (AG) District) shall not be located in Critical Aquifer Recharge Areas of a High Susceptibility, as identified by the Critical Areas Ordinance map, or Frequently Flooded Areas, as identified and regulated by Whatcom County Public Works River and Flood Division through WCC Title 17.

20.40.150 Conditional Uses

.164 Packinghouses, as identified in WCC 20.97.282.1, and slaughterhouses as identified in WCC 20.97.423.1, which shall be located, designed, and operated so as to not interfere with the overall agricultural character of the area, provided the following criteria are met:

(1) “Conditional use” approval criteria located in WCC 20.84.220 shall be satisfied.

(2) The total allowable building area is larger than 27,000 square feet and no larger than 720,000 square feet.

(3) The facility is an accessory use, as identified in WCC 20.97.005 “Accessory Use”

(4) The facility processes at least 75 percent agricultural goods produced in Whatcom, Skagit and/or Island County and that originate from uses permitted in WCC 20.40.051.

(5) Holding pens associated with packinghouses and slaughterhouses shall be limited to that necessary to accommodate animals intended for processing within 24 hours.

(6) The facility will be serviced adequately by necessary facilities such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and wastewater treatment.

(7) The facility shall comply with solid waste handling standards as set forth in WAC 173-350, as administered by the Whatcom County Health Department as adopted by reference in WCC 24.06

(8) An approved state waste discharge permit from the Washington State Department of Ecology with adequate storage, where required, that complies with WAC 173-216, WAC 173-226 industrial stormwater permit (general permits), and/or an NPDES Permit (RCW 90.48 and WAC 173-220); if required by the Washington State Department of Ecology, the following permits shall be obtained:

    a. State waste discharge permit (WAC 173-216)
    b. Industrial stormwater permit – general permit (WAC 173-226)
    c. An NPDES Permit (RCW 90.48 and WAC 173-220)
The facility will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public streets.

The building shall avoid prime agricultural soils to the extent feasible. Where the site is predominantly in prime soils and avoidance is not feasible, the applicant shall demonstrate that the buildings:

a. Are sized to be as small as feasible; and
b. Located to maximize the agricultural use of the remaining area; and
c. Achieve the most suitable locations in terms of minimizing roads, impervious surfaces, and allowing for water availability and septic suitability.

The packinghouse, as identified in WCC 20.97.282.1, or slaughterhouse shall emit no noxious emissions that are detectable, at or beyond the property line for the use concerned, in such a concentration or of such duration as to cause a public nuisance, or threaten health or safety, or to unreasonably infringe upon the use of adjacent property.

Packinghouses and slaughterhouses approved under WCC 20.40.165 within the Agricultural (AG) District shall not be located in Critical Aquifer Recharge Areas of a High Susceptibility, as identified by the Critical Areas Ordinance map, or Frequently Flooded Areas, as identified and regulated by Whatcom County Public Works River and Flood Division through WCC Title 17.

Chapter 20.68 Heavy Impact Industrial (HII)
20.68.050 Permitted Uses
.051 The manufacture and processing of food including meat (including packinghouses and slaughterhouses), dairy, fruits, vegetables, seafood, grain mill, large scale bakery, sugar and beverage products, provided the following criteria are met:

(1) Holding pens associated with packinghouses and slaughterhouses shall be limited to that necessary to accommodate animals intended for processing within 24 hours.

(2) The facility shall comply with the solid waste handling standards as set forth in WAC 173-350, as administered by the Whatcom County health Department as adopted by reference in WCC 24.06.

(3) If required by the Washington State Department of Ecology, the following permits shall be obtained:
   a. State waste discharge permit (WAC 173-216);
   b. Industrial stormwater permit – general permit (WAC 173-226);
   c. An NPDES permit (RCW 90.48 and WAC 173-220).

Chapter 20.69 Rural Industrial Manufacturing (RIM)
20.69.130 Administrative approval uses
20.69.131 Packinghouses and Slaughterhouses, provided the following criteria are met:

1) Holding pens associated with packinghouses and slaughterhouses shall be limited to that necessary to accommodate animals intended for processing within 24 hours.

2) The facility shall comply with the solid waste handling standards as set forth in WAC 173-350, as administered by the Whatcom County health Department as adopted by reference in WCC 24.06.

3) If required by the Washington State Department of Ecology, the following permits shall be obtained:
   a. State waste discharge permit (WAC 173-216);
   b. Industrial stormwater permit – general permit (WAC 173-226);
   c. An NPDES permit (RCW 90.48 and WAC 173-220).

Chapter 20.80 Supplementary Requirements
20.80.200 Setback requirements
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, packinghouses and slaughterhouses, 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) The minimum separation between packinghouses/slaughterhouses and schools shall be 500 feet.

4) The minimum separation between packinghouses/slaughterhouses and adjacent property lines shall be 150 feet.

20.97.282.1 Packinghouse
“Packinghouse” means a plant that both slaughters animals and subsequently processes carcasses into fresh, cured, smoked, canned or other prepared meat products. Rendering and importation of animal by-products is strictly prohibited in packinghouses. Packinghouses shall not slaughter poultry. Packinghouses exclude temporary, mobile or other on-farm, owner-raised poultry slaughtering operations regulated under WAC 16-170 and/or RCW 69.07 that do not require USDA inspection. Agricultural producers who raise poultry may slaughter up to one thousand (1,000) poultry raised on their own farm annually subject to the special poultry permit requirements of WAC 16-170. Agricultural producers who process between one thousand (1,000) and twenty thousand (20,000) poultry a year on their farm are subject to the food processor license requirements of RCW 69.07.

20.97.310 Poultry
“Poultry” means products derived from the slaughter and processing of broilers, other young chickens, mature chickens, hens, turkeys, capons, geese, ducks, small game fowl such as quail or pheasants, and small game such as rabbits.

20.97.343 Rendering
“Rendering” means the process or business of producing tallow, grease, and high-protein meat and bone meal from animal by-products.

20.97.343.1 Rendering Plant
“Rendering plant” means a plant that processes animal by-product materials for the production of tallow, grease, and high-protein meat and bone meal.

20.97.423.1 Slaughterhouse
“Slaughterhouse” means a facility that slaughters animals and has as its main product fresh meat as whole, half or quarter carcasses or small meat cuts. Rendering and importation of animal by-products is strictly prohibited in slaughterhouses. Slaughterhouses shall not slaughter poultry. Slaughterhouses exclude temporary, mobile or other on-farm, owner-raised poultry slaughtering operations regulated under WAC 16-170 and/or RCW 69.07 that do not require USDA inspection. Agricultural producers who raise poultry may slaughter up to one thousand (1,000) poultry raised on their own farm annually subject to the special poultry permit requirements of WAC 16-170. Agricultural producers who process between one thousand (1,000) and twenty thousand (20,000) poultry a year on their farm are subject to the food processor license requirements of RCW 69.07.

20.97.424 Slaughtering
“Slaughtering” means the killing and processing of animals for human consumption.
Attachment A
Memorandum

TO: Joshua Fleischmann
FROM: Tyler Schroeder
DATE: June 6, 2014
SUBJECT: PLN2014-00018 – Packinghouses SEPA Review

A SEPA threshold determination of Determination of Nonsignificance was originally issued for PLN2012-00008 Small Scale Slaughterhouses based on the following project description:

Proposal to amend the agriculture zoning district to allow small scale slaughterhouses as a conditional use.

The revisions made as part of the proposed ordinance (PLN2014-00018) have been reviewed with the scope of original determination in mind. However, this has not been documented in the record. Thus, SEPA documentation for PLN2014-00018 has been reviewed to ensure that the proposed changes to the AG, HII and RIM have been taken into account.

Under the proposed ordinance, project specific SEPA review will be subsequently conducted in the following manner:

- **Heavy Impact Industrial (HII)** – Packinghouses and Slaughterhouses will be processed as Permitted Uses. Project specific SEPA review will be required if the proposed building exceeds the threshold exemption size of 12,000 sf for industrial uses as identified in WCC 16.08.070.3.

- **Agriculture (AG)** – Packinghouses and Slaughterhouses will be processed as either an Administrative Approval Use or a Conditional Use. Project specific SEPA review will not be required, and the threshold exemption size of 12,000 sf for industrial uses as identified in WAC 197-11-800(1)(b)(4) will not be exceeded (Note: WAC 197-11-800(1)(b)(3) indicates that the agriculture building exemption is “to be used only by the property owner or his or her agent in the conduct of farming the property”). Within the AG zone, packinghouses and slaughterhouses are limited to 7,000 sf, with
conditions in proposed WCC 20.40.139 and .164, to specifically mitigate potential environmental impacts.

- **Rural Industrial Manufacturing (RIM)** – Packinghouses and Slaughterhouses will be processed as Administrative Approval Uses. Within the Rural Business designated RIM zones, new nonresidential uses are subject to a maximum building size of 7,000 sf, per WCC 20.69.302. Project specific SEPA review will not be required, as the threshold exemption size of 12,000 sf for industrial uses as identified in WAC 197-11-800(1)(b)(4) will not be exceeded. However, all other county development regulations including the performance standards in WCC 20.69 specifically designed to mitigate potential environmental impacts must be met.

Additionally, Packinghouses and Slaughterhouses in any zone would be required to meet State and Federal requirements such as water availability, wastewater, air pollution, and labor laws, among others. Further, approval criteria for Administrative Approval Uses and Conditional Uses, as well as specific criteria within the AG, RIM, and HII zones, would be required, as applicable.

Thus, the changes to this non-project action, coupled with the zoning limitations and conditions and/or Project Specific SEPA requirements (where applicable), are not substantive enough to require a revised SEPA threshold determination. However, it should be noted that the present proposal moving through the legislative process has been modified from the original proposal at the time of SEPA review.

Please place this memo in the official file to be included as part of the record.
### TITLE OF DOCUMENT: Reappointments to the Northwest Senior Services Board

### ATTACHMENTS: NWRC Executive Director correspondence recommending the re-appointment of Jana Finkbonner.

### 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 requests confirmation of his reappointment of Jana Finkbonner to the Northwest Senior Services Board.

### 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).
June 4, 2014

Jack Louws, Whatcom County Executive  
Whatcom County Courthouse  
311 Grand Avenue  
Bellingham, WA 98225

Dear Jack,

The term of Jana Finkbonner of the Northwest Senior Services Board ends on June 30 of this year. Ms. Finkbonner has expressed a desire to be reappointed to a new three-year term beginning July 1, 2014 and ending June 30, 2017.

Ms. Finkbonner has provided exemplary service to the board.

If reappointed, the term will run from July 1, 2014 through June 30, 2017.

Should Ms. Finkbonner be reappointed, Whatcom County will have four remaining slots vacant. We will work with Suzanne Mildner of your office in recruiting candidates for your consideration.

If I can be of further assistance, please do not hesitate to contact me.

Thank you.

Sincerely,

Dan Murphy  
Executive Director

cc: Suzanne Mildner, Jana Finkbonner
<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>NDC</td>
<td>6/25/14</td>
<td></td>
<td>07/08/14</td>
<td>Intro</td>
</tr>
<tr>
<td>Division Head:</td>
<td></td>
<td></td>
<td></td>
<td>07/22/14</td>
<td>Finance</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Committee;</td>
<td>Council</td>
</tr>
<tr>
<td>Dept. Head:</td>
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</tr>
<tr>
<td>Prosecutor:</td>
<td>KMF</td>
<td>6/26/14</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Purchasing/Budget:</td>
<td>NDC</td>
<td>6/25/14</td>
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<td></td>
<td></td>
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<tr>
<td>Executive:</td>
<td></td>
<td>6/30/14</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**TITLE OF DOCUMENT:** 2014 Supplemental Budget Request #13

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

<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.)

Supplemental #13 requests funding from the General Fund:

1. To appropriate $15,201 in the Sheriff’s Office to fund ballistic armor plates from grant proceeds.
2. To appropriate $2,000 in the Sheriff’s Office to fund marijuana eradication operations from grant proceeds.
3. To appropriate $589,943 in Health to fund enhanced and expanded Behavioral Health Services.
4. To appropriate $33,062 in Health to fund Mental Health Court staff position.
5. To appropriate $10,000 to fund transfer for Courtroom minor remodeling.
6. To appropriate $10,000 in Facilities to fund minor remodeling in Superior Courtroom Dept. 2.
7. To re-appropriate $130,000 in Information Technology for pictometry project.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

| Related County Contract #: | Related File Numbers: | Ordinance or Resolution Number: |
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 2014 budget included therein:

<table>
<thead>
<tr>
<th>Fund</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>17,201</td>
<td>(17,201)</td>
<td>-</td>
</tr>
<tr>
<td>Total General Fund</td>
<td>17,201</td>
<td>(17,201)</td>
<td>-</td>
</tr>
<tr>
<td>Mental Health / Chemical Dependency Fund</td>
<td>623,005</td>
<td>-</td>
<td>623,005</td>
</tr>
<tr>
<td>Trial Court Improvement Fund</td>
<td>10,000</td>
<td>-</td>
<td>10,000</td>
</tr>
<tr>
<td>Administrative Services Fund</td>
<td>140,000</td>
<td>(65,500)</td>
<td>74,500</td>
</tr>
<tr>
<td>Total Supplemental</td>
<td>790,206</td>
<td>(82,701)</td>
<td>707,505</td>
</tr>
</tbody>
</table>

In addition, Exhibit B to the 2013-2014 Budget Ordinance entitled “Authorized Positions” should be amended to provide for the following FTE change:

- Add 1 FTE Mental Health Court Program Manager in Health

ADOPTED this day of , 2014.

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Council Clerk

Carl Weimer, Chair of the Council

APPROVED AS TO FORM:

Civil Deputy Prosecutor

( ) Approved         ( ) Denied

Jack Louws, County Executive

Date: ___________________
### WHATCOM COUNTY

**Summary of the 2014 Supplemental Budget Ordinance No. 13**

<table>
<thead>
<tr>
<th>Department/Fund</th>
<th>Description</th>
<th>Increased (Decreased) Expenditure</th>
<th>(Increased) Decreased Revenue</th>
<th>Net Effect to Fund Balance (Increase) Decrease</th>
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<tbody>
<tr>
<td><strong>General Fund</strong></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sheriff</td>
<td>To fund ballistic armor plates from grant proceeds</td>
<td>15,201</td>
<td>(15,201)</td>
<td>-</td>
</tr>
<tr>
<td>Sheriff</td>
<td>To fund marijuana eradication operations from grant proceeds</td>
<td>2,000</td>
<td>(2,000)</td>
<td>-</td>
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<tr>
<td><strong>Total General Fund</strong></td>
<td></td>
<td>17,201</td>
<td>(17,201)</td>
<td>-</td>
</tr>
<tr>
<td><strong>Mental Health / Chemical Dependency Fund</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Health</td>
<td>To fund enhanced and expanded Behavioral Health Services</td>
<td>589,943</td>
<td>-</td>
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<tr>
<td>Health</td>
<td>To fund Mental Health Court staff position</td>
<td>33,062</td>
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<tr>
<td><strong>Total Mental Health / Chemical Dependency Fund</strong></td>
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<td></td>
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<tr>
<td></td>
<td></td>
<td>623,005</td>
<td>-</td>
<td>623,005</td>
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<tr>
<td><strong>Trial Court Improvement Fund</strong></td>
<td>To fund transfer for Courtroom minor remodeling</td>
<td>10,000</td>
<td>-</td>
<td>10,000</td>
</tr>
<tr>
<td><strong>Administrative Services Fund</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Facilities</td>
<td>To fund minor remodeling in Superior Courtroom Dept 2</td>
<td>10,000</td>
<td>(10,000)</td>
<td>-</td>
</tr>
<tr>
<td>Information Technology</td>
<td>To re-appropriate funding for pictometry project</td>
<td>130,000</td>
<td>(55,500)</td>
<td>74,500</td>
</tr>
<tr>
<td><strong>Total Administrative Services Fund</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>140,000</td>
<td>(65,500)</td>
<td>74,500</td>
</tr>
<tr>
<td><strong>Total Supplemental</strong></td>
<td></td>
<td>790,206</td>
<td>(82,701)</td>
<td>707,505</td>
</tr>
</tbody>
</table>
The attached Supplemental Budget requests budget authority to use funds from the City of Bellingham 2014 Edward Byrne Memorial Justice Assistance Grant (JAG) to purchase enhanced ballistic protection plates for Sheriff’s Office Special Response Team.

Background and Purpose
The continued trend of violent attacks on innocent citizens at schools and public venues around the country reaffirms that law enforcement personnel must be prepared and equipped to deal with armed suspects in order to effectively mitigate threats to the public. It is essential that the Whatcom County Sheriff’s Office Special Response Team (SRT) members have sufficient ballistic resistant armor plates to protect them from advanced weapons including high caliber rifles.

The City of Bellingham will administer 2014 Edward Byrne Memorial Justice Assistant Grant and provide the Sheriff’s Office with $15,201 to upgrade current ballistic protection plates and purchase enhanced ballistic protection plates in an effort to improve officer safety.

Funding Amount and Source
Funding of $15,201 will be provided by the City of Bellingham 2014 Edward Byrne Memorial Justice Assistance Grant (JAG) Program Funds, CFDA No. 16.738.

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

Thank you.
Supplemental Budget Request

Status: Pending

Sheriff Administration

Supp'ID # 1874 Fund 1 Cost Center 1003514004 Originator: Dawn Pierce

Expenditure Type: One-Time Year 2 2014 Add'l FTE □ Add'l Space □ Priority 1

Name of Request: SO Grant COB 2014 JAG - Ballistic Armor Plates

Department Head Signature (Required on Hard Copy Submission) 6/9/14

Costs:

<table>
<thead>
<tr>
<th>Object</th>
<th>Amount Requested</th>
</tr>
</thead>
<tbody>
<tr>
<td>4333.1673</td>
<td>Byrne JAG Grant</td>
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<tr>
<td>6320.001</td>
<td>Office &amp; Op Supplies</td>
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<tr>
<td>Request Total</td>
<td>$15,201</td>
</tr>
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</table>

1a. Description of request:
The continued trend of violent attacks on innocent citizens at schools and public venues around the country reaffirms that law enforcement personnel must be prepared and equipped to deal with armed suspects in order to effectively mitigate threats to the public. It is essential that the Whatcom County Sheriff’s Office Special Response Team (SRT) members have sufficient ballistic resistant armor plates to protect them from advanced weapons including high caliber rifles.

The Sheriff’s Office will use grant funds to upgrade the current ballistic plates and purchase enhanced ballistic plates in an effort to improve officer safety.

1b. Primary customers:
Whatcom County Sheriff’s Office SRT members.

2. Problem to be solved:
The Sheriff’s Office requires budget authority to purchase body armor with 2014 Edward Byrne Memorial Justice Assistance Grant (JAG) Program Funds.

3a. Options / Advantages:
The Sheriff’s Office will use grant funds rather than local funds to purchase ballistic protection plates.

3b. Cost savings:
Cost savings of $15,201

4a. Outcomes:
Enhanced ballistic protection plates will be purchased.

4b. Measures:

5a. Other Departments/Agencies:
The City of Bellingham will administer the grant and provide $15,201 to Whatcom County Sheriff’s Office to purchase body armor.

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

6. Funding Source:
$15,201 from City of Bellingham 2014 Edward Byrne Memorial Justice Assistance Grant Program Funds, CFDA No. 16.738.
TO: Jack Louws, County Executive
FROM: Sheriff Bill Elfo
DATE: June 18, 2014
SUBJECT: Supplemental Budget ID# 1876

The attached Supplemental Budget requests revenue and expenditure budget authority for Washington State Patrol Marijuana Eradication Grant 2014.

Background and Purpose
The Washington State Patrol awarded $2,000 to Whatcom County Sheriff’s Office for marijuana eradication in 2014. Funds will be used to purchase operating supplies and small tools and equipment needed by the Northwest Regional Gang and Drug Task Force for use in marijuana eradication operations.

Funding Amount and Source
$2,000 Federal Domestic Cannabis Eradication/Suppression Grant (CFDA No. 16.000) from Washington State Patrol.

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

Thank you.
Supplemental Budget Request

Status: Pending

Sheriff Administration

Supp'l ID # 1878 Fund 1 Cost Center 1003513005 Originator: Dawn Pierce

Expenditure Type: One-Time Year 2 2014 Add'l FTE Add'l Space Priority 1

Name of Request: WSP Marijuana Eradication Grant 2014

<table>
<thead>
<tr>
<th>Costs:</th>
<th>Object</th>
<th>Object Description</th>
<th>Amount Requested</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>4333.1603</td>
<td>Marijuana Eradication</td>
<td>($2,000)</td>
</tr>
<tr>
<td></td>
<td>6320</td>
<td>Office &amp; Op Supplies</td>
<td>$1,000</td>
</tr>
<tr>
<td></td>
<td>6510</td>
<td>Tools &amp; Equip</td>
<td>$1,000</td>
</tr>
<tr>
<td>Request Total</td>
<td></td>
<td></td>
<td>$0</td>
</tr>
</tbody>
</table>

1a. Description of request:
Federal funds support annual activities associated with locating and eradicating illicit cannabis plants. The allocation for 2014 will be used to purchase operating supplies and small tools and equipment needed by the Northwest Regional Gang and Drug Task Force for use in marijuana eradication operations.

1b. Primary customers:
Members of the Northwest Regional Gang and Drug Task Force and citizens of Whatcom County.

2. Problem to be solved:
There is evidence that trafficking in controlled substances exists and that such illegal activity has a substantial and detrimental effect on the health and general welfare of the people of the State of Washington. The Washington State Patrol (WSP) provides funding to law enforcement agencies to support the locating and eradication of illicit production of marijuana. Detection, deterrence, and eradication activities support the goals and objectives of the Justice Assistance Grant (JAG) funded Northwest Regional Gang and Drug Task Force and are part of our multi-faceted strategy for combating gang-drug criminal activity in Whatcom County.

3a. Options / Advantages:
Grant funds will pay for supplies and equipment that would otherwise have to be purchased with local dollars or not purchased at all.

3b. Cost savings:
$2,000.00

4a. Outcomes:
Items needed will be purchased by September 30, 2014.

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:
Funding from the Washington State Patrol. These funds originate from the Federal Domestic Cannabis Eradication/Suppression Grant, CFDA No. 16.000.
Memorandum

TO: Jack Louws, Executive
FROM: Regina Delahunt, Director
DATE: June 23, 2014
RE: Supplemental Budget Request – Behavioral Health Fund

Two supplemental budget requests are attached for your consideration. One establishes the Mental Health Court, and the second increases the authorization for behavioral health contract services. A portion of the funding for these supplemental budgets is from available revenues within the Behavioral Health Fund, with the remainder from available accumulated fund balance in that fund. As of the beginning of 2014 a $5.4 million fund balance has built up since the fund was established in 2009. Of that total $3 million is in reserve for construction purposes (the triage center) and the remainder is available to fund services in the community. The attached spreadsheet shows the long-term plan for this fund. This plan assumes that this year the program will reach full implementation and over the next few years we will work to maintain a sustainable program.

Mental Health Court: The design of the Mental Health Court has been under development since early in 2013. The program will consist of a Mental Health Court Program Manager as a Health Department employee. The manager will oversee the ongoing operations of the mental health court, will coordinate to work of court team members, provide direct service to court participants, and will ensure the integrity and quality of the program. This request is for a new full time position and necessary office equipment and training costs.

Behavioral Health Contract Services: This request for funding is to continue implementation of the strategic plan developed by the Health Department and supported by the Behavioral Health Revenue Advisory Committee (BHRAC). The BHRAC provides oversight and guidance of the expenditures of the Chemical Dependency/Mental Health Program Fund. The BHRAC recommended an increase in programs and services to the previously designed PITA (Prevention, Intervention, Treatment, and Aftercare) Continuum of Care using fund balance that has accumulated during the early years of this revenue source. The Committee strongly recommended that these new services begin this year. Some of these new services reflect a shift in funding from other funds or programs. Housing fund revenues have decreased in recent months, yet the need to continue to support two of our housing programs that serve those with mental health issues remains critical. Therefore, behavioral health funds are replacing some of the housing funds no longer available for these programs. The state statute allows for these behavioral health funds to support housing programs for people living with mental illness and/or substance use disorders. The other funding shift increases local behavioral health funding to the Jail Behavioral Health program. The North Sound Mental Health Administration (NSMHA) reduced their portion of state funding to us for this program because the state legislature decreased their funding for the service. As a result, our local funds will backfill this loss and allow the County to maintain the current jail staffing model.

Please let me know if you have any additional questions.
**Supplemental Budget Request**

**Health Human Services**

**Fund** 124  **Cost Center** 124100  **Originator:** Christy Fowler

**Expenditure Type:** One-Time  **Year:** 2014  **Add'l FTE**  **Add'l Space**  **Priority** 1

**Name of Request:** Behavioral Health

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**Costs:**

<table>
<thead>
<tr>
<th>Object</th>
<th>Description</th>
<th>Amount Requested</th>
</tr>
</thead>
<tbody>
<tr>
<td>6610</td>
<td>Contractual Services</td>
<td>$589,943</td>
</tr>
</tbody>
</table>

**Request Total:** $589,943

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1a. **Description of request:**

Enhanced and expanded services planned for the remainder of 2014 require an increase in budget spending authority. These additional services are part of the strategic plan created by the Health Department and supported by the Behavioral Health Revenue Advisory Committee that provides oversight and guidance of the expenditures of the Chemical Dependency/Mental Health Program Fund. These programs and services have been added since the original budget was approved. The Advisory Committee recommended an increase in programs and services to the previously designed PITA (Prevention, Intervention, Treatment, and Aftercare) Continuum of Care since a fund balance was available to support them and the community need for them was well established. The Committee strongly recommended that these new services begin this year.

Some of these new services reflect a shift in funding from other funds or programs. Housing fund revenues have decreased in recent months, yet the need to continue to support two of our housing programs remains critical. Therefore, behavioral health funds are replacing some of the housing funds no longer available for these programs. The state statute allows for these behavioral health funds to support housing programs for people living with mental illness and/or substance use disorders.

The other funding shift increases local behavioral health funding to the Jail Behavioral Health program. The North Sound Mental Health Administration (NSMHA) reduced their portion of state funding to us for this program because the state legislature decreased their funding for the service. As a result, our local funds will backfill this loss and allow the County to maintain the current jail staffing model. NSMHA has increased Medicaid funding to us in the General Fund to account for this loss to be directed to other activities not noted here.

1b. **Primary customers:**

The four general areas of focus include:

1) Individuals living with mental illness in need of housing assistance, primarily in the form of programs and supportive services that promote sustainable housing. The programs receiving these funds are City Gate program, managed by Pioneer Human Services, and SUN House, managed by SUN Community Services.

2) Youth and their families experiencing behavioral health challenges that negatively impact their academic and social success. Funds are added to the seven school district contracts to ensure on-site mental health services.

3) Individuals who are struggling with Substance Use Disorders and require intensive treatment to promote recovery efforts. Funds will be distributed to our contracted Substance Abuse Treatment agencies in order to expand the array of services needed to support recovery.

4) Individuals incarcerated in our jail whose untreated/under-treated mental illness exacerbates their criminal behaviors.

2. **Problem to be solved:**

These services are being added to the existing Continuum of Care in order to fill gaps in current services.
Supplemental Budget Request

Health Human Services

<table>
<thead>
<tr>
<th>Fund</th>
<th>Cost Center</th>
<th>Originator</th>
</tr>
</thead>
<tbody>
<tr>
<td>124</td>
<td>124100</td>
<td>Christy Fowler</td>
</tr>
</tbody>
</table>

Programs. The shift in funding from housing to behavioral health solves the problem of jeopardizing the sustainability of two comprehensive housing programs.

3a. Options / Advantages:

These additional programs and services will increase access to treatment and improve behavioral health outcomes.

3b. Cost savings:

Long-term savings are variable depending upon the services provided.

4a. Outcomes:

Each Evidence-based program (EBP) has its own expected positive outcomes. Programs and services that are not specifically EBPs also provide outcome data as required by contract.

4b. Measures:

1) Decrease in number of days homeless and increase in housing stability, as well as improved behavioral health stability
2) Increase in youth and their families utilizing treatment in their community, and experiencing improved behavioral health and academic success
3) Increase in the number of people accessing comprehensive substance abuse treatment
4) Improvement in behavioral health stability of incarcerated individuals, and connection to behavioral health services upon release.

5a. Other Departments/Agencies:

The Affordable Care Act (ACA) has increased the number of Whatcom County citizens who have Medicaid or Commercial insurance to cover some of the services previously supported by this fund. The County has begun to experience some cost savings as Medicaid and Commercial Insurance support outpatient mental health treatment. These savings allow us to divert previously budgeted monies to other programs and services. A need to support behavioral health treatment with local funds will continue for those individuals who require comprehensive services not otherwise covered. The magnitude of local support needed is still unknown given the new roll-out of the ACA. Our 2015-2016 budget will reflect this significant shift in health care delivery and payment.

By design, the Health Department is planning to increase program costs to exceed expected revenue in 2014. The undedicated fund balance allows for this, and helps provide funding and stability to programs that are transitioning to Medicaid funding in the near future.

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

Anne Deacon, Human Services Manager, and other Human Services division staff.

6. Funding Source:

1/10th of 1% Sales Tax dedicated funding

Monday, June 23, 2014
Supplemental Budget Request

**Health Human Services**

<table>
<thead>
<tr>
<th>Fund</th>
<th>Cost Center</th>
<th>Originator</th>
</tr>
</thead>
<tbody>
<tr>
<td>124</td>
<td>124111</td>
<td>Anne Deacon</td>
</tr>
</tbody>
</table>

Expenditure Type: Ongoing
Year 2 2014
Add'l FTE □ Add'l Space □ Priority 1

**Name of Request:** Mental Health Court

**Expenditure:**

- **Object:** 6110
  - **Description:** Regular Salaries & Wages
  - **Amount Requested:** $21,940

- **Object:** 6210
  - **Description:** Retirement
  - **Amount Requested:** $1,975

- **Object:** 6230
  - **Description:** Social Security
  - **Amount Requested:** $1,755

- **Object:** 6245
  - **Description:** Medical Insurance
  - **Amount Requested:** $4,158

- **Object:** 6255
  - **Description:** Other H&W Benefits
  - **Amount Requested:** $560

- **Object:** 6259
  - **Description:** Worker's Comp-Interfund
  - **Amount Requested:** $174

- **Object:** 6320
  - **Description:** Office & Op Supplies
  - **Amount Requested:** $2,000

- **Object:** 6780
  - **Description:** Travel-Educ/Training
  - **Amount Requested:** $500

**Request Total:** $33,062

---

1a. **Description of request:**

The design of the Mental Health Court in Whatcom County is in its final stages, with implementation targeted for year end. An additional FTE, a Mental Health Court Program Manager, is being requested who will have the responsibility of managing the programmatic elements of the Mental Health Court, as well as provide direct service to the court participants.

1b. **Primary customers:**

Whatcom County citizens enrolled in the Mental Health Court

2. **Problem to be solved:**

This is a new program that requires a qualified professional to manage the ongoing operations, coordinate the work of the court team members, provide direct service, and ensure the integrity and quality of the program.

3a. **Options / Advantages:**

An effective Mental Health Court will increase public safety and reduce the use of our criminal justice systems as adult offenders with serious mental illness will receive comprehensive care and judicial oversight.

3b. **Cost savings:**

Current data from the Washington State Institute for Public Policy shows that $6.75 in benefits will result for every $1 spent per participant.

4a. **Outcomes:**

Increased public safety due to reduced criminal behavior. Decreased criminal justice costs.

4b. **Measures:**

In 2014 measures will include the recruitment, hiring and training of a Mental Health Court Program Manager; final design of the Mental Health Court program; and initial implementation of the Court.

5a. **Other Departments/Agencies:**

Other

---

Monday, June 23, 2014
5b. Name the person in charge of implementation and what they are responsible for:

Anne Deacon, Human Services Manager, will be responsible for supervision of the Mental Health Court Program Manager and the oversight of the Mental Health Court program design and initial implementation.

6. Funding Source:

Chemical Dependency Mental Health Program Fund
Supplemental Budget Request

Non-Departmental

Supplemental ID # 1380  Fund 135 Cost Center 135100  Originator: M. Caldwell
Expenditure Type: One-Time  Year 2 2014  Add'l FTE  Add'l Space  Priority 1

Name of Request: Trf to fund Court minor remodeling

X

Department Head Signature (Required on Hard Copy Submission)  Date

Costs:

<table>
<thead>
<tr>
<th>Object</th>
<th>Object Description</th>
<th>Amount Requested</th>
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<tbody>
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<tr>
<td>8351</td>
<td>Operating Transfer Out</td>
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</table>

Request Total $0

1a. Description of request:
Trial Court Improvement Fund Balance will be the funding source for minor remodeling requested by Judge Garrett for her courtroom. See related supplemental #1871, Remodel Space for Judicial Assistant and Court Reporter.

1b. Primary customers:
Court personnel

2. Problem to be solved:

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:

4b. Measures:

5a. Other Departments/Agencies:

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

6. Funding Source:
TCIF fund balance
MEMORANDUM

TO: Jack Louws, County Executive
FROM: Michael Russell, Facilities Manager
RE: Supplemental Budget Request
DATE: June 23, 2014

Enclosed for your review is the Supplemental Budget Request form for the minor remodel in Judge Garrett’s courtroom.

- **Background and Purpose**
  This purposed work is being done at Judge Garrett’s request to improve the security and efficiency within her courtroom. The remodel will include the judicial assistant and the court clerks areas.

- **Funding Amount and Source**
  The funding amount needed for this project is $10,000.00 and will come from the Trial Court Improvement Fund.

- **Differences from Previous Contract**
  This project is a one-time agreement.

Please contact Michael Russell at extension 50575, if you have any questions or concerns regarding this request.

Enclosures
**Supplemental Budget Request**

**Administrative Services**

**Facilities Management**

- **Supp’/ID #**: 1871
- **Fund**: 507
- **Cost Center**: 50712
- **Originator**: Michael Russell

**Expenditure Type**: One-Time
- **Year**: 2014
- **Priority**: 1

**Name of Request**: Remodel Space for Judicial Assist & Court Reporter

**Department Head Signature (Required on Hard Copy Submission)**

<table>
<thead>
<tr>
<th>Costs:</th>
<th>Object</th>
<th>Object Description</th>
<th>Amount Requested</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>7070</td>
<td>Minor Remodeling</td>
<td>$10,000</td>
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<tr>
<td></td>
<td>8301</td>
<td>Operating Transfer In</td>
<td>($10,000)</td>
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<tr>
<td><strong>Request Total</strong></td>
<td></td>
<td></td>
<td><strong>$0</strong></td>
</tr>
</tbody>
</table>

1a. **Description of request:**

This minor remodel will address some security and efficiency concerns that Judge Garrett has within her courtroom. This work will include modifications to the two workspaces in Superior Courtroom Dept. 2, one for the judicial assistant and the other for the court reporter.

1b. **Primary customers:**

Superior Courtroom Dept. 2

2. **Problem to be solved:**

This minor remodel will address some security and efficiency concerns that Judge Garrett has within her courtroom.

3a. **Options / Advantages:**

This minor remodel will address some security and efficiency concerns that Judge Garrett has within her courtroom.

3b. **Cost savings:**

The cost savings will be in efficiencies gained by this remodel.

4a. **Outcomes:**

The completion of this work will help to address Judge Garrett’s security and efficiency concerns she has with her courtroom.

4b. **Measures:**

The completion of this work will address efficiency and security concerns Judge Garrett has with her courtroom.

5a. **Other Departments/Agencies:**

Whatcom County Facilities Management

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

Michael Russell

6. **Funding Source:**

Trial Court Improvement Fund

Monday, June 23, 2014
To: Jack Louws, County Executive  
From: Perry L. Rice, IT Manager  
Date: June 23, 2014  
Re: Supplemental Budget Request – Re-appropriate Funds for Pictometry

- Background and Purpose

In 2012, Whatcom County entered into an agreement (Contract # 201210015) with Pictometry International Corporation (Pictometry) to acquire digital aerial imagery of western Whatcom County. After evaluating the imagery that Pictometry flew in Spring of 2013, Whatcom County notified Pictometry that the dataset was not acceptable due to too much foliage on the trees and shrubs and payment was withheld. Pictometry performed a reflight in Spring of 2014.

The purpose of this request is to reappropriate funds in order to pay for the dataset under contract now that the reflight has been completed.

- Funding Amount and Source

This supplemental request is to reappropriate $130,000 of the 2013 regional Pictometry budget to 2014. The source of the funding is as follows:

<table>
<thead>
<tr>
<th>Funding Source</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regional Partners</td>
<td>$80,000</td>
</tr>
<tr>
<td>Whatcom County – General Fund</td>
<td>$20,000</td>
</tr>
<tr>
<td>Whatcom County – Public Works – Flood</td>
<td>$15,000</td>
</tr>
<tr>
<td>Whatcom County – Public Works – Road</td>
<td>$15,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$130,000</strong></td>
</tr>
</tbody>
</table>

Please contact Perry Rice at extension 52511 or Mike Pelela at extension 50112 if you have any questions or concerns regarding this request.
Supplemental Budget Request

Status: Pending

Administrative Services
- Fund: 507
- Cost Center: 507102
- Originator: Perry Rice

Expenditure Type: One-Time Year 2 2014
- Add'l FTE □ Add'l Space □ Priority 1

Name of Request: Reappropriation of Regional Pictometry Budget

X

Department Head Signature (Required on Hard Copy Submission)

Date

6/25/2014

Costs:

<table>
<thead>
<tr>
<th>Object</th>
<th>Object Description</th>
<th>Amount Requested</th>
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<tbody>
<tr>
<td>2880.1000</td>
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<td>4341.8000</td>
<td>Data Processing Services</td>
<td>($55,500)</td>
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<tr>
<td>6630</td>
<td>Professional Services</td>
<td>$130,000</td>
</tr>
</tbody>
</table>

Request Total: $0

1a. Description of request:

In 2012, Whatcom County entered into an agreement (Contract # 201210015) with Pictometry International Corporation (Pictometry) to acquire ortho and oblique imagery of western Whatcom County to add to the existing 2004, 2008 and 2010 datasets. This is a regional cost sharing effort with 15 local government and tribal partners. Interlocal agreements are in place with all of our regional partners.

After evaluating the imagery that Pictometry flew in Spring of 2013, Whatcom County notified Pictometry that the dataset was not acceptable due to too much foliage on the trees and shrubs and payment was withheld. Pictometry performed a reflight in Spring of 2014.

The purpose of this request is to reappropriate funds in order to pay for the dataset under contract now that the reflight has been completed.

1b. Primary customers:

Primary Whatcom Co. Departments: Public Works & Planning and Development Services
Secondary Whatcom Co. Departments: Assessor's Office, Health, Sheriff's Office, Treasurer's Office
Regional Partners: Cities, Tribes and other local jurisdictions.

2. Problem to be solved:

Funding needs to be reappropriated in the 2014 budget. 2013 budget authority was not used since the imagery provided from the Spring 2013 flight was not accepted and payment was withheld. A partial reflight was completed in Spring 2014.

Whatcom County departments and regional partners depend on "current" aerial imagery for critical governmental operations:
- Landuse planning and enforcement
- Road construction planning and maintenance
- Asset management
- Property appraisals
- Law enforcement situational awareness
- Onsite septic system permitting
- Court exhibits
- Public presentations

Ideally, aerial imagery would be acquired every 2-3 years to support the above operations. As imagery ages, it becomes less useful.

Wednesday, June 25, 2014
Supplemental Budget Request

<table>
<thead>
<tr>
<th>Administrative Services</th>
<th>Information Technology</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Supp'l ID #</strong> 1737</td>
<td><strong>Fund</strong> 507</td>
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<tr>
<td></td>
<td><strong>Cost Center</strong> 507102</td>
</tr>
<tr>
<td><strong>Originator:</strong> Perry Rice</td>
<td></td>
</tr>
</tbody>
</table>

### 3a. Options / Advantages:

Whatcom County is under contract with Pictometry.

### 3b. Cost savings:

The Whatcom Regional Pictometry cost sharing partnership is saving Whatcom County $80,000.

### 4a. Outcomes:

Updated imagery from the Spring 2013 and Spring 2014 re-flight has been received from Pictometry.

Staff in PDS & PW primarily, but also the Sheriff's Office, Assessor's Office, Health Department, Treasurer and AS will be provided with access to the imagery in 2014. Imagery will be provided to our regional partners on the same schedule.

### 4b. Measures:

Updated ortho and oblique imagery delivered from vendor.

Distributing the imagery to regional partners.

Providing access to the imagery to county departments.

### 5a. Other Departments/Agencies:

AS Division of Information Technology will assist users in PDS & PW (Also, Health, Sheriff's Office, Assessor's Office, Treasurer's Office and other interested departments) with access to the imagery, software configuration and training.

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

Whatcom County will be partnering with leads from the cities, tribes and other local jurisdictions.

### 6. Funding Source:

Interlocal agreements with the cities, tribes and other local jurisdictions are in place for $80,000 in cost sharing. The remaining $50,000 is funded by transfers from the following funds: $20K GF, $15K Road, $15K Flood. Other local jurisdictions have already prepaid $24,500 and the county funds have entirely prepaid their $50,000.
TITLE OF DOCUMENT: Ordinance amending the Official Whatcom County Zoning Ordinance, Title 20, Chapter 20.13 – Wireless Communications Facilities to reorganize and streamline administration of the chapter, add a new section on permitted uses, add new definitions; and also amend Title 20, Chapter 20.97 – Definitions.

ATTACHMENTS:
(1) Cover Memo to County Executive and County Council
(2) Draft Ordinance & Exhibit “A”
(3) Whatcom County Planning Commission Findings of Fact and Reasons for Action, Conclusions, & Recommendation
(4) Planning Commission Draft Minutes from May 22, 2014 and June 12, 2014
(5) Staff Report & Memos (on file at the Council Office)
(6) Public Comment (on file at the Council Office)

SEPA review required? (X) Yes ( ) NO  Should Clerk schedule a hearing? (X) Yes ( ) NO
SEPA review completed? (X) Yes ( ) NO  Requested Date: July 22, 2014

Note: Based on public input, staff suggests that the County Council hold a public hearing on the proposal; note also, that the Council must hold a hearing if they want to change the Planning Commission’s recommendation [WCC 20.90.051(iv)].

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:
The proposal is to amend Whatcom County Code, Title 20, Chapter 20.13 – “Wireless Communications Facilities” and Chapter 20.97 – Definitions to streamline permit processing for routine wireless communication equipment upgrades. Proposed changes to the wireless code chapter include new definitions and clarification of terms for ease of administration, adding a new section on “permitted uses” to allow routine antenna upgrades and replacement construction on existing, approved and conforming sites as a permitted use instead of as an administrative approval use; reorganization of the Chapter into a format that is more consistent with the format used in most chapters of Title 20; and deleting definitions in Chapter 20.97 that pertain to wireless communication facilities to avoid duplication in the title and maintain consistency with the wireless code chapter as amended.

COUNCIL ACTION:
TO: Honorable Jack Louws, Whatcom County Executive, & Honorable Members of the Whatcom County Council

FROM: Erin Osborn, Planner

THROUGH: Mark Personius, Long Range Planning Manager

DATE: June 25, 2014

SUBJECT: Wireless Communication Code Amendments (PLN2014-00010)

The attached packet contains recommendations from the Whatcom County Planning Commission on a proposal to amend Whatcom County Code, Title 20, Chapter 20.13 – "Wireless Communications Facilities", as shown in the attached Exhibit "A", in both 'clean' and 'strike-through' versions.

Generally, the proposal is to streamline the permit process for routine equipment upgrades, and new antenna construction on existing, approved and conforming wireless communication service sites. Definitions are amended to clarify terms, and new ones added, for increased transparency and ease of administration; the chapter is reorganized into a format that more closely resembles the format used in most chapters of the County's zoning code, i.e. putting specific uses that are now found in sections on “additional standards” into their own individual sections according to type of use, such as: administrative uses, conditional uses, non-conforming uses, and prohibited uses. Note: The strike-through version of Exhibit "A" in your packet notes the original location of uses that have been 'moved'.

During the last 5 years, PDS has issued approximately 44 WCF Permits for routine upgrades and collocation on existing sites. Staff has noticed that although many of the applications required public notice, based on lack of public comment and absence of objection to projects on existing sites, staff finds that the public is generally not concerned about routine upgrades or new antenna construction on existing sites.

Existing code requires a special use permit even for routine upgrades, i.e. collocations or replacement antennas on existing sites. Adding a new permitted use section, (as proposed) would allow routine antenna upgrades, replacement construction, and new antennas or new antenna arrays to be constructed on existing, approved and conforming sites as a permitted use, (instead of having to get an administrative approval use permit, subject to public notice), but still subject to the requirement of a commercial building permit and corresponding zoning review for conformance with the chapter.
Recent changes to the State Environmental Policy Act (SEPA) have expanded categorical exemptions that apply to modifications of existing wireless communication facilities. Under existing code, wireless communication facility improvement projects that are exempt from SEPA are also exempt from public notice. Proposed changes to existing code factor in changes to SEPA and its rules, and are reflected in the proposal to allow routine equipment upgrades, and replacement construction on existing sites as a permitted use when such proposals don’t substantially change the physical dimensions of such facilities.

Key to successful application of new SEPA categorical exemptions is language in SEPA that defines “substantial change to the physical dimensions”. The proposal before you to approve a new permitted use section would allow replacement construction and new antenna construction (collocation) on existing sites, only when such modifications to existing, approved, and conforming sites do not result in a substantial change to the physical dimensions of existing sites. The proposal also incorporates the definition from SEPA for “substantial change”.

As noted in my introductory comments, a number of definitions have been proposed and terms have been clarified for ease of chapter administration. New definitions are proposed to more clearly explain what is meant by “wireless communication facilities”, and new definitions are proposed to distinguish “free standing wireless communication facilities”, from “attached wireless communication facilities”, and to clarify what is meant by “collocation”. New language is also proposed that gives a provider an opportunity to weigh in on the selection of an expert, should the County require “third party” review.

The Planning Commission held two public hearings on the proposal, and the proposal has gone through a number of drafts. During the two hearings held on the application, there was discussion on the subject of performance bonds (required under existing code to cover costs incurred by the county should the county find it necessary to remove a facility if one was ever to be abandoned). Commissioners voted to recommend that the County Council docket a future application proposal to review and update these provisions.

Wireless service industry representatives for AT&T (Bush Law Firm) have been involved in providing input to staff and the Planning Commission on the subject amendments. They have expressed a desire to further comment on the proposal to the County Council, and staff suggests that Council hold a hearing on the proposal.

I look forward to presenting an overview of the subject proposal and answering questions at your July 22, 2014 Public Hearing.

Please contact me if you have any questions.

Thank you.
ORDINANCE #______________________

ADOPTING AMENDMENTS TO THE OFFICIAL WHATCOM COUNTY ZONING ORDINANCE, TITLE 20: CHAPTER 20.13 – "WIRELESS COMMUNICATIONS FACILITIES" TO STREAMLINE PERMIT PROCESSING ON ROUTINE WIRELESS COMMUNICATION EQUIPMENT UPGRADES ON EXISTING, APPROVED, AND CONFORMING SITES: ADDING A NEW SECTION ON PERMITTED USES, ADDING NEW DEFINITIONS TO CLARIFY TERMS FOR EASE OF ADMINISTRATION, REORGANIZATION OF THE CHAPTER TO BETTER MATCH THE ORGANIZATION OF OTHER TITLE 20 CHAPTERS; AND ALSO AMENDING CHAPTER 20.97 – DEFINITIONS

WHEREAS, Whatcom County Comprehensive Plan Goals and Policies emphasize the importance of refining the regulatory system, streamlining development regulations and eliminating unnecessary delays in routine permitting, and support the development and use of new technologies; and

WHEREAS, Whatcom County Code that regulates establishment of new wireless communication facilities was originally adopted fourteen years ago under Whatcom County Ord. 2000-006; and

WHEREAS, Since adoption of the County’s wireless communication facility code, wireless service technologies have advanced, especially in recent years. Increased customer demand for wireless service especially 'data', requires that providers routinely update their equipment and replace antennas to make use of the latest technologies; and

WHEREAS, Under existing code, project proponents when collocating or replacing equipment and structures on existing sites are required to obtain an administrative approval use permit which requires a public comment period in addition to a commercial building permit; staff has noted that public comment on these types of proposals is infrequent, and opposition to upgrades on existing, approved, conforming sites is very rare; and

WHEREAS, Representatives of the wireless communication services industry have submitted verbal and written comments requesting that Whatcom County update its wireless code. Comments received indicates that both the wireless services industry and wireless service customers in the county would benefit from a more streamlined, efficient permit process for routine equipment upgrades on existing sites; and

WHEREAS, Whatcom County Planning and Development Services submitted an application to amend the Official Whatcom County Zoning Ordinance, Title 20, Chapter 20.13 – “Wireless Communications Facilities” and placed this item on the docket which was affirmed by the Whatcom County Council under Whatcom County Res. 2014-012; and

WHEREAS, Legal notice and County Public Participation requirements have been met; and
WHEREAS, The proposed amendments have been reviewed for conformance with zoning text amendment approval criteria established in Whatcom County Code, Chapter 20.90.050; and

WHEREAS, The Whatcom County Planning Commission held two public hearings on the subject amendments, and after considering staff recommendations and input from the public, they voted to recommend that the Whatcom County Council adopt amendments to the text of Whatcom County Code, Title 20 as shown in the attached Exhibit "A".

WHEREAS, The County Council has adopted the following Findings of Fact:

FINDINGS OF FACT

1. The purpose of the proposal to amend Whatcom County Code, Title 20, Chapter 20.13 “Wireless Communications Facilities” is to streamline permit processing for routine wireless communication equipment upgrades on existing, approved, and conforming sites. Existing code requires a special use permit even for routine upgrades. The proposal adding a new permitted use section would allow routine antenna upgrades, replacement construction, and new antennas or new antenna arrays on existing, approved and conforming sites as a permitted use subject to the requirement of a commercial building permit, and subject to all applicable local, state, and federal laws and regulations.

The proposal also amends definitions and clarifies existing terms to promote ease of administration and increase transparency, and includes a reorganization of the chapter into a format that more closely resembles the format used in most chapters of the County’s zoning code. Types of uses found in sections on "additional standards“ have been moved into their own individual sections according to type of use, such as administrative uses, conditional uses, non-conforming uses, and prohibited uses.

2. The proposed amendments have been drafted in response to staff recommendations, public comment, and recommendations by the Planning Commission. The amendments as proposed may provide increased flexibility in siting wireless service facilities, streamline application review, avoid duplicative review, and provide greater permit efficiencies that may assist wireless service providers to more successfully implement new technologies and better serve wireless customers in Whatcom County.


4. On March 31, 2014 a "60 Day Notice of Intent to Adopt Amendment” was submitted to the Washington State Department of Commerce via email in regards to the subject amendments. On April 7, 2014 Washington State Department of Commerce replied to confirm that the County had fulfilled this requirement, and that the 60 Day Notice was filed for reference under Material ID 20154. On May 14, 2014, a supplement to the 60-Day Notice was sent by email to provide Department of Commerce with the most recent proposal on that date.
5. The Whatcom County Designated SEPA Official (lead agency) reviewed the proposed amendments to the Wireless Communications Facilities Chapter, and on April 2, 2014 made a determination that no probable significant adverse impacts to the environment would be likely to occur as a result of adopting the proposed amendments. This decision was made after a review of the completed SEPA Environmental Checklist on file with the lead agency, referenced under File No. SEP2014-00021. A 14 day comment period ending on April 16, 2014 was established for the DNS; one comment was received from the City of Bellingham, which indicated general support for the proposal. At the conclusion of the comment period, a 10 day appeal period was established, and no appeals to the determination, a DNS, were filed.

6. Notice of the Planning Commission hearing scheduled for May 22, 2014, and notice that the proposal had been posted on the County website was sent to citizen, media, cities and other groups on the County’s e-mail list on May 13, 2014.


8. Notice of the Planning Commission hearing scheduled for May 22, 2014 was published in the Bellingham Herald on May 9, 2014.

9. A number of public comments were received from the wireless communication services industry, and these comments were posted to the Planning Commission website, as they were received. The substance of these comments generally supported the County’s intent to streamline wireless communication facility permit processing on existing, approved, and conforming sites. General and specific suggestions were given on what kind of changes would benefit the wireless communications service industry.

10. The Planning Commission held a scheduled public hearing on the subject proposed amendments on May 22, 2014.

11. At the May 22, 2014 public hearing, the Planning Commission heard from one member of the public who spoke about the importance of providing a public comment period when siting new wireless facilities, and gave an example of how at one point public comment positively influenced the siting of a new tower constructed on Badger Road, in regards to setbacks.

12. At the May 22, 2014 public hearing, Planning Commissioners also heard from several members of the public (Bush Law Firm) representing interests of AT&T Wireless Services. Comments included an outline of four additional opportunities for streamlining the permit process for routine replacement construction and equipment upgrades on existing sites, as follows:

- Revise Exhibit “A” proposed new definition for “substantially increase the
physical dimensions” to match the new definition (July 2013) for “substantial change” in the State Environmental Policy Act (SEPA);

- Consider alternative measures to supplant “Performance Bond” [WCC 20.13.062(11)] requirements that are meant to cover costs incurred by the County should the county ever have to intervene and remove an abandoned wireless structure or facility;

- Revise Exhibit “A” Section 20.13.160 – “Third Party Review” language to provide explicitly for “joint approval” as to the selection of a third party expert;

- Instead of moving routine maintenance from the chapter reserved for exempt actions to a new permitted use section in WCC 20.13.140 (as proposed by staff), reconsider whether or not routine maintenance should be exempt from provisions of the chapter, and whether or not such maintenance should be subject to requirements of obtaining a building permit.

13. During the work session of the May 22, 2014 meeting, during deliberations on the subject amendments, commissioners voted to recommend that staff make a number of minor edits to Exhibit “A” preliminary draft proposed text to increase clarity, including adding a note to clarify the meaning of the term “collocate”; they also voted to recommend that staff provide a new definition for “substantial increase to physical dimensions” to match the SEPA definition for “substantial change to physical dimensions”, and to draft easy-to-understand new language providing a base line from which to measure “substantial change in physical dimensions”, so as to limit the effect of incremental changes on the size of existing facilities; to revise Section 20.13.160 – “Third Party Review” language to require “joint approval” between Whatcom County and applicant in selection of third party experts; and that staff provide a rationale for maintaining existing wireless code provisions on performance bonds that are intended to cover costs of removal; and finally, that staff provide a memo or some discussion on applicability of the International Building Code (IBC) to wireless service improvement projects, including, temporary uses, routine maintenance and repair, and replacement construction.

14. Based on public input at their May 22, 2014 meeting, Planning Commissioners voted to hold the public record open for additional comment. They also requested that members of the public representing AT&T interests submit written comment to summarize their verbal comments and suggestions. Commissioners then voted to hold a second public hearing on the proposed amendments, scheduled for June 12, 2014.

15. On May 23, 2014, staff spoke with Whatcom County Planning & Development Services, Building Official, relaying the Planning Commissioner’s request that a briefing on applicability of the IBC to wireless communication facility improvement projects be provided at or before the scheduled June 12, 2014 Planning Commission Meeting & Public Hearing. A follow up email was sent on
May 27, 2014 to outline the nature of the Planning Commission’s inquiry in more detail.

16. Information about applicability of the International Building Code (IBC) to wireless communication facilities, and emergency repair permitting was provided by the Whatcom County Building Services Manager, and this information was submitted to all members of the Whatcom County Planning Commission by email, and was also posted to the County’s website, in advance of the second hearing, scheduled on June 12th.

17. Between the first and second hearings, staff conducted research on performance bonds as requested by the Planning Commission, reviewing the code of a number of city and county jurisdictions, interviewed four staff from different County departments, and drafted a new Exhibit “A” (dated June 2, 2014) to reflect Planning Commission recommendations.


19. Notice of the second Planning Commission hearing and notice that the proposal had been posted on the County website was sent to citizen, media, cities and other groups on the County’s e-mail list on June 3, 2014.

20. Notice of the second Planning Commission hearing and proposed amendments was sent to the Lummi Indian Business Council, Historic Preservation Office on June 3, 2014.

21. Additional comment was received in a letter from Bush Law Firm representing the interests of AT&T on June 11th 2014. The letter addressed the four items addressed in public comment submitted to commissioners on May 22, 2014, and also included a section suggesting new definitions for “wireless communications service”, “wireless communications facilities” and “collocation”.

22. Staff wrote an additional memo to the Planning Commission dated June 12, 2014, to cover public comment and suggestions outlined in the June 11, 2014 Bush Law Firm Letter, including discussion and recommendations on support for the new definitions for wireless communication service and wireless communication facility, and also gave reasons why the suggested definition for “collocation” outlined in the June 11th Bush Law Firm letter should not be approved.

23. The Planning Commission held a second public hearing on the subject amendment on June 12, 2014.

24. At the June 12, 2014 public hearing, the Planning Commission heard from a member of the public who spoke about the importance of providing a public comment period when siting new wireless facilities on new sites, and gave an example of how public comment influenced the siting of a new tower constructed on Badger Road, in regards to setbacks. Further comment from this individual emphasized an understanding of how important it is to uphold setbacks for new
wireless towers to ensure protection of property and public safety.

25. At the June 12, 2014 public hearing, Planning Commissioners heard from the public representing interests of AT&T (Bush Law Firm). Public comment included general support for changes to the proposal, as follows:

- Support for revised proposed definition: “substantially change the physical dimensions” to match the definition in the State Environmental Policy Act (SEPA);
- Support for staff’s revised proposal (June 12, 2014, Memo to Planning Commission) to delete “Performance Bond” [WCC 20.13.062(11)] requirements that are meant to cover costs incurred by the County should the county ever have to intervene and remove an abandoned wireless structure or facility, but not supporting staff suggested language to expressly provide Whatcom County authority to lien property to recover costs incurred should the facility ever become abandoned, and should the county find it necessary to remove the facility.
- Support for revisions to Exhibit “A” Section 20.13.160 – “Third Party Review” language to provide explicitly for “joint approval” in selecting a third party expert;
- Support for moving routine maintenance from the chapter reserved for exempt actions to a new permitted use section in WCC 20.13.140, but still recommending that commissioners should reconsider whether or not routine maintenance should be exempt from provisions of the chapter.

26. At the Planning Commission meeting held June 12, 2014, after considering staff’s report and recommendations, and after considering public comment, commissioners deliberated on the subject amendments and through a series of motions, and amended motions, they voted to recommend that the Whatcom County Council adopt amendments to the text of the Official Whatcom County Zoning Ordinance, as shown in the Exhibit “A” attached to this ordinance.

27. At the end of the Planning Commission meeting held on June 12, 2014, commissioners voted on a motion to recommend that the Whatcom County Council consider initiating to the docket a proposal to review and update existing wireless code provisions that relate to Performance Bonds [WCC 20.13.062(11)]. More specifically, commissioners recommended that performance bond requirements that are intended to cover costs incurred by the County (in removing such facilities in the case of abandonment), may be more efficiently administered if they apply only to wireless support structures and their appurtenant ground equipment, and that performance bonds not be required as a condition of issuance for each incremental and successive improvement made to the structure over the life of the facility. The general motion was to recommend that the County Council docket a future amendment to review and update “performance bonds”, because it appeared to exceed the scope of the original application: Planning Commission discussion indicated that additional
research, review and input on this subject was needed prior to making a more specific recommendation.

28. Pursuant to Whatcom County Code (WCC) 20.90.050, Whatcom County Planning and Development Services has evaluated the proposed amendment in relationship to the goals, objectives and policies of the Whatcom County Comprehensive Plan as authorized by the Washington State Growth Management Act (GMA) – RCW 36.70A; and has considered possible environmental impacts identified by the lead agency through the State Environmental Policy Act (SEPA) threshold determination process.

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

Section 1. The Official Whatcom County Zoning Ordinance, Title 20 is hereby amended as shown on Attachment “A”.

Section 2. Adjudication of invalidity of any of the sections, clauses, or provisions of this ordinance shall not affect or impair the validity of the ordinance as a whole or any part thereof other than the part so declared to be invalid.

ADOPTED this __________ day of __________________________, 2014

ATTEST: WHATCOM COUNTY COUNCIL

WHATCOM COUNTY, WASHINGTON

______________________________
Dana Brown-Davis, Council Clerk

______________________________
Carl Weimer, Chairperson

APPROVED as to form:

______________________________
Royce Buckingham, Civil Deputy Prosecutor

( ) Approved ( ) Denied

______________________________
Jack Louws, Executive

Date: __________________________
WHATCOM COUNTY PLANNING COMMISSION
FINDINGS OF FACT, REASONS FOR ACTION,
CONCLUSIONS, & RECOMMENDATION

AMENDMENTS TO THE OFFICIAL WHATCOM COUNTY ZONING ORDINANCE, TITLE 20: CHAPTER 20.13 – "WIRELESS COMMUNICATIONS FACILITIES" TO STREAMLINE PERMIT PROCESSING ON ROUTINE WIRELESS COMMUNICATION EQUIPMENT UPGRADES ON EXISTING, APPROVED, AND CONFORMING SITES: ADDING A NEW SECTION ON PERMITTED USES, ADDING NEW DEFINITIONS TO CLARIFY TERMS FOR EASE OF ADMINISTRATION, REORGANIZATION OF THE CHAPTER TO BETTER MATCH THE ORGANIZATION OF OTHER TITLE 20 CHAPTERS; AND ALSO AMENDING CHAPTER 20.97 – DEFINITIONS

THE PLANNING COMMISSION ENTERS THE FOLLOWING FINDINGS OF FACT, REASONS FOR ACTION, CONCLUSIONS, AND RECOMMENDATION:

FINDINGS OF FACT AND REASONS FOR ACTION

1. The purpose of the proposal to amend Whatcom County Code, Title 20, Chapter 20.13 “Wireless Communications Facilities” is to streamline permit processing for routine wireless communication equipment upgrades on existing, approved, and conforming sites. Existing code requires a special use permit even for routine upgrades. The proposal adding a new permitted use section would allow routine antenna upgrades, replacement construction, and new antennas or new antenna arrays on existing, approved and conforming sites as a permitted use subject to the requirement of a commercial building permit, and subject to all applicable local, state, and federal laws and regulations.

The proposal also amends definitions and clarifies existing terms to promote ease of administration and increase transparency, and includes a reorganization of the chapter into a format that more closely resembles the format used in most chapters of the County’s zoning code. Types of uses found in sections on “additional standards” have been moved into their own individual sections according to type of use, such as administrative uses, conditional uses, non-conforming uses, and prohibited uses.

2. The proposed amendments have been drafted in response to staff recommendations, public comment, and recommendations by the Planning Commission. The amendments as proposed may provide increased flexibility in siting wireless service facilities, streamline application review, avoid duplicative review, and provide greater permit efficiencies that may assist wireless service providers to more successfully implement new technologies and better serve wireless customers in Whatcom County.

4. On March 31, 2014 a "60 Day Notice of Intent to Adopt Amendment" was submitted to the Washington State Department of Commerce via email in regards to the subject amendments. On April 7, 2014 Washington State Department of Commerce replied to confirm that the County had fulfilled this requirement, and that the 60 Day Notice was filed for reference under Material ID 20154. On May 14, 2014, a supplement to the 60-Day Notice was sent by email to provide Department of Commerce with the most recent proposal on that date.

5. The Whatcom County Designated SEPA Official (lead agency) reviewed the proposed amendments to the Wireless Communications Facilities Chapter, and on April 2, 2014 made a determination that no probable significant adverse impacts to the environment would be likely to occur as a result of adopting the proposed amendments. This decision was made after a review of the completed SEPA Environmental Checklist on file with the lead agency, referenced under File No. SEP2014-00021. A 14 day comment period ending on April 16, 2014 was established for the DNS; one comment was received from the City of Bellingham, which indicated general support for the proposal. At the conclusion of the comment period, a 10 day appeal period was established, and no appeals to the determination, a DNS, were filed.

6. Notice of the Planning Commission hearing scheduled for May 22, 2014, and notice that the proposal had been posted on the County website was sent to citizen, media, cities and other groups on the County’s e-mail list on May 13, 2014.


8. Notice of the Planning Commission hearing scheduled for May 22, 2014 was published in the Bellingham Herald on May 9, 2014.

9. A number of public comments were received from the wireless communication services industry, and these comments were posted to the Planning Commission website, as they were received. The substance of these comments generally supported the County’s intent to streamline wireless communication facility permit processing on existing, approved, and conforming sites. General and specific suggestions were given on what kind of changes would benefit the wireless communications service industry.

10. The Planning Commission held a scheduled public hearing on the subject proposed amendments on May 22, 2014.

11. At the May 22, 2014 public hearing, the Planning Commission heard from one member of the public who spoke about the importance of providing a public comment period when siting new wireless facilities, and gave an
example of how at one point public comment positively influenced the siting of a new tower constructed on Badger Road, in regards to setbacks.

12. At the May 22, 2014 public hearing, Planning Commissioners also heard from several members of the public (Bush Law Firm) representing interests of AT&T Wireless Services. Comments included an outline of four additional opportunities for streamlining the permit process for routine replacement construction and equipment upgrades on existing sites, as follows:

- Revise Exhibit “A” proposed new definition for “substantially increase the physical dimensions” to match the new definition (July 2013) for “substantial change” in the State Environmental Policy Act (SEPA);

- Consider alternative measures to supplant “Performance Bond” [WCC 20.13.062(11)] requirements that are meant to cover costs incurred by the County should the county ever have to intervene and remove an abandoned wireless structure or facility;

- Revise Exhibit “A” Section 20.13.160 – “Third Party Review” language to provide explicitly for “joint approval” as to the selection of a third party expert;

- Instead of moving routine maintenance from the chapter reserved for exempt actions to a new permitted use section in WCC 20.13.140 (as proposed by staff), reconsider whether or not routine maintenance should be exempt from provisions of the chapter, and whether or not such maintenance should be subject to requirements of obtaining a building permit.

13. During the work session of the May 22, 2014 meeting, during deliberations on the subject amendments, commissioners voted to recommend that staff make a number of minor edits to Exhibit “A” preliminary draft proposed text to increase clarity, including adding a note to clarify the meaning of the term “collocate”; they also voted to recommend that staff provide a new definition for “substantial increase to physical dimensions” to match the SEPA definition for “substantial change to physical dimensions”, and to draft easy-to-understand new language providing a base line from which to measure “substantial change in physical dimensions”, so as to limit the effect of incremental changes on the size of existing facilities; to revise Section 20.13.160 – “Third Party Review” language to require “joint approval” between Whatcom County and applicant in selection of third party experts; and that staff provide a rationale for maintaining existing wireless code provisions on performance bonds that are intended to cover costs of removal; and finally, that staff provide a memo or some discussion on applicability of the International Building Code (IBC) to wireless service improvement projects, including, temporary uses, routine maintenance and repair, and replacement construction.

14. Based on public input at their May 22, 2014 meeting, Planning Commissioners voted to hold the public record open for additional comment. They also requested that members of the public representing AT&T interests...
submit written comment to summarize their verbal comments and suggestions. Commissioners then voted to hold a second public hearing on the proposed amendments, scheduled for June 12, 2014.

15. On May 23, 2014, staff spoke with Whatcom County Planning & Development Services, Building Official, relaying the Planning Commissioner’s request that a briefing on applicability of the IBC to wireless communication facility improvement projects be provided at or before the scheduled June 12, 2014 Planning Commission Meeting & Public Hearing. A follow up email was sent on May 27, 2014 to outline the nature of the Planning Commission’s inquiry in more detail.

16. Information about applicability of the International Building Code (IBC) to wireless communication facilities, and emergency repair permitting was provided by the Whatcom County Building Services Manager, and this information was submitted to all members of the Whatcom County Planning Commission by email, and was also posted to the County’s website, in advance of the second hearing, scheduled on June 12th.

17. Between the first and second hearings, staff conducted research on performance bonds as requested by the Planning Commission, reviewing the code of a number of city and county jurisdictions, interviewed four staff from different County departments, and drafted a new Exhibit “A” (dated June 2, 2014) to reflect Planning Commission recommendations.


19. Notice of the second Planning Commission hearing and notice that the proposal had been posted on the County website was sent to citizen, media, cities and other groups on the County’s e-mail list on June 3, 2014.

20. Notice of the second Planning Commission hearing and proposed amendments was sent to the Lummi Indian Business Council, Historic Preservation Office on June 3, 2014.

21. Additional comment was received in a letter from Bush Law Firm representing the interests of AT&T on June 11th 2014. The letter addressed the four items addressed in public comment submitted to commissioners on May 22, 2014, and also included a section suggesting new definitions for “wireless communications service”, “wireless communications facilities” and “collocation”.

22. Staff wrote an additional memo to the Planning Commission dated June 12, 2014, to cover public comment and suggestions outlined in the June 11, 2014 Bush Law Firm Letter, including discussion and recommendations on support for the new definitions for wireless communication service and wireless communication facility, and also gave reasons why the suggested definition for “collocation” outlined in the June 11th Bush Law Firm letter should not be approved.

23. The Planning Commission held a second public hearing on the subject
amendment on June 12, 2014.

24. At the June 12, 2014 public hearing, the Planning Commission heard from a member of the public who spoke about the importance of providing a public comment period when siting new wireless facilities on new sites, and gave an example of how public comment influenced the siting of a new tower constructed on Badger Road, in regards to setbacks. Further comment from this individual emphasized an understanding of how important it is to uphold setbacks for new wireless towers to ensure protection of property and public safety.

25. At the June 12, 2014 public hearing, Planning Commissioners heard from the public representing interests of AT&T (Bush Law Firm). Public comment included general support for changes to the proposal, as follows:

- Support for revised proposed definition: “substantially change the physical dimensions” to match the definition in the State Environmental Policy Act (SEPA);
- Support for staff’s revised proposal (June 12, 2014, Memo to Planning Commission) to delete “Performance Bond” [WCC 20.13.062(11)] requirements that are meant to cover costs incurred by the County should the county ever have to intervene and remove an abandoned wireless structure or facility, but not supporting staff suggested language to expressly provide Whatcom County authority to lien property to recover costs incurred should the facility ever become abandoned, and should the county find it necessary to remove the facility.
- Support for revisions to Exhibit “A” Section 20.13.160 – “Third Party Review” language to provide explicitly for “joint approval” in selecting a third party expert;
- Support for moving routine maintenance from the chapter reserved for exempt actions to a new permitted use section in WCC 20.13.140, but still recommending that commissioners should reconsider whether or not routine maintenance should be exempt from provisions of the chapter.

26. At the Planning Commission meeting held June 12, 2014, after considering staff’s report and recommendations, and after considering public comment, commissioners deliberated on the subject amendments and through a series of motions, and amended motions, they voted to recommend that the Whatcom County Council adopt amendments to the text of the Official Whatcom County Zoning Ordinance, as shown in Exhibit “A”, dated June 24, 2014.

27. At the end of the Planning Commission meeting held on June 12, 2014, commissioners voted on a motion to recommend that the Whatcom County Council consider initiating to the docket a proposal to review and update existing wireless code provisions that relate to Performance Bonds [WCC
More specifically, commissioners recommended that performance bond requirements that are intended to cover costs incurred by the County (in removing such facilities in the case of abandonment), may be more efficiently administered if they apply only to wireless support structures and their appurtenant ground equipment, and that performance bonds not be required as a condition of issuance for each incremental and successive improvement made to the structure over the life of the facility. The general motion was to recommend that the County Council docket a future amendment to review and update “performance bonds”, because it appeared to exceed the scope of the original application: Planning Commission discussion indicated that additional research, review and input on this subject was needed prior to making a more specific recommendation.

Pursuant to Whatcom County Code (WCC) 20.90.050, Whatcom County Planning and Development Services has evaluated the proposed amendment in relationship to the goals, objectives and policies of the Whatcom County Comprehensive Plan as authorized by the Washington State Growth Management Act (GMA) – RCW 36.70A; and has considered possible environmental impacts identified by the lead agency through the State Environmental Policy Act (SEPA) threshold determination process.

CONCLUSIONS

After evaluating all information presented by staff, and after considering all comment from the public, and after reviewing the proposed amendments for consistency with zoning text amendment approval criteria established in Whatcom County Code, Chapter 20.90.050, the Whatcom County Planning Commission concludes that it will be in the best interest of the public if the County Council adopts amendments to the text of the Whatcom County Official Zoning Ordinance (Title 20) as shown in the attached Exhibit “A”.

RECOMMENDATION

Based upon the above findings of fact, reasons for action and conclusions, the Whatcom County Planning Commission hereby recommends that the Whatcom County Council adopt amendments to the Official Whatcom County Zoning Ordinance as shown in the attached Exhibit “A”.

WHATCOM COUNTY PLANNING COMMISSION

Dave Onkels, Chair

Becky Boxx, Secretary

Date June 16, 2014

Date 6-27-14

Commissioners present at the June 12, 2014 meeting when the vote was taken on the subject amendments:
Dave Onkels, Mary Beth Teigrob, Gary Honcoop, Ken Bell, Ben Elenbaas, Natalie McClendon, Walter Haugen, David Hunter

Roll Call Vote: Ayes: Dave Onkels, Mary Beth Teigrob, Gary Honcoop, Ken Bell, Ben Elenbaas, Natalie McClendon, Walter Haugen, David Hunter; Nays: 0; Abstain: 0; Absent: Gerald Vekved. Motion carried to forward a recommendation of approval to the County Council on the subject amendments.

Attachment:

Exhibit "A"
EXHIBIT “A”

Whatcom County Code, Title 20

Chapter 20.13
WIRELESS COMMUNICATIONS FACILITIES

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20.13.010 Purpose.

The purpose of this chapter is to establish regulations for the placement, development, permitting, and removal of personal wireless communications facilities including support structures and antennas. These standards were developed to comply with the Federal Telecommunications Act of 1996. They are intended to protect property values and minimize visual impact while furthering the development of enhanced telecommunication services in the county.

The provisions of this chapter are not intended to and shall not be interpreted to prohibit or to have the effect of prohibiting personal wireless services. This chapter shall not be applied in such a manner as to discriminate between providers of functionally equivalent personal wireless services.

In reviewing an application to provide personal wireless service or to install personal wireless service facilities, the county shall act within a reasonable period of time, taking into account the nature and scope
of the application and the required notice and necessary review process. Any decision to deny an
application shall be in writing, supported by substantial evidence contained in a written record. (Ord.
2000-006 § 1, 2000).

20.13.020 Definitions.

As used in this chapter, the following terms shall have the following meanings. Other words and terms
shall have meanings assigned to them by Chapter 20.97 WCC or if not defined in this chapter or Chapter
20.00 WCC, the meaning customarily assigned to them.

(1) "Administrator" means the director of planning and development services or his designee.

(2) "Amateur radio" or "ham radio" means radio facilities operated for noncommercial purposes by
individuals licensed by the FCC with an interest in construction and operation of radio equipment, usually
as a hobby or vocation.

(3) "Ancillary equipment facility (AEF)" means an unstaffed structure used to contain ancillary equipment
for a WCF. Such structures include cabinets, shelters, remodeled structures, pedestals and other similar
structures. Ancillary equipment may include air conditioners and emergency generators.

(4) "Antenna" means any pole, panel, reflection disc, or similar device used for the transmission or
reception of radio frequency signals, including but not limited to, directional antennas, Omni-directional
antennas, and parabolic antennas.

(5) "Antenna array" means any system of poles, panels, rods, reflecting discs or similar devices used for
the transmission or reception of radio frequency signals. An antenna array can be made up of one or
more antennas including but not limited to the following:

(a) Directional antenna (also known as a panel antenna) which transmits signals in a directional
pattern of less than 360 degrees.

(b) Omni-directional antenna (also known as a whip antenna) which transmits signals in a 360-
degree pattern.

(c) Parabolic antenna (also known as a dish antenna) which is a bowl shaped device that
receives and transmits signals in a specific directional pattern (e.g., point-to-point).

(6) "Attached wireless communications facility" means an antenna array that is attached to an existing
building or structure (attachment structure), which structure shall include but not be limited to utility poles,
signs, and water towers, together with any accompanying pole or device (attachment device) which
attaches the antenna array to the existing building or structure, transmission cables, and an ancillary
equipment facility which may be located either inside or outside of the attachment structure.
(6) "Attached wireless communication support structure" is a support structure not specifically designed and constructed to support an antenna array. Such structures may include but are not limited to buildings or structures, utility poles, signs, and water towers, together with any accompanying pole or device (attachment device) which attaches the antenna array to the existing building or structure.

(7) "Attached wireless communication facility" is a wireless communication facility that utilizes an attached wireless communication support structure as defined in WCC 20.13.020(6). It means the site, the leased area, attached wireless communication support structures, antennas, antenna array(s), accessory equipment structures, and appurtenances used to transmit, receive, distribute, provide or offer personal wireless communication, together with any accompanying pole or device (attachment device) which attaches the antenna array to the existing building or structure, transmission cables, and an ancillary equipment facility which may be located either inside or outside of the attachment structure.

(8) "Citizens band radio" means two-way radio facilities operated for short-range personal and business communications, without necessity of a federal license, pursuant to 47 Congressional Federal Register Part 95.

(9) "Clustering" means the placement of more than one wireless communication support structure on a single site either by one provider or by several different providers.

(8) "Collocation" means the use of a single wireless communications support structure by more than one wireless communications provider or the use of a site by more than one wireless communications provider

(10) "Collocate" means the installation of wireless services equipment on a freestanding or attached wireless communication facility that may be shared by one or more wireless service providers to transmit and/or receive radio frequency signals for communication purposes. For the purposes of this chapter, the terms "collocate", "collocation" or "co-locate" may be used interchangeably to describe action taken by a principal facility owner, an authorized agent, or a valid lessee to add wireless services equipment to an existing facility. Note: The spelling of these terms may vary based on local vernacular used by wireless service industry professionals, and in accordance with state and federal law.

(11) "Direct-to-home satellite service" means the distribution or broadcasting of programming or services by satellite directly to the subscriber's premises without use of ground receiving or distribution equipment, except at the subscriber's premises or in the uplink process to the satellite.

(12) "FAA" means the Federal Aviation Administration.

(13) "FCC" means the Federal Communications Commission.
1 (14) "Freestanding wireless communication facility" means the site, the lease area, freestanding wireless
2 communication support tower(s), antennas, antenna array(s), accessory equipment structures, and
3 appurtenances used to transmit, receive, distribute, provide or offer personal wireless communication
4 services. Freestanding wireless communication facilities include but are not limited to antennas, poles,
5 towers, cables, wires, conduits, ducts, pedestals, vaults, buildings, and electronic switching equipment.
6
7 (15) "Freestanding wireless communication support structure" is a freestanding structure, designed and
8 constructed to specifically support an antenna array, and may include but is not limited to any of the
9 structures listed below:
10
(a) "Lattice tower" means a wireless communication support structure which consists of a
11 network of vertical and horizontal supports and crossed metal braces, forming a tower which is
12 usually triangular or square in cross-section.
13
(b) "Monopole tower" means a wireless communication support structure consisting of a single
14 pole to support antennas and connecting appurtenances.
15
(c) "Guyed tower" means any variety of wireless communication support structures using wire
16 guys connecting above grade portions of a communication support structure diagonally with the
17 ground or the structure on which the tower is placed. The purpose of the wire guys is to provide
18 support for wireless communication towers, antennas, and connecting appurtenances. (Ord.
19 2000-006 § 1, 2000).
20
(16) "Wireless communications facilities" (WCF) means the site, wireless
21 communications support structures, antennas, accessory equipment structures, and
22 appurtenances used to transmit, receive, distribute, provide or offer personal wireless
23 communications services. Wireless communications facilities include, but are not limited to
24 antennas, poles, towers, cables, wires, conduits, ducts, pedestals, vaults, buildings, and
25 electronic switching equipment.
26
(17) "Personal wireless communications services" means wireless communications services.
27
(18) "Wireless communications service" means the sending and receiving of radio or microwave signals
28 used for communication, including, but not limited to cellular telephone, personal communications
29 services (PCS), enhanced/specialized mobile radio (ESMR), commercial paging services, and any other
30 technology which provides similar wireless services licensed by the FCC and unlicensed wireless
31 services.
32
(19) "Wireless communication service" means wireless data and telecommunications services, including
33 commercial mobile services, commercial mobile data services, unlicensed wireless services, and
34 common carrier wireless exchange access services, as defined by federal laws and regulations.
1. "Wireless communications support structure" means a structure designed and constructed to specifically support an antenna array, and may include but is not limited to any of the structures listed below. Any device (attachment device) which is used to attach an attached WCF to an existing structure (attachment structure) is excluded from this definition.

   (a) "Lattice tower" means a wireless communications support structure which consists of a network of vertical and horizontal supports and crossed metal braces, forming a tower which is usually triangular or square in cross-section.

   (b) "Monopole tower" means a wireless communications support structure consisting of a single pole to support antennas and connecting appurtenances.

   (c) "Guyed tower" means any variety of wireless communication support structures using wire guys connecting above-grade portions of a communication support structure diagonally with the ground or the structure on which the tower is placed. The purpose of the wire guys is to provide support for wireless communications towers, antennas, and connecting appurtenances. (Ord. 2000 006 § 1, 2000).

(1319) "Satellite earth station" means the facilities used for reception and processing of programming services from a satellite prior to transfer to terrestrial distribution systems or for processing of programming and services from a terrestrial source before transmission via satellite.

(1420) "Site". For the purpose of this chapter, "site" means a building, structure, leased area which may contain a base station, building(s) or structure in compliance with the provisions of the Whatcom County subdivision regulations, site easement area or lot of record upon which a wireless communications facility is or will be located.

(1522) "Unlicensed wireless services" means commercial mobile services that operate on public frequencies and do not need a FCC license.

(21) "Substantially change the physical dimensions" means:

   (a) The installation or mounting of wireless services equipment on an existing support structure that would increase the overall height of the structure by more than ten percent, or twenty feet, whichever is greater; provided that any such increase in height must conform to the provisions of this chapter; or

   (b) The installation or mounting of equipment that would involve adding an appurtenance to the body of the structure that would protrude from the edge of the structure more than twenty feet or more than the width of the structure at the level of the appurtenance, whichever is greater;

Provided, that in making determinations as to whether or not project proposals constitute a substantial change as described in (a) or (b) above, and in order to limit incremental and cumulative effects concerning the overall size of such facilities, measurements shall be taken to establish a base line for determining whether or not proposed changes constitute a substantial change; such measurements shall be taken from the dimensions of the existing facility as it was approved and constructed under the original building permit issued by Whatcom County.

The requirements of this chapter shall apply to all new personal wireless communications facilities and the expansion and/or alteration of any existing personal wireless communications facilities. The following are exempt from the provisions of this chapter:

(1) Satellite earth stations using antenna(s) not more than two meters in diameter in commercial and industrial districts and direct-to-home satellite services.

(2) Send and receive citizen band radio antennas or antennas operated by federally licensed amateur ("ham") radio operators.

(3) Industrial, scientific and medical equipment using frequencies regulated by the FCC.

(4) Military and government radar antennas and associated communication towers used for navigational purposes as regulated by the FCC under 47 Congressional Federal Register Parts 97 and 95 respectively.

(5) Military and federal, state and local government communications facilities used for emergency preparedness and public safety purposes.

(6) Normal, routine and emergency maintenance and repair of existing wireless communications facilities and related equipment which do not increase the size, footprint or bulk of such facilities and which otherwise comply with the county, state, and federal law and regulations. Provided, that compliance with design and development standards of this chapter is maintained. (Ord. 2000-006 § 1, 2000).

20.13.040 Permitted Uses.

The following uses shall be considered permitted uses and shall comply with federal, state, and local laws and regulations and the provisions of this chapter; the following uses shall also be subject to environmental review under the State Environmental Policy Act (SEPA), unless categorically exempt.

(1) Replacement construction:

In all districts: Replacement of any component of an existing freestanding or attached wireless communication facility, and/or replacement of any component of an existing ancillary equipment facility on existing, approved and conforming sites; provided that such replacement does not increase the total number of components lawfully existing on the site at the time of application for such replacement construction, and further provided that such replacement construction does not "substantially change the physical dimensions" of the individual components being replaced as defined in WCC 20.13.020(21).

Determinations made as to whether or not replacement proposals substantially change the physical dimensions of existing facilities shall be made by the administrator, as follows:

(a) The applicant or applicant's agent must submit documentation to the administrator that demonstrates that replacement construction proposals do not substantially change the physical
dimensions of such facilities as defined in WCC 20.13.020(20). Examples of such documentation may include specification sheets and/or area calculations for both the existing and proposed replacement equipment. Such documentation must be submitted at the time of pre-application interview for the required commercial building permit(s).

(b) The applicant or applicant's agent must also submit documentation to the administrator demonstrating that replacement construction meets Federal Communication Commission (FCC) Emission Standards (as applicable). Such documentation must be submitted at time of application for the required commercial building permit(s).

(2) New antenna or new antenna array construction:

In all districts: New antennas or new antenna arrays may be constructed on or added to existing, attached or freestanding wireless communication facilities on existing, approved and conforming sites; provided that such new antennas or antenna arrays do not "substantially change the physical dimensions" of such facilities, as defined in WCC 20.13.020(19);

Determinations made as to whether or not new construction proposals substantially change the physical dimensions of existing facilities shall be made by the administrator, as follows:

(a) The applicant or applicant's agent must submit documentation to the administrator that demonstrates that the proposed new antenna or new antenna array construction does not substantially change the physical dimensions of such facilities. Examples of such documentation may include specification sheets and/or area calculations for both the existing and the proposed new equipment. Such documentation must be submitted at the time of pre-application interview for the required commercial building permit(s).

(b) The applicant or applicant's agent must also submit documentation to the administrator that demonstrates that any new antenna(s) meet Federal Communication Commission (FCC) Emission Standards (as applicable). Such documentation must be submitted at time of application for the required commercial building permit(s).

20.13.050 Administrative Approval Uses

The following uses are considered administrative approval uses and shall require a Wireless Communication Facility (WCF) permit in accordance with WCC 20.84 and WCC 2.33, and shall be subject to a threshold determination in accordance with the Whatcom County SEPA Ordinance unless categorically exempt; provided that WCF permit proposals located in nonresidential related districts shall be exempt from the public noticing requirements found in WCC 2.33 – Permit Review Procedures.

Uses described in this section must comply with county, state, and federal law and regulations and all applicable provisions of this chapter. The administrator may refer an application for a WCF Permit to a technical review committee for its review prior to making a decision on the application.
(1) Wireless Communication Facility (WCF) permit

1. New freestanding wireless communication support structures, new antennas or antenna arrays on existing freestanding or attached wireless communication structures on existing approved and conforming sites, and new attached wireless communication facilities that substantially change the physical dimensions of a facility as defined in WCC 20.13.020(21) may be approved by the administrator through issuance of a WCF permit, subject to a required commercial building permit. Prior to application approval, the applicant or applicant's agent must also submit documentation to the administrator that demonstrates that any new antenna(s) meet Federal Communication Commission (FCC) Emission Standards (as applicable).

(a) New freestanding wireless communication support structures:

(i) New freestanding wireless communication support structures (lattice towers or monopole towers) may be collocated or clustered on existing, approved and conforming wireless communication facility sites in the following residential related districts: Rural, Residential Rural, and Rural Residential Island. [Moved from: WCC 20.13.070(1)(a)(i)]

(ii) New freestanding wireless communication support structures (monopoles only), may be collocated or clustered on existing, approved and conforming wireless communication facility sites in the following residential related districts: Urban Residential, Urban Residential Medium, Urban Residential Mixed, Neighborhood Commercial, and Eliza Island; provided that the site does not also contain residential uses. [Moved from: WCC 20.13.070(1)(ii)]

(iii) Monopoles that are permitted as a WCF may exceed the height limits of the underlying residential related zone by 15 feet; provided, the applicant demonstrates that the structure's height is the minimum necessary to adequately function, or if collocation is specifically provided for on the tower, the additional 15 feet for collocation may be added to the 15 feet necessary for adequate function for a total of 30 feet in the event both situations pertain. [Moved from: WCC 20.13.070(1)(b)]

(iv) In all nonresidential districts: New freestanding wireless communication support structures (lattice towers or monopole towers) may be collocated or clustered on approved and conforming sites; provided that the height of such structures shall be subject to requirements of WCC 20.13.092(9)(b); and provided further that the height does not exceed 150 feet. Additional height may be approved only by special exception as provided in WCC 20.13.110. [Moved from: WCC 20.13.080(1)]

(b) New attached wireless communication facilities:

New attached wireless communication facilities may be approved by the administrator through issuance of a WCF Permit, and subject to a required commercial building permit(s), as provided below.

(i) In all residential districts: New attached wireless communication facilities or new antennas attached to existing attached wireless communication structures that utilize a nonresidential structure on a parcel or lot not used primarily for residential purposes, provided, the antenna is not more than 15 feet above the
roof or parapet wall or top of structure (if not a building). Installation of dish antennas on the roof of an attached wireless communication structure may be permitted as a WCF permit if the applicant demonstrates to the administrator that such proposal satisfies the special exception criteria pursuant to WCC 20.13.110. [Moved from: WCC 20.13.070(2)(b)(ii) and 20.13.070(2)(a)]

(ii) In all non-residential related districts: Ground mounted dish antennas may be located on existing approved, conforming sites, provided that the site is not used exclusively for residential purposes. [Moved from: WCC 20.13.080(2)(b)(c)]

(iii) In all residential related districts: Ground mounted dish antennas may be located on existing approved, conforming sites, provided that the site is not used exclusively for residential purposes and the antenna is not more than 15 feet above ground level nor more than 12 feet in diameter. [Moved from: WCC 20.13.070(2)(b)(iii)]

(c) New antennas or antenna arrays on existing freestanding wireless communication facilities or existing attached wireless communication facilities on existing, approved and conforming sites: may be approved by the administrator through issuance of a WCF Permit, and subject to required commercial building permit(s):

(j) In all nonresidential districts: New antennas or antenna arrays may be added to existing freestanding wireless communication support structures on existing approved and conforming sites, provided that the height of such new antennas or antenna arrays shall not extend more than 15 feet above the attachment device. [Moved from: WCC 20.13.080(2)(c)(d)]

(ii) In all residential districts: New antennas or antenna arrays may be added to existing freestanding wireless communication support structures on approved and conforming sites, provided that the height of such new antennas or antenna arrays shall be subject to the requirements of WCC 20.13.092(9)(b). [Moved from: WCC 20.13.070(2)(i)]

(iii) In all residential districts: New antennas on existing attached wireless communication structures that utilize a nonresidential structure on a parcel or lot not used primarily for residential purposes; provided, the antenna is not more than 15 feet above the roof or parapet wall or top of structure (if not a building). Installation of dish antennas on the roof of an attached wireless communication structure may be permitted as a WCF permit if the applicant demonstrates to the administrator that such proposal satisfies the special exception criteria pursuant to WCC 20.13.110. [Moved from: WCC 20.13.070(2)(b)(ii) and 20.13.070(2)(a)]

(iv) In all nonresidential related districts: New antennas attached on existing attached wireless communication structures that utilize a nonresidential structure on a parcel or lot not used primarily for residential purposes, provided, the antenna is not more than 15 feet above the roof or parapet. [Moved from: WCC 20.13.080(2)(b)(c)]

(2) Ancillary Equipment Facilities
(a) New ancillary equipment facilities or replacement construction that substantially increases the physical dimensions of an existing facility as defined in WCC 20.13.020(19), may be permitted on existing approved, conforming sites as an Ancillary Equipment Facility (AEF) under the scope of a WCF permit. Such structures include cabinets, shelters, remodeled structures, pedestals and other similar structures. Ancillary equipment may include air conditioners, emergency generators, and GPS units. Installation of such ancillary equipment when included in the scope of a WCF permit shall conform to original time frames for completion set by the administrator, or as further amended by the administrator.

20.13.060 Conditional Uses.
(1) The following uses shall require conditional use permit approval by the hearing examiner, and shall be processed in accordance with WCC 20.84 and WCC 2.33 and shall be subject to a threshold determination in accordance with the Whatcom County SEPA Ordinance, unless categorically exempt. Such uses shall comply with county, state, and federal law and regulations and all applicable provisions of this chapter. The applicant or applicant’s agent must also submit documentation to the administrator that demonstrates that any new antennas meet Federal Communication Commission (FCC) Emission Standards (as applicable). The administrator may refer an application for a conditional use to a technical review committee for review and comment prior to referring the application to the hearing examiner for a decision.

(a) New freestanding wireless communication facilities:
(i) In all nonresidential related districts: New freestanding wireless communication facilities that utilize lattice tower or monopole wireless communication support structures; provided that the height of such structures shall be subject to the requirements of WCC 20.13.092(9)(b); and further provided that the height does not exceed 150 feet. Additional height may only be approved by special exception as provided in WCC 20.13.110. [Moved from: WCC 20.13.080(1)(a)]

(ii) New freestanding wireless communication facilities that utilize lattice towers or monopole towers in the following residential related districts: Rural, Residential Rural, Rural Residential Island; provided that the height of such structures shall be subject to the requirements of WCC 20.13.092(9)(b). [Moved from: WCC 20.13.070(1)(a)]

(iii) New freestanding wireless communication facilities that utilize monopole towers only in the following residential districts: Urban Residential, Urban Residential Medium, Urban Residential Mixed, Neighborhood Commercial, and Eliza Island; provided that the site does not also contain existing residential uses, and further provided that the height of such structures shall be subject to the requirements of WCC 20.13.092(9)(b). [Moved from: WCC 20.13.070(1)(ii)]

(b) New Attached Wireless Communication facilities:
(i) In all non-residential related districts: New attached wireless communication facilities that utilize a residential structure on a site used exclusively for residential purposes shall require a conditional use
permit; provided that the antenna shall not extend more than 15 feet above the roof or parapet. [Moved from: WCC 20.13.080(2)(b)(c)]

(ii) In all residential districts: New attached wireless communication facilities that utilize an attached wireless communication support structure that is a residential building or on a parcel used exclusively for residential purposes shall require a conditional use permit; provided that the antenna shall not extend more than 15 feet above the roof top (or top of the structure if not a building) and that the requirements of WCC 20.13.092(1) are met. The hearing examiner shall have the authority to restrict the height of the attached antenna to a figure less than 15 feet in order to attain compliance with WCC 20.13.092(1).

[Moved from: WCC 20.13.070(2)(c)]

(2) New ancillary equipment facilities may be permitted under the scope of a conditional use permit, or may be permitted separately as an AEF under a WCF permit pursuant to WCC 20.13.060. Such structures include cabinets, shelters, remodeled structures, pedestals and other similar structures. Ancillary equipment may include air conditioners, emergency generators, and GPS units. Installation of such ancillary equipment when included in the scope of a conditional use permit shall conform to original time frames for completion set by the hearing examiner, or as further amended by the hearing examiner.

20.13.040-070 Nonconforming uses and structures.
Freestanding and attached wireless communications facilities, and ancillary equipment facilities in operation as of the effective date of the ordinance codified in this chapter or amendment hereto, including vested applications for such facilities, that do not conform to the use standards or development standards of this chapter are hereby declared nonconforming uses and shall be subject to the provisions of Chapter 20.83 WCC governing nonconforming uses. Routine maintenance on existing towers and antennas is permitted as provided in WCC 20-13.030(6) WCC 20.13.050. However, any new construction other than routine maintenance on existing non-conforming towers, antennas, buildings or other facilities shall comply fully with the requirements of Chapter 20.83 WCC governing nonconforming uses, and this chapter.—(Ord.: 2000-006 §1, 2000).

20.13.080 Prohibited Locations.
(a) New attached antennas or antenna arrays shall not be mounted, installed or affixed to a single family residence, duplex or their accessory structures; this prohibition shall not apply to residential structures such as multi-family housing, condominiums, apartment buildings, hotels, rooming houses, and their appurtenant structures, such as parking garages, and storage buildings.

(b) New freestanding wireless communication support structures (lattice towers) are prohibited in Urban Residential, Urban Residential Medium, Urban Residential Mixed, Neighborhood Commercial, and Eliza Island districts.

(c) New freestanding wireless communication support structures (monopole towers and ground level dishes) are prohibited in Urban Residential, Urban Residential Medium, Urban Residential Mixed, Neighborhood Commercial, and Eliza Island districts on sites that also contain residential uses.
(d) New support structures are prohibited on lands within the jurisdiction of the Whatcom County Shoreline Program. (Ord. 2011-013 § 2 Exh. B, 2011; Ord. 2000-006 § 1, 2000).

**20.13.050-085 Siting priorities and prohibited locations.**

(1) In reviewing applications for new freestanding wireless communication facilities, and new attached wireless communication facilities, the approving authority shall evaluate the proposal in relationship to the following siting priorities and prohibited locations. Unless the facility will be located at the highest priority location, the applicant shall demonstrate that:

(a) None of the higher priority locations are available; or

(b) If one is available it is not a feasible location for the proposed facility; or

(c) If feasible, the location is less desirable than the one proposed from the standpoint of minimizing impacts on surrounding land uses.

(2) For the purpose of this section:

(a) Residential related districts shall include Urban Residential (UR), Urban Residential Medium (URM), Urban Residential Mixed (UR-MX), Eliza Island (EI), Neighborhood Commercial (NC), Rural-Residential Rural (RR), Rural Residential Island (RR-I), and Rural (R) Districts;

(b) Non-residential related districts include:

(i) Commercial districts shall include Rural General Commercial (RGC), General Commercial (GC), Resort Commercial (RC) and Tourist Commercial (TC) Districts;

(ii) Industrial districts shall include Heavy Impact Industrial (HII), Light Impact Industrial (LII), Gateway Industrial (GI), Rural Industrial and Manufacturing (RIM), General Manufacturing (GM), Airport Operations (AO) and the Cherry Point Industrial District (CP-ID);

and

(iii) Resource districts shall include Agriculture (AG), Commercial Forestry (CF), Rural Forestry (RF) and Recreation Open Space (ROS).

(3) Siting Priorities. Listed in descending order with the highest priority first:

(a) Collocated attached-antennas on attached wireless communication structures that are nonresidential buildings and structures, including and collocated antennas on existing freestanding wireless communications towers in nonresidential related districts.

(b) Collocated attached-antennas on attached wireless communication support structures that are nonresidential buildings and structures, including, and -collocated antennas on existing
freestanding wireless communications towers in residential related districts on property not used exclusively for residential purposes.

(c) Attached antennas New antennas on attached wireless communication structures such as nonresidential buildings and structures in nonresidential related districts.

(d) New freestanding wireless communication support structures at remote, low visual impact locations in resource and industrial districts.

(e) New Attached antennas on attached wireless communication facilities that utilize nonresidential buildings and structures in residential related zones on property not used exclusively for residential purposes.

(f) New freestanding wireless communication support structures at low visual impact locations in commercial districts.

(g) Locations other than those listed above.

(4) Prohibited Locations:

(a) New support structures are prohibited on lands within the jurisdiction of the Whatcom County Shoreline Program. (Ord. 2011-013 § 2 Exh. B, 2011; Ord. 2000-006 § 1, 2000).

20.13.060.090 Design and development standards.

.061.091 Design and Development Standards. The development standards set forth below shall apply to all wireless communications facilities. These developments standards are minimum standards and shall be in addition to any development standards or project review process which applies in the underlying district in which a wireless communication facility is located. In the event of a conflict between the provisions of this chapter and the general development standards of this title, or the project review process, the more stringent provision shall govern; provided, that where a provision of this chapter is the more specific in its application to wireless communication facilities that provision shall prevail regardless of stringency.

(1) Anti-Climbing Devices. All freestanding and attached wireless communications support structures and required fencing shall be equipped with appropriate anti-climbing devices.

(2) Attachment to Trees Prohibited. It is prohibited to attach any wireless communication facility or portion thereof to any tree.

(3) Signage. All freestanding and attached wireless communications support structures shall be identified with an illuminated sign not exceeding four square feet. The sign shall list the wireless service provider's name and emergency telephone number and shall be posted in a place visible to the general public.
public. No advertising signs shall be located on support structures or antennas, however arrays may be
camouflaged as otherwise permitted signs.

(4) Lighting. All freestanding and attached wireless communications facilities shall not be
illuminated except where required by the FAA.

(5) Painting. All freestanding and attached wireless communications facilities shall be painted or
finished in a manner that blends with the dominant color of the background except where otherwise
required by the FAA. The applicant and the operator of the facility shall have a continuing duty to maintain
such paint or finish.

(6) Noise from Accessory Equipment. Accessory Equipment Facilities shall comply with state noise level
standards under Chapter 173-60 WAC, as amended. Generators may only be permitted for emergency
operation purposes. If air conditioning or other noise generating equipment is proposed, the applicant
shall provide information detailing the expected noise level and any proposed abatement measures. This
may require noise attenuation devices or other mitigation measures to minimize impacts.

(7) Copies of deeds or other instruments such as lease agreements and site easements that establish
the applicant's right to use the site shall be provided at the time of application. These may be in unsigned
final draft form pending the outcome of the approval process. The boundaries of a proposed wireless
communications facility site shall be defined in each such instrument in a manner that will provide a land
surveyor sufficient information to accurately locate the site boundaries using standard survey methods.

(8) If the proposed site is leased, the terms of the lease shall not restrict the land owner in any way from
leasing other areas of his property to other wireless communications providers with the exception that the
lease may include a provision that any additional facilities so located not materially interfere with the
operation of the existing facility.

.062.092 General Design Standards.

(1) Attached antennas. Antennas that are mounted, installed or affixed to an attached wireless
communication support structure (excluding collocated antennas on existing WCF structures) shall be
designed or placed to blend with the, predominant background or architectural features as seen from
abutting residential uses, roadways or other public rights of way.

(2) When located on buildings, panel antennas shall be placed closely against walls or parapets and not
extend above the wall or parapet unless an alternative design is required to a) achieve better compatibility
with the building design or b) to obtain antenna function.

(3) Accessory Ancillary equipment facility structures shall be placed underground or wholly enclosed in an
existing structure or building, or designed to blend into the architecture and landscaping of the
surrounding buildings or structures. When equipment boxes are placed at ground level, they shall be
screened from view.
(4) Ground-mounted dishes shall be located outside any required landscaped area and preferably located in service areas or other less visible locations. They shall be solidly screened to at least as high as the center of the dish when viewed from off the site. Solid screening shall be provided as high as the top of the dish on sides adjacent to residential zones.

Roof-mounted dishes shall be solidly screened at least as high as the center of the dish. The screening shall be of a material and design compatible with the building, and can include penthouse screening, parapet walls, or other similar screening. The dish should be placed as close to the center of the roof as possible.

(5) Antennas on utility poles shall be limited to whip-antennas that are no more than two feet in length unless the approving authority finds that the visual impact of a longer antenna would not have an appreciable affect on surrounding uses. No more than one whip-antenna is permitted per pole. No utility pole shall be extended in height in order to accommodate an antenna. No antenna shall be allowed on light standards.

(6) Setbacks Applicable. The following setback standards shall apply to wireless communications facilities:

(a) Accessory equipment structures shall comply with the setback requirements for principle nonaccessory structures in the underlying district. An antenna and its attachment device attached to a building or other permanent structures shall comply with the setback requirements for principle nonaccessory structures in the underlying district. Where the setback requirement in the underlying zone is based on the height of the structure, the height used to compute the setback for the antenna array shall be the height of the structure plus the additional height that will be added by the antenna array and its attachment device.

(b) Nonattached Freestanding wireless communications support structures located in a residential related district as set out described in WCC 20.13.050-20.13.085 shall be set back from any property line by a distance equal to the height of the wireless communications support structure or the setback of the underlying use district, whichever is greater.

(c) Nonattached Freestanding wireless communications support structures located in other than residential related districts shall be set back from any property line abutting or adjacent to a residential related district a distance equal to the height of the wireless communications support structure or the setback of the underlying use district, whichever is greater.

(d) Regardless of the district, nonattached freestanding wireless communications structures shall be setback from dwellings not on the same legal lot, a distance equal to the height of the freestanding wireless communications support structure or the setback of the underlying use district whichever is greater.
(e) Setbacks for nonattached freestanding wireless communications support structures shall be measured from the ground-level base of the structure.

(f) The setback requirements for freestanding and attached wireless communication facilities under this chapter may be reduced by the approving authority subject to the satisfaction of the special exception criteria in WCC 20.13.110.

(7) In the event that a new freestanding or attached wireless communications facility is proposed on land zoned agriculture or in an agriculture overlay zone and the land is otherwise suitable for agricultural use, the facility shall be located and maintained so as not to interfere with current agricultural activities or the potential future use of the site for agricultural activities.

(8) Screening Standards. Freestanding and attached wireless communications facilities shall be subject to the following standards for visual screening:

(a) The perimeter of the wireless communication support structure and any guyed wires and anchors shall be enclosed by a fence or wall at least six feet in height. A row of evergreen shrubs, spaced not more than five feet apart and capable of growing to form a continuous hedge at least five feet high within five years of planting, and at least one row of evergreen trees or shrubs spaced not more than 10 feet apart nor less than six feet high when planted shall be installed outside and adjacent to the fence.

(b) Landscape material used for screening should be selected and sited to produce a hardy and drought-resistant landscape area. Native plant materials are preferred.

(c) Maintenance of landscaped areas shall be the responsibility of the applicant and/or operator of the facility. Required landscaping must be maintained in a healthy manner. Trees and shrubs that die must be replaced with healthy in-kind materials such that during the life of the facility the landscaping continues to satisfy the requirements of the permit. Temporary irrigation shall be provided to help ensure survival during the plant establishment period. If the approving authority determined that existing vegetation provided adequate screening without the need for additional landscaping, than no action shall be taken by the applicant or his assigns or successors that would diminish its effectiveness in screening the site. In the event that natural vegetation is removed to the extent that the area required to be screened is made more visible, the operator of the facility shall prepare a revegetation plan and submit the plan to the administrator for review and approval. Upon approval the operator shall implement the plan.

(d) The administrator or the hearing examiner as appropriate may approve any combination of existing vegetation, topography, walls, decorative fences or other features instead of landscaping, if they achieve the same degree of screening as the required landscaping. Either, as appropriate, may waive the requirement for the installation of screening for those sides of the
facility that are naturally screened so as not to be visible from public streets or adjoining properties.

(e) Existing vegetation shall be preserved to the maximum extent practicable.

(f) When landscaping is required to be installed a maintenance bond, assignment of funds or other financial guaranty acceptable to the county shall be provided in the amount of 50 percent of the value of the labor and materials. The guaranty shall be in effect for two years from the date of planting.

(9) General Height Standards. The following standards shall apply to wireless communications facilities:

(a) The height of a freestanding or attached wireless communications facility shall be measured to include the support structure and any antennas proposed to be attached to the structure at the time of application; provided, provided that a lightning rod, not to exceed 10 feet or FAA required lighting shall not be included in the height measurement.

(b) For a nonattached wireless communications facility, the height limit on a freestanding wireless communications facility shall be the minimum height necessary for the facility to function satisfactorily provided the height does not exceed height restriction imposed elsewhere in this chapter. The applicant shall provide technical documentation that the height proposed is the minimum necessary. As provided in WCC 20.13.160, the administrator or the hearing examiner may require a third party review of this information.

(c) The height of attached antennas mounted or installed on an attached wireless communication support structure may exceed the height limit of the underlying zone; provided, provided that the height does not exceed height restriction imposed elsewhere in this chapter.

(10) Parking. Each freestanding and attached wireless communications support structure shall be provided with at least one adjacent parking space or more if needed to accommodate staff. All unstaffed wireless-communications facilities shall have access to parking for maintenance personnel, however such parking may be shared or public parking at the discretion of the county. Staffed facilities shall require one parking space per staff under the standard provisions of the zone in which it is located.

(11) Performance Bond. The operator of the facility shall obtain and keep in force throughout the time the facility is located on the site a performance bond payable to Whatcom County in the amount of 150 percent of the estimated cost of removal as determined by the director, but not less than $1,000. The bond is intended to cover the costs of removal of such facility at such time as the facility may be required to be removed pursuant to WCC 20.13.150.

(12) Building and Utility Permits. Approval of a WCF permit does not exempt or otherwise remove any requirements for obtaining building permits and other applicable construction, development or operation
related permits, licenses or approvals for the project. It shall be the permittee’s responsibility to secure all other necessary permits and approvals prior to beginning work on the installation of the facility. (Ord. 2000-006 § 1, 2000).

20.13.070 Additional standards for residential related districts.

The following requirements and restrictions shall apply to the location of wireless communications facilities in the county’s residential related districts. For the purposes of this section, residential related districts shall include Urban Residential (UR), Urban Residential Medium (URM), Urban Residential Mixed (UR-MX), Eliza Island (EI), Neighborhood Commercial (NC), Rural Residential (RR), Rural Residential Island (RR-1), and Rural (R) Districts.

(1) Support Structures.

(a) When not otherwise prohibited, new wireless communications support structures in residential related zones shall require conditional use approval pursuant to WCC 20.84.200 and subject to the following; provided, that new support structures collocated or clustered on an existing approved and conforming site may be permitted through a wireless communications facility (WCF) permit. Collocation or clustering on a nonconforming site may be approved as an expansion of a nonconforming use by conditional use as provided in WCC 20.83.020:

(i) Lattice towers are prohibited in the following residential related zones: Urban Residential, Urban Residential Medium, Urban Residential Mixed, Neighborhood Commercial, and Eliza Island Districts.

(ii) Monopole wireless communication support structures and ground level dishes shall not be located on land parcels or lots in Urban Residential, Urban Residential Medium, Urban Residential Mixed, Neighborhood Commercial and Eliza Island Districts that also contain residential uses.

(b) A monopole WCF may exceed the height limits of the underlying residential related zone by 15 feet; provided, the applicant demonstrates the structure’s height is the minimum necessary to adequately function, or if collocation is specifically provided for on the tower. The additional 15 feet for collocation may be added to the 15 feet necessary for adequate function for a total of 30 feet in the event both situations pertain.

(2) Attached Antennas.

(a) Attached antennas are prohibited on single-family dwellings, duplexes and their accessory structures. Dish antennas shall not be mounted on roofs without a special exception under the provisions of WCC 20.13.110.

(b) The following antennas may be permitted through a wireless communications facility (WCF) permit:
(i) Collocation on an existing, approved and conforming, wireless communication support structure; provided, that no more than 15 feet is added to the height of the facility.

Collocation on a nonconforming site may be approved as an expansion of a nonconforming use by conditional use as provided in WCC 20.83.020.

(ii) Attachment to a nonresidential structure on a land parcel or lot not used primarily for residential purposes; provided, the antenna does not extend more than 15 feet above the roof or top of the structure if not a building.

(iii) Ground-mounted dish antennas may be located on sites not used exclusively for residential purposes; provided, the antenna is not more than 15 feet in height above ground level nor more than 12 feet in diameter.

(c) Attached antennas on a structure located on a land parcel of lot used exclusively for residential purposes or attached to a residential building, other than those residential buildings prohibited in subsection (1)(a) of this section, may be approved as a conditional use provided the antenna shall not extend more than 15 feet above the roof or top of the structure if not a building and that the requirements of WCC 20.13.062(1) are met. The hearing examiner shall have the authority to restrict the height of the attached antenna to a figure less than 15 feet in order to attain compliance with WCC 20.13.062(1). (Ord. 2000 006 § 1, 2000).

20.13.080 Additional standards for nonresidential-related districts.

The following requirements and restrictions shall apply to the location of wireless communications facilities in the county's nonresidential districts. For the purposes of this section, nonresidential-related districts shall include commercial districts, industrial districts and resource districts each as described in WCC 20.13.050.

(1) Support Structures.

(a) New support structures shall require a conditional use permit pursuant to WCC 20.84.200; provided, that new support structures collocated or clustered on an existing approved and conforming site may be permitted through a wireless communications facility (WCF) permit. Collocation or clustering on a nonconforming site may be approved as an expansion of a nonconforming use by conditional use as provided in WCC 20.83.020. The height of new support structures shall be subject to requirements of 20.13.062(9) (b); provided, that the height does not exceed 150 feet. Additional height may only be approved by special exception as provided for in WCC 20.13.110.

(2) Attached Antennas.

(a) Antennas shall not be attached to single-family residences, duplexes or their accessory structures.
(b) Where not otherwise prohibited by this chapter, attached wireless communications facilities on sites used exclusively for residential purposes and wireless communications facilities attached to residential structures shall require a conditional use permit.

(c) Other attached antennas, ground-mounted dishes and collocated antennas, on existing, approved and conforming sites, shall require a WCF permit; provided, that new support structures collocated on an existing approved and conforming site may be permitted through a wireless communications facility (WCF) permit. Collocation on a nonconforming site may be approved as an expansion of a nonconforming use by conditional use as provided in WCC 20.83.020.

(d) Antennas attached to structures shall not extend more than 15 feet above the roof or parapet. Collocated antennas shall not extend more than 15 feet above the attachment device. (Ord. 2000-006 § 1, 2000).

20.13.090-100 Temporary uses.

Wireless Freestanding or attached wireless communication facilities may be permitted as a temporary use with review by the administrator in order to facilitate continuity in wireless communications service during repair or maintenance of existing wireless communications facilities or prior to completion of construction of new wireless communications facilities. Such temporary wireless communications facilities shall operate for not more than 60 days at any one location within a six-month period commencing when transmission from such facility begins. The wireless communications facilities facility(s) shall be removed within 30 days after the facility is no longer needed for telecommunications purposes. (Ord. 2000-006 § 1, 2000).

20.13.100 Wireless communication facility permit.

A wireless communication facility (WCF) permit is an administrative approval permit, except where a conditional use permit is required in WCC 20.13.080 and 20.13.070, and shall be processed and approved pursuant to WCC 20.84.235; provided, that the notice requirements shall be as follows:

Applications that are categorically exempt from environmental review under SEPA (WAC 197-11-800) shall also be exempt from the public notice requirements of WCC 20.84.235 and Chapter 2.33 WCC.

Applications not exempt from environmental review under SEPA shall be provided notice of completeness, notice of application and notice of decision as provided by Chapter 2.33 WCC.

The administrator may refer an application for a WCF permit to the technical review committee for review and comment prior to making a decision on the proposal. (Ord. 2000-006 § 1, 2000).

20.13.110 Special exceptions.

When adherence to all development standards of this chapter would result in a physical barrier which would block signal reception or transmission or prevent effective communication in all permissible locations, a special exception may be permitted provided criteria outlined below are met. Exceptions do
not apply to variations from the current code as adopted and amended per WCC Title 15, Buildings and Construction. A variance pursuant to Chapter 20.84 WCC is required for variations from applicable zoning regulations not described in this section.

The approval authority for granting of the special exception shall be the same as that of that of the authority authorized to approve the permit for the antenna location. A request for a special exception shall be processed in conjunction with the permit approving the antenna location.

Upon review of special exception requests, the approval authority shall consider first those standards having the least effect upon the resulting aesthetic compatibility of the antenna or tower with the surrounding environment. The approval authority shall review setback, size, screening requirements, and height limits.

(1) Special Exception Criteria.

(a) The applicant shall justify the request for a special exception by documenting and providing evidence that the full application of a particular standard or standards of this chapter would result in an obstruction or inability to send and receive a communication signal from the proposed location of the facility and further, that the obstruction or inability to send or receive a signal from that location is the result of factors beyond the property owner’s or applicant’s control. Pictures, scaled drawings, maps and/or manufacturer’s specifications, and other technical information as necessary, should be provided to substantiate the need for the special exception.

(b) The applicant for a special exception shall demonstrate that the proposed materials, shape, and color of the antenna will minimize negative visual impacts on adjacent or nearby residential uses to the greatest extent possible. The use of certain materials, shapes and colors may be required in order to minimize visual impacts.

(c) Any request for a special exception to heights for new antennas that are proposed to be mounted or installed on an attached wireless communication support structure requesting a special exception for height shall be reviewed relative to through the same process as a support structure height limitations set for structures in the underlying zone district in which the antenna is located.

(d) Requests for special exceptions for setback reductions shall also be judged based on the following criteria:

   (i) The extent to which screening and camouflaging will be employed to mitigate the effects of the structure versus the value of the setback in providing such screening.

   (ii) The need for the setback reduction to facilitate a location or design that better satisfies the criteria of this chapter.
(iii) The impact on adjacent properties.


20.13.120 Application requirements and conditions of issuance.

Applicants shall submit the following information in addition to standard application materials:

(1) A scaled site plan clearly indicating the location of the proposed facility, all other structures and uses on the site, adjacent roadways, proposed means of access, parking, existing and proposed landscaping and setbacks from property lines. Elevation drawings of the proposed tower, the equipment structure, existing structure with proposed antenna, fencing, buffering/screening, type of architectural treatment, and any other feature necessary to show compliance with the applicable standards.

(2) Photo-simulations of the proposed facility from adjacent residential properties, public properties and public rights-of-way.

(3) Legal description and ownership of the parcel.

(4) A valid agreement for collocation on an existing WCF support structure or on an existing building or structure; or a location evaluation study as described in subsection (5) of this section.

(5) For new freestanding support structures, a location evaluation study shall be provided as follows:

(a) A study shall be provided showing that the structure is required for present and future network coverage, that the height requested is the minimum necessary to provide for the function and potential collocated antennas and why the antennas could not be collocated on an existing structure. In residential zones, the applicant shall provide adequate proof that the facility could not be located in a nonresidential zone.

(6) The applicant shall submit a letter of credit, performance bond or other security acceptable to the county, as described in WCC 20.13.060(11) 20.13.130(4), to cover the future costs of removal of the antenna and/or tower facility.

(7) A report from a licensed professional engineer documenting that:

(a) The support structure is designed for collocation of other antennas (if applicable.)

(b) The antenna usage will not interfere with other adjacent or neighboring transmission or reception communications signals.

(c) The wireless communications facility complies with all applicable standards of the FCC for such facilities including EMF emission standards, if applicable.
(8) A projection of the wireless communication facilities which the applicant and/or prospective operator of the facility reasonably anticipates will be sited by his company within Whatcom County during the next five years.

(9) Proof of license by the FCC, if applicable.

(10) A copy of the findings from the FAA’s Aeronautical Study Determination regarding the proposed wireless communication support structure.

(11) A copy of the instrument that establishes the right of the applicant to use the site for the intended purpose as required in WCC 20.13.061 20.13.091(7).

(12) If the site is a leased site, a copy of lease agreement which specifies or shows that it does not preclude the site owner from entering into leases on the site with other providers. (Ord. 2000-006 § 1, 2000).

20.13.130 General criteria for issuance of permits.

(1) Any applicant for a land use permit (other than a building permit) proposing to install an antenna support structure or mount an antenna on an existing structure shall demonstrate by engineering evidence that:

(a) The antenna must be located at the site to satisfy its function in the applicant’s local wireless service provider’s local grid system. The county may require the applicant to provide feasibility studies which demonstrate that locations on existing structures and/or in higher priority locations have been explored and are not feasible or available.

(b) The height requested is the minimum height necessary to fulfill the site’s function within the grid wireless service provider’s system.

(2) In addition to standard criteria, the authority granting the permit shall find that, unless the facility will be located at the highest priority location as set forth in WCC 20.13.060 20.13.085, the applicant has demonstrated that none of the higher priority locations are available or if one is available it is not a feasible location for the proposed facility; or if feasible is less desirable than the one proposed from the standpoint of minimizing impacts on surrounding land uses.

(3) The permit may include requirements which:

(a) Minimize visual impacts to the greatest extent possible by maximum feasible use of camouflage or screening, including but not limited to fencing, landscaping, strategic placement adjacent to existing buildings or live or simulated vegetation, undergrounding of accessory equipment structures, incorporation of wireless communications support structures, antennas and other appurtenances into the architectural features of existing buildings or structures and by requiring compatibility with key design elements in the surrounding area; for example, use of...
brick or other material similar to that used in adjacent buildings or structures, incorporation of support structures into compatible architectural features such as flag poles, bell towers or cornices, or use of simulated vegetation to camouflage support structures.

(b) Locate wireless communication facilities so as to minimize the visibility of the facility to residentially zoned land and so as to minimize the obstruction of scenic views from residentially zoned land.

(c) Require the mounting of the facility on existing buildings or structures, or use of other, alternatives with less visual, aesthetic or safety impacts, as an alternative to use of a monopole or lattice tower. (Ord. 2000-006 § 1, 2000).

(4) Performance Bond or Other Security Acceptable to the County. The operator of the facility shall obtain and keep in force throughout the time the facility is located on the site a performance bond or other security acceptable to Whatcom County payable to Whatcom County in the amount of 150 percent of the estimated cost of removal as determined by the director, but not less than $1,000. The bond is intended to cover the costs of removal of such facility at such time as the facility may be required to be removed pursuant to WCC 20.13.150.

20.13.140 Federal requirements.
All wireless communications support structures must meet or exceed current standards and regulations of the FAA, the FCC and any other agency of the federal government with the authority to regulate wireless communications support structures and antennas. If such standards and regulations are changed, owners of the freestanding or attached wireless communication support structure, antennas and electronic equipment governed by this chapter shall bring such wireless communication support structure, antennas and electronic equipment facility into compliance with such revised standards and regulations within the compliance schedule of the federal agency. Failure to bring such facilities wireless communication support structures and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the wireless communication support structure, antenna or electronic equipment facility at the owner’s expense. (Ord. 2000-006 § 1, 2000).

20.13.150 Removal of antennas and support structures.
No less than 30 days prior to the date that a personal wireless service provider plans to abandon or discontinue operation of a facility, the provider must notify the Whatcom County planning and development services director by certified U.S. mail of the proposed date of abandonment or discontinuation of operation. The owner of the facility shall then remove the antenna within 90 days of discontinuation or abandonment unless an additional period of time is authorized by the county. In any case, if the county finds that any antenna or wireless communication support structure has not operated for a continuous period of six months, the owner or lessee of the property on which the wireless communication support structure or antenna is situated or the owner of the wireless communications antenna or support structure shall remove the facility within 90 days of receipt of notice to remove from the county. If the antenna and/or wireless communication support structure is not removed within said
time period, the county may remove the antenna or wireless communication support structure at the
owner’s expense. If there are two or more wireless communications providers on a single wireless
communication support structure, this provision shall not become effective until all providers cease using
the wireless communication support structure. (Ord. 2000-006 § 1, 2000).

20.13.150 Removal of antennas and support structures.
No less than 30 days prior to the date that a personal wireless service provider plans to abandon or
discontinue operation of a facility, the provider must notify the Whatcom County planning and
development services director by certified U.S. mail of the proposed date of abandonment or
discontinuation of operation. The owner of the facility shall then remove the antenna within 90 days of
discontinuation or abandonment unless an additional period of time is authorized by the county. In any
case, if the county finds that any antenna or wireless communication support structure has not operated
for a continuous period of six months, the owner or lessee of the property on which the wireless
communication support structure or antenna is situated or the owner of the wireless communications
antenna or support structure shall remove the facility within 90 days of receipt of notice to
remove from the county. If the antenna and/or wireless communication support structure abandoned
facility is not removed within said time period, the county may remove the antenna or wireless
communications support structure at the owner’s expense. If there are two or more wireless
communications providers on a single wireless communication support structure, this provision shall not
become effective until all providers cease using the wireless communication support structure. (Ord-
2000-006 § 1, 2000).

20.13.160 Third party review.
Personal wireless service providers use various methodologies and analyses, including geographically-
based computer software, to determine the specific technical parameters of their services and low power
mobile radio service facilities, such as expected coverage area, antenna configuration, topographic
constraints that affect signal paths, etc. Because of the technical nature of methodologies and analyses,
the county may find it necessary to require a third party technical review of the material submitted by the
applicant as part of a permitting process. The expert review is intended to address interference and public
safety issues and be a site-specific review of technical aspects of the facilities or a review of the
provider’s methodology and equipment used and not a subjective review of the site which was selected
by a provider. Based on the results of the expert review, the county may require changes to the provider’s
application. The expert review shall address the following:

(1) The accuracy and completeness of submissions;

(2) The applicability of analysis techniques and methodologies;

(3) The validity of conclusions reached; and

(4) Any specific technical issues designated by the county.
In general, and if necessary, the administrator shall consider requiring a third party review of technical information submitted in support of a special exception, and technical information submitted in support of a wireless communications facility proposed at a low priority, high visual impact location.

The selection of a third party expert shall be by mutual agreement between the provider and the county. The cost of the technical review shall be borne by the applicant. (Ord. 2000-006 § 1, 2000)

20.13.170 Appeals.
The hearing examiner shall have the authority to decide, in conformity with this chapter, appeals from any order, requirement, permit decision or determination made by an administrative official in the administration or enforcement of this chapter where more than one interpretation is possible; provided, that such appeal shall be filed within 14 days of the action being appealed. The hearing examiner shall hear appeals under this chapter in the same manner as those appeals he has authority to hear under provided in WCC 20.92.210(2). (Ord. 2000-006 § 1, 2000).

Chapter 20.97
DEFINITIONS

20.97.456 Wireless communications facilities.
"Wireless communications facilities" means the site, wireless communications support structures, antennas, accessory equipment structures, and appurtenances used to transmit, receive, distribute, provide or offer wireless telecommunications services. Wireless communications facilities includes, but are not limited to antennas, poles, towers, cables, wires, conduits, ducts, pedestals, vaults, buildings, electronic and switching equipment. (Ord. 2000-006 § 3, 2000).

20.97.457 Wireless communications service.
"Wireless communications service" means the sending and receiving of radio or microwave signals used for communication, including, but not limited to cellular telephone, personal communications services (PCS), enhanced/specialized mobile radio (ESMR), commercial paging services, and any other technology which provides similar wireless services licensed by the FCC and unlicensed wireless services. (Ord. 2000-006 § 4, 2000).
Call To Order: The meeting was called to order, by Whatcom County Planning Commission Chair, David Onkels, in the Northwest Annex Conference Room at 6:30 p.m.

Roll Call

Present: Ben Elenbaas, Jerry Vekved, David Onkels, Ken Bell, Natalie McClendon
Absent: Walt Haugen, Gary Honcoop, David Hunter, Mary Beth Teigrob

Staff Present: Mark Personius, Erin Osborn, Karen Frakes-Prosecutor’s Office, Becky Boxx

Department Update

Mark Personius updated the commission on the following:
- Review of items before the County Council
- Planning & Development Services happenings

Open Session for Public Comment

Greg Brown, Whatcom County: Thanked Ken Bell and Ben Elenbaas for applying for the Charter Review Committee.

Commissioner Comments

There were no Commissioner comments.

File #PLN2014-00010: A proposal to amend Whatcom County Zoning Code text, Title 20, Chapter 20.13 – Wireless Communications Facilities. The purpose of the proposed amendments are to review and update permit processes for routine wireless communication facility equipment upgrades, adding new definitions to clarify terms for ease of administration and adding new language that exempts certain projects from Wireless Communication Facility permit requirements when such structures or improvements do not substantially increase the physical dimensions of such facilities.

Erin Osborn presented the staff report and a power point presentation.

The purpose of the amendments are to streamline permit processing for routine wireless communication equipment upgrades on existing approved and conforming sites. What staff has found, over the years, is that the code does not provide for routine upgrades. There is existing code language that states that if the bulk or footprint is increased in any way, then it is no longer exempt, and would require a special use permit, either an administrative approval WCF permit or a conditional use permit. During development of this proposal staff has been in contact with representatives of the wireless industry to get their input on ways to streamline the permit process.

Proposed Substantive Changes

- New permitted uses apply to replacement construction; new antenna or new antenna array construction; routine maintenance and emergency repair.
1 recommends that routine maintenance and repair should not be exempt from the provisions of the chapter. Under the proposed code most routine replacement construction and new antennas, on existing approved conforming sites, would be a permitted use, subject to a commercial building permit and zoning review for conformance with the chapter, so long as the proposals don't substantially increase the physical dimensions. The new permitted use would be subject to a pre-screening at the time of the commercial building permit. Once it has been determined to be a permitted use it would not have to get what is typically required, which is a WCF permit, an administratively approved use permit. At the pre-application screening for the commercial building permit, and after the zoning administrator determines that it is a permitted use based on what documentation the applicant provides, it would be approved per zoning, but still would be subject to conditions in the commercial building permit, similar to normal conditions of approval found in a WCF permit.

- Add new language and delete existing language to address July 2013 amendments to SEPA and updated May 10, 2014 SEPA rules regarding expanded statutory categorical exemptions that apply to modifications of existing wireless communication facilities.

- Move exemptions for “routine repair and maintenance” into a new section for permitted uses.

- Add new definitions.

The existing definition for “collocation” is deleted. A new definition for “collocate: is proposed that expands on the existing definition to clarify that the terms may be used to describe action by someone other than the owner of the facility. This was an issue that was a concern for staff because “collocate” implies that one provider is putting something on another provider’s tower. In a situation where the tower owner wants to add additional equipment to its own tower, what is it called? Staff didn’t have a way to describe that. This new definition clarifies that.

The freestanding wireless communication structure facilities such as lattice towers and monopole towers are called wireless communication structures in the existing code. Other types of facilities and structures are called attached, but if specifically designed to support equipment it is considered a wireless communication structure. If not designed for this it is called an attached wireless communication structure. The existing code goes all over the place, in that it calls the wireless communication structures non-attached, but there is no definition and there is a lot of blending of the language.

Proposed Non-Substantive Changes

- Consists of reorganizing the chapter so that uses are taken out of the standards sections for residential and non-residential related districts and puts them into specific use categories such as: administrative approval uses, conditional uses, non-conforming uses and prohibited uses.
• Delete the "s" from the word "communications" because it is problematic.

• Clarify provisions that would allow ancillary equipment facilities as part of an administrative approval WCF permit or as part of a conditional use permit. Right now a provider will come in and apply for a conditional use permit but there is no clear mechanism for them to attach antennas or to permit their ancillary equipment.

Existing Chapter Organization

All of the uses embedded in existing code sections 20.13.070 and 20.13.080 WCC are very difficult to administer. In the proposal these uses weren’t changed they were just extracted from the existing text and moved into new sections that more clearly describe that they are "uses", as opposed to "standards".

Public Notice Requirements and Public Comment

Under existing code most routine wireless equipment upgrades require a WCF permit. Generally, unless exempt from SEPA, the process for review and permitting is very similar to a conditional use permit, including public notice(in residential related districts). Conditional use applications require environment review, under SEPA and a threshold determination. SEPA determinations need to be published with a 14 day comment period. Public notice is sent to all property owners with 300 feet of the proposal in the Urban Growth Areas, or 1,000 feet in other areas. There is then a 15 day comment period for the application. Staff does utilize the optional DNS provisions, which allows them to combine noticing. Staff has found that public comment on sites that require public notice, generally don’t express any major objection.

New SEPA and SEPA Rules

SEPA is a broad, general law that is meant to catch environmental impacts when other types of code regulations might not. In the state law there are some categorical exemptions for wireless communication facilities. In July 2013 SEPA was amended and new rules, to reflect the SEPA changes went into effect in May 2014. The new rules exempt most routine upgrades and replacement construction on existing sites. The new rules state that a substantial change occurs when “the mounting of equipment on a structure that increases the height of the structure more than 10 percent or 20 feet, whichever is greater; or an action that would add an appurtenance to the body that would protrude from the edge more than 20 feet or more than the width of the structure at the level of the appurtenance, whichever is greater.

The way changes to SEPA affect existing code is that the applications that are categorically exempt from environmental review are also exempt from the public notice requirements. What it does is create a less restrictive requirement than what is in existing code. This would exempt sites in residential zones from public notice. The proposal is to delete language that refers to SEPA rules and add language stating that all permitted uses, administrative approval uses, conditional uses and non-conforming uses are subject
to environmental review under SEPA, unless categorically exempt. New language is added that requires public notice on those projects that substantially increase the dimensions and do require a wireless communication facility permit in residential related zones.

Proposed Amendments

Right now there are no provisions to allow for minor upgrades, such as antenna replacement except under a WCF permit, and then subsequent commercial building permit. To make this more streamlined, staff proposes language stating “the mounting of equipment on a structure that increases the height of the structure more than 10 feet, in any direction, or 4 feet for new antennas on an existing tower would be a permitted use, subject to commercial building permit. Most new antennas aren’t going to be more than 4 feet more than the existing. (Staff showed photo examples of what additions to existing towers may look like). Staff also proposes adding language to the permitted use section that requires some sort of documentation that the proposal is going to conform to the FCC rules.

Commissioner Bell asked if the FCC requires any permit.

Ms. Osborn stated she does not know.

Ken Lyons, AT&T representative, stated the FCC does not require a permit.

The hearing was opened to the public.

Carol Tagayun, AT&T representative: They have been involved in the process of the amendments. People are relying on their wireless devices more and more and for a variety of reasons. AT&T sees that is will continue to grow. Over the past seven years, on the AT&T network there has been a 50,000 percent increase in data traffic. That has required them to do a lot of work on the network to ensure that customers can get the services they need and want. This means doing a lot of upgrades to their existing network that they never knew they would have to do. People are using their phones more at home. They are not installing land lines as much. 75 percent of the people that do have land lines are not using them. They have been doing a lot of upgrading to existing facilities, to increase capacity, rather than building new ones if they are not needed. Being involved in this process allows AT&T to respond to the growth in technology and make upgrades efficiently.

Commissioner McClendon asked if every jurisdiction has different rules.

Ms. Tagayun stated they do. They are working with a number of jurisdictions to update their codes as well.

Kristen Larson, AT&T representative: They support the proposal to streamline the rules. They proposed the following, in addition: If you can build a structure on your property, without a permit, you should be able to add a part. To the definition of “substantial increase” they suggest it be consistent with the SEPA definition. The reason for this is the separation requirement. There needs to be a certain number of feet between antennas so
they do not interfere with each other. She would like the commission to consider the
bonding requirements. They are in the application section of the code. Right now it is an
application requirement. They don’t think this is needed. The term of the bonds is written
as open ended, without interest. It costs the county time and money to administer. There
are already safeguards to insure proper removal of towers. Each lease, with the
landowners, requires removal of the facilities if the facilities revert to the landowner. They
do not want to give up their assets in this way so they believe there are safeguards in
place. Regarding Third-party review, right now the section currently requires an applicant
to pay for any third-party review. They would like the language to state that the third-
party reviewer shall be chosen by mutual agreement between the county and applicant.
Currently the applicant has no say. They respect the proposal to add the new 20.13.040
Permitted Uses section, but they urged the commission to consider not adding additional
complexity to the code and instead leave normal, routine and emergency maintenance
under the exempt uses.

Ken Lyons, Busch Law Firm on behalf of AT&T: Regarding routine maintenance and repair,
that usually involves replacement of an identical part. Under the existing code a building
permit would not be needed. Under the new code 20.13.040, a permit would be needed.
Once sites are on the air it is very important that they continue to provide service,
especially for emergency services so they are not in favor of this change.

Ms. Osborn stated the code was silent on this issue before and is now being addressed.
She does not see where a permit is required under this section. Perhaps the language
should be clarified. However, a building permit may be required under the International
Building Code (IBC), and it’s the Building Official who makes this determination.

Karen Frakes stated this text puts people on notice that a permit may be required under
the IBC.

Mr. Lyons stated the new SEPA laws are based on new federal laws. They urged the
commission to add this to their code.

Commissioner Elenbaas asked why the cell phone industry is being singled out. Other
companies aren’t required to get permits for maintenance.

Evelyn Vooge, Whatcom County: Stated having people comment on these projects is very
important. When the cell tower on Double Ditch Road was being proposed it was because
of the public comment that they relocated the tower to a safer area. In the text is the
word “substantially”. This is a word that really refers to a lot bigger. So even if it was
substantially smaller it could be a big change. Other than that she is not opposed to the
proposed language.

The hearing was closed to the public.

Mark Personius suggest if the commission would like to hold the hearing open that the
Building Official attend the next meeting on this issue to clarify how the building code
applies to wireless improvement projects.
Commissioner Onkels stated he was concerned about the apparent contradiction between the need to repair or replace components in a timely manner and still comply with the code.

Ms. Osborn stated that the provisions that allow for the permitted uses are not making it harder than the existing code. Whatever has been done in the past to respond to emergency repairs is not going to change. There are provisions for temporary repairs. These are dealt with at the building permit level. How they are dealt with is up to the building official.

Commissioner Elenbaas asked where the line is being drawn as far as replacing a like item. Why is a permit required?

Ms. Osborn stated staff still wants the chapter to apply to the repair. Whether or not it requires a building permit is going to be building official decision. It is not something that the zoning ordinance is going to decide. We need to look at the safety issues that might be involved. There are provisions for emergency situations so work can begin as soon as possible.

Commissioner Bell wants to see the FCC definition used for a substantial change.

Ms. Osborn clarified that the FCC does not have a definition. It is defined under SEPA.

Commissioner Bell moved to use the definition in SEPA for a substantial change. Commissioner Elenbaas seconded.

Commissioner Vekved asked if staff had a reason for not proposing to use the SEPA definition.

Ms. Osborn stated this is under a public use that doesn’t have any public comment. It would be exempt from SEPA. Staff’s opinion was that 20 feet might be substantial. The point is staff wants to hear what the public has to say on proposals that exceed dimensions listed in the staff proposal.

Commissioner Vekved asked if there is an average tower height or do they vary.

Mr. Lyons stated the tower height depends on various factors, such as topography, area coverage, etc. Most are 100 feet.

Ms. Osborn stated the four foot proposal was based on the City of Bellingham comments. They stated two to three feet was considered substantial for their purposes. Notice regarding the proposal went to all of the cities.

Commissioner McClendon asked what the width of a tower is.

Mr. Lyons stated there may be arms or brackets which are generally under 20 feet.

The motion to use the definition in SEPA for a substantial change passed.
Commissioner Elenbaas asked if the proposal of an increase of four feet should be changed to six feet.

Mr. Lyons stated that under SEPA there is no requirement or restriction on the size of the antenna. If the SEPA definition of substantial change is adopted this section could be deleted.

Ms. Osborn stated there was scriveners error made in proposed 20.13.020(19)(b). It should read: The installation or mounting of equipment that would add an appurtenance to the body of the structure protruding from the edge of the structure, resulting in an increase in the overall width of the structure by more than ten percent, or 10 feet, whichever is less greater.

Commissioner Elenbaas stated the FAA is going to have limits on height. They should have jurisdiction.

Commissioner Bell requested some language be inserted that once substantial has been met then there are different requirements.

Ms. Osborn stated she has seen language to address that issue from the City of Salem. To incorporate language into Whatcom County’s code would require additional staff research.

Commissioner Vekved moved to request staff to provide the commission with proposed language limiting incremental increases in sizes to the structures. Commissioner Bell seconded.

Mr. Lyons stated they have recommended such language be added in other jurisdictions and support it.

The motion to request staff to provide the commission with proposed language limiting incremental increases in sizes to the structures passed.

Commissioner Bell moved to make it explicit that normal, routine repairs and maintenance are exempt from permitting. The motion failed for lack of a second.

Commissioner Bell asked about the bonding requirements. Is it strictly a teardown requirement?

Ms. Osborn stated it is for removal of the structure should it be abandoned.

Commissioner Bell asked if there was a standard mechanism for bonding.

Ms. Osborn stated staff spent a lot of time on the bonding issue and took into account the wireless industries concerns. Bonds are difficult for staff to administer. Often there is more than one tower on a parcel and each tower may have several carriers. Then over time carriers merge so it becomes very complex to determine who is responsible for what. To
Regular Meeting

May 22, 2014

1 her knowledge there has never been a time when the county has had to cash in on a
2 bond. However, the system seems to be working.

3 Commissioner Bell stated the towers are on private property so why are they bonded? The
4 arrangement should be between the carrier and the land owner. The county should have
5 to part in it.

6 Ms. Osborn stated that bonding has been part of the code for a long time. The issue
7 requires more research. It may be one of those things that is outdated.

8 Commissioner McClendon asked if property taxes are paid on the towers.
9
10 Ms. Osborn stated taxes are paid on them but indicated that it would only be the
11 Assessor’s Office who could comment on how these structures are assessed.

12 Commissioner Bell moved to remove the bonding requirement from the
13 regulations. Commissioner Elenbaas seconded.

14 Commissioner Onkels asked if bonding is required in other jurisdictions.
15
16 Ms. Larson stated their leases have a reversion clause stating if the structure is
17 abandoned the equipment reverts to the private property owner where the structure is
18 located.

19 Mr. Lyons stated there are different types of abandonment clauses in other codes. They
generally require removal of the tower within a certain time frame but do not require a
bond. There are some jurisdictions that do have a bonding requirement for the tower
when it is originally built. Over time it has been shown that the abandonment clauses or
bonding has never been used so the codes may be obsolete. What is different about
Whatcom County is that bonds are required every time equipment is added.

20 Ms. Frakes suggested staff research this issue before the commission takes action on the
issue.

The vote to remove the bonding requirement from the regulations failed.

24 Staff will research the bonding issue and make their findings known at the next meeting.

Regarding 20.13.160-Third party review, Commissioner Bell stated it should be by mutual
agreement between the county and provider.

28 Ms. Osborn stated that whoever wrote the code had a reason for the language. She had to
justification to change the language.

Commissioner Vekved moved to change 20.13.160 to read: The selection of a
third party expert may shall be by mutual agreement between the provider and
the county, or at the discretion of the county, with a provision for the provider
and interested parties to comment on the proposed expert and review its
qualifications. The cost of the technical review shall be borne by the applicant.
Commissioner Bell seconded.

Ms. Frakes asked what would happen if mutual agreement can’t be reached?
Commissioner McClendon stated it would be the applicant that loses so it would be in their
best interest to agree.

The motion to change 20.13.160 carried.

Commissioner Bell moved to keep the public hearing open to the next meeting.
Commissioner Vekved seconded. The motion carried.

Commissioner Vekved suggested the following changes to the proposal:

20.13.020(10) - “Collocate” means the installation of wireless services equipment on a
freestanding or attached wireless communication facility that may be shared by one or
more wireless service providers to either transmit and/or receive radio frequency signals
for communication purposes. For the purposes of this chapter, the terms “collocate”,
“collocation” or “co-locate” may be used interchangeably to describe action taken by a
principal facility owner, an authorized agent, or a valid lessee to add wireless services
equipment to an existing facility

The commission discussed the definition and pronunciation of “collocate”. The commission
and staff agreed to research the issue more and possibly add the word to the list of
definitions in the code making it easier to understand.

20.13.050- Uses described in this section must comply with county, state, and federal law
and regulations and all applicable provisions of this chapter. The administrator may refer
an application for a WCF Permit to a technical review committee for review and comment
prior to referring the application to the administrator for a decision.

Ms. Osborn suggested it could read: Uses described in this section must comply with
county, state, and federal law and regulations and all applicable provisions of this chapter.
The administrator may refer an application for a WCF Permit to a technical review committee for their review and comment prior to referring the application to the
administrator for prior to making a decision on the application.

The commission agreed to Ms. Osborn’s suggestion.

Commissioner Onkels suggested the following change to the proposal:

20.13.050(1)(a)(iv) - In all nonresidential districts: New freestanding wireless
communication support structures (lattice towers or monopole towers) may be collocated
or clustered on approved and conforming sites; provided that the height of such
structures shall be subject to requirements of WCC 20.13.092(9)(b); and provided further
that the height does not exceed 150 feet. Additional height may only be approved only by
special exception as provided in WCC 20.13.110.
Commissioner Bell moved to adopt the proposed text changes. Commissioner McClendon seconded. The motion carried.

Commissioner Vekved suggested the following change to the proposal:

20.13.040(1)(b) – The applicant or applicant’s agent must also submit documentation to the administrator demonstrating that replacement construction meets Federal Communication Commission (FCC) Emission Standards. Examples of such documentation include engineered analyses, such as a Non-ionization emission report (NIER). Such documentation must be submitted at time of application for the required commercial building permit(s).

Commissioner Vekved stated it does not make sense to pick out one particular report as an example. If it is not a requirement it should not be mentioned.

Ms. Osborn stated this language was suggested by one of the representatives from the wireless services industry.

Commissioner Vekved stated this language appears throughout the proposal and suggested it be deleted in all instances.

Commissioner Vekved moved to adopt the above suggested amendments. Commissioner McClendon seconded. The motion carried.

The meeting was adjourned at 9:20 p.m.

Minutes prepared by B. Boxx.

WHATCOM COUNTY PLANNING COMMISSION ATTEST:

________________________________________  _______________________________________
David Onkels, Chair                           Becky Boxx, Secretary
Call To Order: The meeting was called to order, by Whatcom County Planning Commission Chair, David Onkels, in the Northwest Annex Conference Room at 6:30 p.m.

Roll Call
Present: Ben Elenbaas, Gary Honcoop, David Onkels, Mary Beth Teigrob, Ken Bell, Walter Haugen, Natalie McClendon, David Hunter
Absent: Jerry Vekved

Staff Present: Mark Personius, Erin Osborn, Becky Boxx

Department Update
Mark Personius updated the commission on the following:
- The Critical Areas Citizen Advisory Committee has started meeting.
- Planning Commission schedule.

Open Session for Public Comment
There was no public comment.

Commissioner Comments
Commissioner Elenbaas stated he graduated from college last week. His final paper was titled "Is Planning and Zoning Helping or Hurting Protecting 100,000 Acres of Farm Land in Whatcom County”.

Approval of Minutes
May 8, 2014
Commissioner Teigrob moved to approve as written. Commissioner Bell seconded. The motion carried.

Public Hearing
File #PLN2014-00010: A proposal to amend Whatcom County Zoning Code text, Title 20, Chapter 20.13 – Wireless Communications Facilities. The purpose of the proposed amendments are to review and update permit processes for routine wireless communication facility equipment upgrades, adding new definitions to clarify terms for ease of administration and adding new language that exempts certain projects from Wireless Communication Facility permit requirements when such structures or improvements do not substantially increase the physical dimensions of such facilities. This is a continuation of the public hearing held May 22, 2014.

Erin Osborn gave an overview of the proposal.

This proposal came about because there are no provisions for routine upgrades. Staff has established a permitted uses section so routine collocations or routine maintenance can be done. Staff also reorganized the chapter because it was very confusing in that it didn’t
parallel the organizational structure of the rest of the zoning code. There are also new
definitions which are key in applying the section on permitted uses. Planning Commission
recommendations, from the last meeting, have been incorporated. They include a
definition of "substantial change" and "incremental changes"; the meaning of "collocate";
"third party review" language; "performance bonds" and applicability of the International
Building Code.

Representatives from AT&T submitted their recommendations. Staff drafted a memo
which addresses those recommendations. (see attached)

Definition of Substantial Change: Staff was in agreement with the recommendation.

Third Party Review: At the May 22nd meeting the commission agreed to the
representative’s suggestions.

Commissioner Hunter asked what happens if agreement can’t be reached.

Commissioner Elenbaas stated they won’t get their permit. There was concern that if you
are paying for the permit you should have some input in the selection.

Commissioner Hunter stated if the county doesn’t agree that would end the permit
process.

Ms. Osborn said the representatives stated the code should provide an applicant with an
opportunity to come to mutual agreement with the county.

Commissioner Hunter stated some neutral party needs to be involved if agreement can’t be reached.

Mr. Personius asked how many times have there been when a third party review is
required.

Ms. Osborn stated she did not know of any.

Staff will formulate language to address the concern.

Emergency and Routine Repair and Maintenance: Staff proposed that routine emergency
repair and maintenance be moved into the permitted use section. There was concern,
from the wireless industry, that this would make it subject to additional review. It is up to
the building official to determine when a building a permit is needed. Staff now proposes
the language be returned back to the exemption section but have a provision added that
states "provided that compliance with design and development standards is maintained".

Bonding: Currently a performance bond is required to cover the cost of removal should
the facility be abandoned. They are difficult for staff to administer. At the last meeting the
commission asked staff to come back with rational to justify keeping them. In the memo
is alternative language, which states putting a lien on the property. Bonds don’t have an
inflation factor figured in so that raises the question of will there be enough money to
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1 remove one in the future? Staff ultimately recommends the section be deleted and add language which allows the county to put a lien on the property.


7 Collocation: Staff recommends keeping the definition that the commission approved at the last meeting.

9 The hearing was opened to the public.

12 Evelyn Vooge, Whatcom County: Referred to a statement from Commissioner Bell at the last meeting. He had stated that tearing down a house would have no effect on anyone else, which is true, however tearing down a cell phone tower could have a bad health effect so there is a difference. Sometimes the owners don't care if it is torn down or not so there may be more health effects. She referred to a statement from Commissioner Elenbaas at the last meeting. He had stated that everyone there uses cell phones all day. He did not survey everyone. She stated that fact is incorrect. In 1999 a permit was issued for Nextel. Before they built their cell tower, on Double Ditch Road, they moved it back to 240 from 175 from the road. Why do you think they did that? If was for possible health effect reasons. In the permit it was stated a Washington State professional engineer shall engineer new components, including tower structure, antenna, shelter, foundation, etc. for all equipment. You should keep the bond requirements because the towers are a health hazard to the people near it.

26 Kristin Larsen, Representative of AT&T: They are in agreement with the definition of “substantial change” and “third party review”. She highlighted that “third party review” is not required so it does not mean it will be part of all of their permit processes. The permits that are needed for wireless facilities do not set criteria, within the code, for their approval or denial. The decision is based on the information that is in the record. Whether agreement is reached or not on a third party reviewer the information in the record will decided if the permit is approved or denied. Regarding the emergency repair and maintenance issue they agree that should remain exempt from the chapter. Maintenance and repair of existing facilities is what the language speaks to. The word existing is key. Nothing new is being added. Review has already been done on what is there to make sure it complies with the standards. On the bonding requirement their leases have a provision that if they abandon the facility after 90 days it reverts to the underlying property owner. They don’t have an issue with placing a lien on the property owner.

40 The hearing was closed to the public.

42 Commissioner Honcoop stated regarding bonds, he disagreed with AT&T’s suggestion that the responsibility for removing the tower be shifted to the property owner. That is a convenient way to get out of the responsibility of removing their equipment. He can understand the problem of the county trying to keep track of the bonds. He asked if new bonds are required each time a new permit is issued for a replacement, etc.
Ms. Osborn stated the existing bond usually covers those issues or expansion of the bond may be required.

Commissioner Bell stated the property owner is receiving an income so there is no need to have a bond. There are two entities making money so the cell phone provider should not bear the full burden of removal.

Commissioner Haugen stated there has been a tendency, in the American system, that the full cost of removal is not budgeted into the cost of making something. That could be extended to say that the people that put the equipment on the property are responsible to get it off.

Commissioner Hencoop stated that in this case the property owner does not own the tower so the party that put it there should be responsible to remove it. If the language is changed there is a possibility that the current bonds could be removed then the responsibility shifts to the property owner who had no say in this.

Commissioner Hunter stated that whatever a lease says today can say something else tomorrow. He assumed AT&T was comfortable with attempting to shift the responsibility in their leases to the property owners. He is not comfortable with that. There may be ways of structuring the bond so it has increasing value over time.

Commissioner Elenbaas noted that some of the commissioners feel inheriting a cell tower would be a burden but from what he has heard from the cell tower providers it must not be a burden. Just recycling it would pay for the cost of demolition.

Commissioner Teigrob asked the AT&T representative to explain more clearly what their leases say both currently and in the past.

Kelly Dunham, Representative of AT&T: It has been there policy, for about the last 15 years, that all equipment will be removed from the site within 30-90 days of termination of the lease. If that does not happen there is a second provision that the equipment will revert to the land owner. Should that happen, the landowner, if they should choose to remove that equipment, it will be at AT&T’s cost.

Commissioner Bell asked the cost of a bond.

Ms. Larsen stated the bond minimum stated in the code is $1,000. Every time something is added or changed it is another $1,000.

Commissioner Hencoop asked if they are purchasing a performance bond or posting a cash bond.

Ms. Larsen said they are purchasing a performance bond.

Commissioner McClendon stated it seems like the tower owner has an interest in having an antenna removed if it is not being used or paid for. Why are there bonds on each piece of equipment? Why not just the tower?
Ms. Osborn it would be nice to determine a tower’s full build out might be and just bond the tower, but that’s not how it happens.

Commissioner Honcoop stated there are bonds on each because ownership is different.

Commissioner Bell noted that there is an insurance policy behind AT&T’s policies which will cover the cost of removal in addition to the cost of the bond and the civil process if needed. He is not a fan of the bond. He is not nervous about the cost of removal shifting to the property owner.

Commissioner Hunter stated he would be amazed if AT&T is putting together leases that are of benefit to the other party. He is skeptical that a lease written today will remain the same in the future.

Commissioner Honcoop agreed with Commissioner McClendon’s comments. Bonds should be focused on the towers.

Commissioner Bell asked if the county could be added as additionally insured on the policy.

Commissioner Elenbaas asked why bonds are even needed. They aren’t needed for other things such as silos, tall buildings, etc. Will anyone even know if a tower is abandoned just by looking at it?

Commissioner Onkels stated that the benefit to using insurance is the benefit that the insurance company does the underwriting. They take care of the small details.

Commissioner Bell moved to accept the staff changes on bonding as written in the memo of June 12th. Commissioner Elenbaas seconded.

Commissioner Hunter stated he will not support the motion because he is not comfortable with the language. He pointed out language that stated the county may seek and obtain a court order. A court order is not automatically obtained just by applying. The new language introduces a court process. Do we want that? A bond is preferable because the money is already there versus a lien or court order.

Commissioner Bell stated that if he had a bond he would walk away from it and let other people take it down. The practical aspect is that you will be in court anyway if you abandon a site.

Commissioner Honcoop stated the insurance company can come after you. You can’t just walk away from the bond.

The vote on the motion to accept the staff changes on bonding as written in the memo of June 12th failed.

Commissioner Honcoop asked if the 30 and 90 day time periods mentioned in the text and new or existing.
Ms. Osborn stated they are existing.

Commissioner Honcoop asked if they could be changed. He felt the time period was not long enough to remove a tower. What is the rational for the time period being so short?

Ms. Osborn stated this is existing language that may have been based on a model code in the state.

Commissioner Haugen moved to adopt staff’s recommendation minus bonding, third party review, emergency and routine maintenance and definition of substantial changes. The motion failed for lack of a second.

Commissioner Honcoop moved to accept proposed language in the memo regarding 20.13.020(19)(a). Commissioner Teigrob seconded. The motion carried.

The following motions were made regarding Exhibit A. (attached)

Commissioner Hunter moved to accept section 20.13.010 as written. Commissioner Haugen seconded. The motion failed. (This section was adopted at the previous meeting.)

Commissioner Hunter moved to accept section 20.13.020(10) as written. Commissioner Haugen seconded. The motion carried.

Commissioner Honcoop moved to retain the language in section 20.13.030(6) and add the language proposed by staff in the June 12th memo. Commissioner Hunter seconded. The motion carried.

Commissioner Hunter moved to accept the changes to section 20.13.040. Commissioner Teigrob seconded. The motion carried.

Commissioner Teigrob moved to accept the changes to section 20.13.050 and 20.13.050(1). Commissioner Honcoop seconded.

Commissioner Onkels made a friendly amendment to change 20.13.050 to read: Uses described in this section must comply with county, state, and federal law and regulations and all applicable provisions of this chapter. The administrator may refer an application for a WCF Permit to a technical review committee for their review and comment prior to referring the application administrator for prior to making a decision on the application. Commissioner Hunter seconded. The motion carried.

The motion to accept the changes to section 20.13.050 and 20.13.050(1) carried.
Commissioner Teigrob moved to accept the change to 20.13.050(1)(a)(iv). Commissioner McClendon seconded. The motion carried.

Commissioner Hunter moved to accept the language in 20.13.092(11). Commissioner Haugen seconded.

Commissioner Hunter stated he does not understand why this language is in the general design standards section.

Ms. Osborn stated it may have to do with the condition and appearance if the equipment is abandoned.

Commissioner Teigrob noted there is language in 20.13.150 regarding removal.

Ms. Osborn stated that the way the code is structured there is a provision for removal of the facilities, in the design standards is language regarding the performance bonds and in the application requirements there is reference to the performance bond. They refer to different things.

Commissioner Hunter stated the language in 20.13.092(11) belongs in 20.13.130. Also the language in 20.13.120(6) needs to be changed in some way.

The vote to accept the language in 20.13.092(11) failed.

Commissioner Hunter moved to move the language in 20.13.092(11) to 20.13.130. Commissioner Teigrob seconded. The motion carried.

Commissioner Hunter moved to amend the language in 20.13.130(6) to read: The applicant shall submit a letter of credit, performance bond or other security acceptable to the county, as described in WCC.... Commissioner Haugen seconded.

Commissioner Honcoop spoke against taking out the wording "or other security as acceptable to the county" because there may be circumstances where a performance bond can't be obtained.

Commissioner Hunter stated that if the language remains the language in moved from 20.13.060(11) needs to be changed.

Commissioner Honcoop made an amendment to the motion to read: The applicant shall submit a letter of credit, performance bond or other security acceptable to the county, as described in WCC.... Commissioner Hunter seconded. The motion carried.
The motion to amend the language in 20.13.130(6) to read: The applicant shall submit a letter of credit, performance bond or other security acceptable to the county, as described in WCC.... carried.

Commissioner Honcoop moved to change the wording in 20.13.130 (previously 20.13.092(11)) to read: Performance Bond or Other Security Acceptable to the County. The operator of the facility shall obtain and keep in force throughout the time the facility is located on the site a performance bond or other security acceptable to Whatcom County, payable to Whatcom County in the amount of 150 percent of the estimated cost of removal as determined by the director, but not less than $1,000. The bond is intended to cover the costs of removal of such facility at such time as the facility may be required to be removed pursuant to WCC 20.13.150. Commissioner Bell seconded. The motion carried.

Commissioner Onkels commented on 20.13.150 stating six months is not enough time to remove an abandoned facility. The period of time should be at least a year.

Commission Onkels moved to change 20.13.150 (lines 13-22 of Exhibit A) to read: In any case, if the county finds that any antenna or wireless communication support structure has not operated for a continuous period of six months, the owner or lessee of the property on which the wireless communication support structure or antenna is situated or the owner of the wireless communications antenna or support structure shall remove the facility within 90 days 18 months of receipt of notice to remove from the county. If the antenna and/or wireless communication support structure abandoned facility is not removed within said time period, the county may remove the antenna or wireless communication support structure at the owner’s expense. If there are two or more wireless communication providers on a single wireless communication support structure, this provision shall not become effective until all providers cease using the wireless communication support structure. .... Commissioner Bell seconded.

Ms. Osborn indicated that staff recommended language that would put a lien on the real property if the facility is abandoned.

Commissioner McClendon stated if there is a bond in place why the concern about having the tower taken down?

Commissioner Honcoop stated the county should make it easier for the towers to stay in place. What is the point of taking them down if they may be used again to improve service?

The vote on the motion to change 20.13.150 (lines 13-22 of Exhibit A) to read: In any case, if the county finds that any antenna or wireless communication support structure has not operated for a continuous period of six months, the owner or lessee of the property on which the wireless communication support structure or antenna is situated or the owner of the wireless communications antenna or support structure shall remove the facility within 90 days 18 months...
of receipt of notice to remove from the county. If the antenna and/or wireless communication support structure abandoned facility is not removed within said time period, the county may remove the antenna or wireless communication support structure at the owner's expense. If there are two or more wireless communication providers on a single wireless communication support structure, this provision shall not become effective until all providers cease using the wireless communication support structure failed.

Commissioner McClendon stated there should be language that the performance bond has to be maintained.

Commissioner Teigrob suggested adding language about the tower becoming dangerous.

Commissioner Honcoop stated there needs to be a limit. The time period can't be left open forever.

Commissioner Honcoop moved to change 20.13.150 (lines 13-22 of Exhibit A) to read: In any case, if the county finds that any antenna or wireless communication support structure has not operated for a continuous period of six months, the owner or lessee of the property on which the wireless communication support structure or antenna is situated or the owner of the wireless communications antenna or support structure shall remove the facility within 90 days 36 months of receipt of notice to remove from the county. If the antenna and/or wireless communication support structure abandoned facility is not removed within said time period, the county may remove the antenna or wireless communication support structure at the owner's expense. If there are two or more wireless communication providers on a single wireless communication support structure, this provision shall not become effective until all providers cease using the wireless communication support structure...Commissioner Teigrob seconded. The motion carried.

Commissioner Hunter moved to accept the proposed language in 20.13.160(4). Commissioner Haugen seconded. The motion failed.

Commissioner Hunter spoke to the issue of mutual agreement. He thinks the county can require a third party expert. If they require that and agreement is not reached that can stop the process. Language should be added that states: if mutual agreement can not be reached then the third party will be selected by....It needs to be a third non-interested party to select the third party expert. Perhaps there needs to be a list.

Commissioner Honcoop likes the language the way it was proposed in Exhibit A.

Mr. Personius noted that if mutual agreement can't be reached the county may get sued for blocking its own permit process.

Commissioner Honcoop asked if there is appeal process for this.

Mr. Personius stated if they applied for a building permit there would be.
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Commissioner Haugen asked the AT&T representative had any concerns about the language as it was originally proposed.

Ms. Larsen stated she had no problem with the language.

Ms. Osborn reviewed the two new definitions for “Wireless Communication Facility” and “Wireless Communication Services” that were proposed on page 6 and 7 of the June 12th memo. She recommended approval of the language.

Commissioner Teigrob moved to accept the proposed language. Commissioner McClendon seconded. The motion carried.

Commission Teigrob moved to strike definitions in 20.13.020(16) & (17); 20.97.456; and 20.97.457. Commissioner Hunter seconded. The motion carried.

Commissioner Hunter moved to adopt the amended Chapter 20.13, as amended and associated findings. Commissioner Teigrob seconded. Roll Call Vote: Ayes – Bell, Elenbaas, Haugen, Honcoop, Hunter, McClendon, Onkels, Teigrob; Nays – 0; Abstain – 0; Absent – Vekved. The motion carried.

The meeting was adjourned at 10:00 p.m.

Minutes prepared by B. Boxx.

WHATCOM COUNTY PLANNING COMMISSION ATTEST:

David Onkels, Chair

Becky Boxx, Secretary
EXHIBIT “A”

Chapter 20.13
WIRELESS COMMUNICATIONS FACILITIES

Sections:

20.13.010 Purpose.
20.13.020 Definitions.
20.13.030 Applicability - Exemptions.
20.13.040 Permitted Uses.
20.13.050 Administrative Approval Uses.
20.13.060 Conditional Uses.
20.13.080 Prohibited Locations
20.13.050-20.13.085 Siting priorities and prohibited locations.
20.13.070 Additional standards for residential related districts.
20.13.080 Additional standards for nonresidential related districts.
20.13.090 20.13.100 Temporary uses.
20.13.100 Wireless communication facility permit.
20.13.110 Special exceptions.
20.13.120 Application requirements and conditions of issuance.
20.13.130 General criteria for issuance of permits.
20.13.140 Federal requirements.
20.13.150 Removal of antennas and support structures.
20.13.160 Third party review.
20.13.170 Appeals.

20.13.010 Purpose.
The purpose of this chapter is to establish regulations for the placement, development, permitting, and removal of personal wireless communications facilities including support structures and antennas. These standards were developed to comply with the Federal Telecommunications Act of 1996.

They are intended to protect property values and minimize visual impact while furthering the development of enhanced telecommunication services in the county.

The provisions of this chapter are not intended to and shall not be interpreted to prohibit or to have the effect of prohibiting personal wireless services. This chapter shall not be applied in such a manner as to discriminate between providers of functionally equivalent personal wireless services.

In reviewing an application to provide personal wireless service or to install personal wireless service facilities, the county shall act within a reasonable period of time, taking into account the nature and scope of the application and the required notice and necessary review process. Any decision to deny an
application shall be in writing, supported by substantial evidence contained in a written record. (Ord. 2000-006 § 1, 2000).

20.13.020 Definitions.

As used in this chapter, the following terms shall have the following meanings. Other words and terms shall have meanings assigned to them by Chapter 20.97 WCC or if not defined in this chapter or Chapter 20.97 WCC, the meaning customarily assigned to them.

1 (1) "Administrator" means the director of planning and development services or his designee.

(2) "Amateur radio" or "ham radio" means radio facilities operated for noncommercial purposes by individuals licensed by the FCC with an interest in construction and operation of radio equipment, usually as a hobby or vocation.

(3) "Ancillary equipment facility (AEF)" means an unstaffed structure used to contain ancillary equipment for a WCF. Such structures include cabinets, shelters, remodeled structures, pedestals and other similar structures. Ancillary equipment may include air conditioners and emergency generators.

(4) "Antenna" means any pole, panel, reflection disc, or similar device used for the transmission or reception of radio frequency signals, including but not limited to, directional antennas, Omni-directional antennas, and parabolic antennas.

(5) "Antenna array" means any system of poles, panels, rods, reflecting discs or similar devices used for the transmission or reception of radio frequency signals. An antenna array can be made up of one or more antennas including but not limited to the following:

(a) Directional antenna (also known as a panel antenna) which transmits signals in a directional pattern of less than 360 degrees.

(b) Omni-directional antenna (also known as a whip antenna) which transmits signals in a 360-degree pattern.

(c) Parabolic antenna (also known as a dish antenna) which is a bowl shaped device that receives and transmits signals in a specific directional pattern (e.g., point-to-point).

5) "Attached wireless communications facility" means an antenna array that is attached to an existing building or structure (attachment structure), which structure shall include but not be limited to utility poles, signs, and water towers, together with any accompanying pole or device (attachment device) which attaches the antenna array to the existing building or structure, transmission cables, and an ancillary equipment facility which may be located either inside or outside of the attachment structure.

(6) "Attached wireless communication support structure" is a support structure not specifically designed and constructed to support an antenna array. Such structures may include but are not limited to buildings
or structures, utility poles, signs, and water towers, together with any accompanying pole or device (attachment device) which attaches the antenna array to the existing building or structure.

(7) "Attached wireless communication facility" is a wireless communication facility that utilizes an attached wireless communication support structure as defined in WCC 20.13.020(6). It means the site, the leased area, attached wireless communication support structures, antennas, antenna array(s), accessory equipment structures, and appurtenances used to transmit, receive, distribute, provide or offer personal wireless communication, together with any accompanying pole or device (attachment device) which attaches the antenna array to the existing building or structure, transmission cables, and an ancillary equipment facility which may be located either inside or outside of the attachment structure.

(8) "Citizens band radio" means two-way radio facilities operated for short-range personal and business communications, without necessity of a federal license, pursuant to 47 Congressional Federal Register Part 95.

(9) "Clustering" means the placement of more than one wireless communication support structure on a single site either by one provider or by several different providers.

(10) "Collocation" means the use of a single wireless communications support structure by more than one wireless communications provider or the use of a site by more than one wireless communications provider.

(11) "Collocate" means the installation of wireless services equipment on a freestanding or attached wireless communication facility that may be shared by one or more wireless service providers to either transmit and/or receive radio frequency signals for communication purposes. For the purposes of this chapter, the terms "collocate", "collocation" or "co-locate" may be used interchangeably to describe action taken by a principal facility owner, an authorized agent, or a valid lessee to add wireless services equipment to an existing facility. Note: The spelling of these terms may vary based on local vernacular used by wireless service industry professionals, and in accordance with state and federal law.

(12) "Direct-to-home satellite service" means the distribution or broadcasting of programming or services by satellite directly to the subscriber's premises without use of ground receiving or distribution equipment, except at the subscriber's premises or in the uplink process to the satellite.

(13) "FAA" means the Federal Aviation Administration.

(14) "FCC" means the Federal Communications Commission.

(15) "Freestanding wireless communication facility" means the site, the lease area, freestanding wireless communication support tower(s), antennas, antenna array(s), accessory equipment structures, and appurtenances used to transmit, receive, distribute, provide or offer personal wireless communication services. Freestanding wireless communication facilities include but are not limited to antennas, poles, towers, cables, wires, conduits, ducts, pedestals, vaults, buildings, and electronic switching equipment.
Freestanding wireless communication support structure is a freestanding structure, designed and constructed to specifically support an antenna array, and may include but is not limited to any of the structures listed below:

(a) “Lattice tower” means a wireless communication support structure which consists of a network of vertical and horizontal supports and crossed metal braces, forming a tower which is usually triangular or square in cross-section.

(b) “Monopole tower” means a wireless communication support structure consisting of a single pole to support antennas and connecting appurtenances.

(c) “Guyed tower” means any variety of wireless communication support structures using wire guys connecting above grade portions of a communication support structure diagonally with the ground or the structure on which the tower is placed. The purpose of the wire guys is to provide support for wireless communication towers, antennas, and connecting appurtenances. (Ord. 2000-006 § 1, 2000).

“Personal wireless communications services” means wireless communications services.

“Satellite earth station” means the facilities used for reception and processing of programming services from a satellite prior to transfer to terrestrial distribution systems or for processing of programming and services from a terrestrial source before transmission via satellite.

Site. For the purpose of this chapter, “site” means a building, structure, leased area which may contain a base station, building(s) or structure in compliance with the provisions of Whatcom County subdivision regulations, site easement area or lot of record upon which a wireless communications facility is or will be located.

“Substantially increase change the physical dimensions” means:

(a) The installation or mounting of wireless services equipment on an existing support structure that would increase the overall height of the structure by more than ten percent, or ten twenty feet, whichever is less greater; provided that any such increase in height must conform to the provisions of this chapter; or

(b) The installation or mounting of equipment that would add an appurtenance to the body of the structure protruding from the edge of the structure. The installation or mounting of equipment that would involve adding an appurtenance to the body of the structure that would protrude from the edge of the structure more than twenty feet resulting in an increase in the overall width of the structure by more than ten percent, or 10 feet, or more than the width of the structure at the level of the appurtenance, whichever is less greater; or:
Provided, that in making determinations as to whether or not project proposals constitute a substantial change as described in (a) or (b) above, and in order to limit incremental and cumulative effects concerning the overall size of such facilities, measurements shall be taken to establish a base line for determining whether or not proposed changes constitute a substantial change; such measurements shall be taken from the dimensions of the existing facility as it was approved and constructed under the original building permit issued by Whatcom County.

(c) The installation or mounting of equipment, including adding new antennas or antenna arrays that are intended to replace smaller existing antennas, when such installations increase the area of existing antennas or antenna arrays by ten percent or increase the length or width of such existing antenna by four feet in any direction, whichever is greater.

(1520) “Unlicensed wireless services” means commercial mobile services that operate on public frequencies and do not need a FCC license.

(1721) “Wireless communications service” means the sending and receiving of radio or microwave signals used for communication, including, but not limited to cellular telephone, personal communications services (PCS), enhanced/specialized mobile radio (ESMR), commercial paging services, and any other technology which provides similar wireless services licensed by the FCC and unlicensed wireless services.

(16) “Wireless communications facilities” (WCF) means the site, wireless communications support structures, antennas, accessory equipment structures, and appurtenances used to transmit, receive, distribute, provide or offer personal wireless communications services. Wireless communications facilities include, but are not limited to antennas, poles, towers, cables, wires, conduits, ducts, pedestals, vaults, buildings, and electronic switching equipment.

(17) “Wireless communications service” means the sending and receiving of radio or microwave signals used for communication, including, but not limited to cellular telephone, personal communications services (PCS), enhanced/specialized mobile radio (ESMR), commercial paging services, and any other technology which provides similar wireless services licensed by the FCC and unlicensed wireless services.

(18) “Wireless communications support structure” means a structure designed and constructed to specifically support an antenna array, and may include but is not limited to any of the structures listed below. Any device (attachment device) which is used to attach an attached WCF to an existing structure (attachment structure) is excluded from this definition.

(a) “Lattice tower” means a wireless communications support structure which consists of a network of vertical and horizontal supports and crossed metal braces, forming a tower which is usually triangular or square in cross-section.
(b) "Monopole tower" means a wireless communications support structure consisting of a single pole to support antennas and connecting appurtenances.

c. "Guyed tower" means any variety of wireless communication support structures using wire guys connecting above grade portions of a communication support structure diagonally with the ground or the structure on which the tower is placed. The purpose of the wire guys is to provide support for wireless communications towers, antennas, and connecting appurtenances. (Ord. 2000-006 § 1, 2000).


The requirements of this chapter shall apply to all new personal wireless communications facilities and the expansion and/or alteration of any existing personal wireless communications facilities. The following are exempt from the provisions of this chapter:

(1) Satellite earth stations using antenna(s) not more than two meters in diameter in commercial and industrial districts and direct-to-home satellite services.

(2) Send and receive citizen band radio antennas or antennas operated by federally licensed amateur ("ham") radio operators.

(3) Industrial, scientific and medical equipment using frequencies regulated by the FCC.

(4) Military and government radar antennas and associated communication towers used for navigational purposes as regulated by the FCC under 47 Congressional Federal Register Parts 97 and 95 respectively.

(5) Military and federal, state and local government communications facilities used for emergency preparedness and public safety purposes.

(6) Normal, routine and emergency maintenance and repair of existing wireless communications facilities and related equipment which do not increase the size, footprint or bulk of such facilities and which otherwise comply with the county, state, and federal law and regulations. (Ord. 2000-006 § 1, 2000).

20.13.040 Permitted Uses.

The following uses shall be considered permitted uses and shall comply with federal, state, and local laws and regulations and the provisions of this chapter; the following uses shall also be subject to environmental review under the State Environmental Policy Act (SEPA), unless categorically exempt.

(1) Replacement construction:

In all districts: Replacement of any component of an existing freestanding or attached wireless communication facility, and/or replacement of any component of an existing ancillary equipment facility on existing, approved and conforming sites; provided that such replacement does increase the total number of components lawfully existing on the site at the time of application for such replacement construction.
and further provided that such replacement construction does not "substantially increase change the physical dimensions" of the individual components being replaced as defined in WCC 20.13.020(19).

Determinations made as to whether or not replacement proposals substantially increase change the physical dimensions of existing facilities shall be made by the administrator, as follows:

(a) The applicant or applicant's agent must submit documentation to the administrator that demonstrates that replacement construction proposals do not substantially increase change the dimensions of such facilities as defined in WCC 20.13.020(19). Examples of such documentation may include specification sheets and/or area calculations for both the existing and proposed replacement equipment. Such documentation must be submitted at the time of pre-application interview for the required commercial building permit(s).

(b) The applicant or applicant's agent must also submit documentation to the administrator demonstrating that replacement construction meets Federal Communication Commission (FCC) Emission Standards. Examples of such documentation include engineered analyses, such as a Non-ionization emission report (NIER). Such documentation must be submitted at time of application for the required commercial building permit(s).

(2) New antenna or new antenna array construction:

In all districts: New antennas or new antenna arrays may be constructed on or added to existing, attached or freestanding wireless communication facilities on existing, approved and conforming sites; provided that such new antennas or antenna arrays do not "substantially increase change the physical dimensions" of such facilities, as defined in WCC 20.13.020(19);

Determinations made as to whether or not new construction proposals substantially increase the physical dimensions of existing facilities shall be made by the administrator, as follows:

(a) The applicant or applicant's agent must submit documentation to the administrator that demonstrates that the proposed new antenna or new antenna array construction does not substantially increase change the dimensions of such facilities. Examples of such documentation may include specification sheets and/or area calculations for both the existing and the proposed new equipment. Such documentation must be submitted at the time of pre-application interview for the required commercial building permit(s).

(b) The applicant or applicant's agent must also submit documentation to the administrator that demonstrates that any new antenna(s) meet Federal Communication Commission (FCC) Emission Standards. Examples of such documentation include engineered analyses, such as a Non-ionization emission report (NIER). Such documentation must be submitted at time of application for the required commercial building permit(s).
In all districts: Normal, routine and emergency maintenance and repairs to existing freestanding or
attached wireless communication facilities, and ancillary equipment facilities which do not change the
size, footprint or bulk of such facilities and which otherwise comply with the county, state, and federal law
and regulations.

20.13.50 Administrative Approval Uses.
The following uses are considered administrative approval uses and shall require a Wireless
Communication Facility (WCF) permit in accordance with WCC 20.84 and WCC 2.33, and shall be
subject to a threshold determination in accordance with the Whatcom County SEPA Ordinance unless
categorically exempt; provided that WCF permit proposals located in nonresidential related districts shall
be exempt from the public noticing requirements found in WCC 2.33 – Permit Review Procedures.

Uses described in this section must comply with county, state, and federal law and regulations and all
applicable provisions of this chapter. The administrator may refer an application for a WCF Permit to a
technical review committee for their review and comment prior to referring the application administrator for
prior to making a decision on the application.

(1) Wireless Communication Facility (WCF) permit
New freestanding wireless communication support structures, new antennas or antenna arrays on
existing freestanding or attached wireless communication structures on existing approved and conforming
sites, and new attached wireless communication facilities that substantially increase change the physical
dimensions of a facility as defined in WCC 20.13.020(19) may be approved by the administrator through
issuance of a WCF permit, subject to a required commercial building permit. Prior to application approval,
the applicant or applicant’s agent must also submit documentation to the administrator that demonstrates
that any new antenna(s) meet Federal Communication Commission (FCC) Emission Standards.
Examples of such documentation include engineered analyses, such as a Non-ionization emission report
(NIER):

(a) New freestanding wireless communication support structures:

(i) New freestanding wireless communication support structures (lattice towers or monopole towers) may
be collocated or clustered on existing, approved and conforming wireless communication facility sites in
the following residential related districts: Rural, Rural Residential, and Rural Residential Island. [Moved
from: WCC 20.13.070(1)(a)(i)]

(ii) New freestanding wireless communication support structures (monopoles only), may be collocated or
clustered on existing, approved and conforming wireless communication facility sites in the following
residential related districts: Urban Residential, Urban Residential Medium, Urban Residential Mixed,
Neighborhood Commercial, and Eliza Island; provided that the site does not also contain residential uses.
[Moved from: WCC 20.13.070(1)(ii)]
(iii) Monopoles that are permitted as a WCF may exceed the height limits of the underlying residential related zone by 15 feet; provided, the applicant demonstrates that the structure’s height is the minimum necessary to adequately function, or if collocation is specifically provided for on the tower. The additional 15 feet for collocation may be added to the 15 feet necessary for adequate function for a total of 30 feet in the event both situations pertain. [Moved from: WCC 20.13.070(1)(b)]

(iv) In all nonresidential districts: New freestanding wireless communication support structures (lattice towers or monopole towers) may be collocated or clustered on approved and conforming sites; provided that the height of such structures shall be subject to requirements of WCC 20.13.092(b)(b); and provided further that the height does not exceed 150 feet. Additional height may only be approved only by special exception as provided in WCC 20.13.110. [Moved from: WCC 20.13.080(1)]

(b) New attached wireless communication facilities:

New attached wireless communication facilities may be approved by the administrator through issuance of a WCF Permit, and subject to a required commercial building permit(s), as provided below.

(i) In all residential districts: New attached wireless communication facilities or new antennas attached to existing attached wireless communication structures that utilize a nonresidential structure on a parcel or lot not used primarily for residential purposes; provided, the antenna is not more than 15 feet above the roof or parapet wall or top of structure (if not a building). Installation of dish antennas on the roof of an attached wireless communication structure may be permitted as a WCF permit if the applicant demonstrates to the administrator that such proposal satisfies the special exception criteria pursuant to WCC 20.13.110. [Moved from: WCC 20.13.070(2)(b)(ii) and 20.13.070(2)(a)]

(ii) In all nonresidential related districts: Ground mounted dish antennas may be located on existing approved, conforming sites; provided that the site is not used exclusively for residential purposes. [Moved from: WCC 20.13.080(2)(b)(c)]

(iii) In all residential related districts: Ground mounted dish antennas may be located on existing approved, conforming sites; provided that the site is not used exclusively for residential purposes and the antenna is not more than 5 feet above ground level nor more than 12 feet in diameter. [Moved from: WCC 20.13.070(2)(b)(iii)]

(c) New antennas or antenna arrays on existing freestanding wireless communication facilities or existing attached wireless communication facilities on existing, approved and conforming sites; may be approved by the administrator through issuance of a WCF Permit, and subject to required commercial building permit(s):

(j) In all nonresidential districts: New antennas or antenna arrays may be added to existing freestanding wireless communication support structures on existing approved and conforming sites; provided that the height of such new antennas or antenna arrays shall not extend more than 15 feet above the attachment device. [Moved from: WCC 20.13.080(2)(c)(d)]
(ii) In all residential districts: New antennas or antenna arrays may be added to existing freestanding wireless communication support structures on approved and conforming sites; provided that the height of such new antennas or antenna arrays shall be subject to the requirements of WCC 20.13.092(9)(b). [Moved from: WCC 20.13.070(2)(i)]

(iii) In all residential districts: New antennas on existing attached wireless communication structures that utilize a nonresidential structure on a parcel or lot not used primarily for residential purposes; provided, the antenna is not more than 15 feet above the roof or parapet wall or top of structure (if not a building). Installation of dish antennas on the roof of an attached wireless communication structure may be permitted as a WCF permit if the applicant demonstrates to the administrator that such proposal satisfies the special exception criteria pursuant to WCC 20.13.110. [Moved from: WCC 20.13.070(2)(b)(ii) and 20.13.070(2)(a)]

(iv) In all nonresidential related districts: New antennas attached on existing attached wireless communication structures that utilize a nonresidential structure on a parcel or lot not used primarily for residential purposes; provided, the antenna is not more than 15 feet above the roof or parapet. [Moved from: WCC 20.13.080(2)(b)(c)]

(2) Ancillary Equipment Facilities

(a) New ancillary equipment facilities or replacement construction that substantially increases the physical dimensions of an existing facility as defined in WCC 20.13.020(19), may be permitted on existing approved, conforming sites as an Ancillary Equipment Facility (AEF) under the scope of a WCF permit. Such structures include cabinets, shelters, remodeled structures, pedestals and other similar structures. Ancillary equipment may include air conditioners, emergency generators, and GPS units. Installation of such ancillary equipment when included in the scope of a WCF permit shall conform to original time frames for completion set by the administrator, or as further amended by the administrator.

20.13.060 Conditional Uses.

(1) The following uses shall require conditional use permit approval by the hearing examiner, and shall be processed in accordance with WCC 20.84 and WCC 2.33 and shall be subject to a threshold determination in accordance with the Whatcom County SEPA Ordinance, unless categorically exempt. Such uses shall comply with county, state, and federal law and regulations and all applicable provisions of this chapter. The applicant or applicant's agent must also submit documentation to the administrator that demonstrates that any new antennas meet Federal Communication Commission (FCC) Emission Standards. Examples of such documentation include engineered analyses, such as a Non-Ionization emission report (NIER). The administrator may refer an application for a conditional use to a technical review committee for review and comment prior to referring the application to the hearing examiner for a decision.

(a) New freestanding wireless communication facilities:
(i) In all nonresidential related districts: New freestanding wireless communication facilities that utilize lattice tower or monopole wireless communication support structures; provided that the height of such structures shall be subject to the requirements of WCC 20.13.092(9)(b); and further provided that the height does not exceed 150 feet. Additional height may only be approved by special exception as provided in WCC 20.13.110. [Moved from: WCC 20.13.080(1)(a)]

(ii) New freestanding wireless communication facilities that utilize lattice towers or monopole towers in the following residential related districts: Rural, Rural Residential, Rural Residential Island; provided that the height of such structures shall be subject to the requirements of WCC 20.13.092(9)(b). [Moved from: WCC 20.13.070(1)(a)]

(iii) New freestanding wireless communication facilities that utilize monopole towers only in the following residential districts: Urban Residential, Urban Residential Medium, Urban Residential Mixed, Neighborhood Commercial, and Eliza Island; provided that the site does not also contain existing residential uses provided that the height of such structures shall be subject to the requirements of WCC 20.13.092(9)(b). [Moved from: WCC 20.13.070(1)(i)]

(b) New Attached Wireless Communication facilities:

(i) In all non-residential related districts: New attached wireless communication facilities that utilize a residential structure on a site used exclusively for residential purposes shall require a conditional use permit; provided that the antenna shall not extend more than 5 feet above the roof or parapet. [Moved from: WCC 20.13.080(2)(b)(c)]

(ii) In all residential districts: New attached wireless communication facilities that utilize an attached wireless communication support structure that is a residential building or on a parcel used exclusively for residential purposes shall require a conditional use permit; provided that the antenna shall not extend more than 15 feet above the roof top (or top of the structure if not a building) and that the requirements of WCC 20.13.092(1) are met. The hearing examiner shall have the authority to restrict the height of the attached antenna to a figure less than 15 feet in order to attain compliance with WCC 20.13.092(1). [Moved from: WCC 20.13.070(2)(c)]

(2) New ancillary equipment facilities may be permitted under the scope of a conditional use permit, or may be permitted separately as an AEF under a WCF permit pursuant to WCC 20.13.060. Such structures include cabinets, shelters, remodeled structures, pedestals and other similar structures. Ancillary equipment may include air conditioners, emergency generators, and GPS units. Installation of such ancillary equipment when included in the scope of a conditional use permit shall conform to original time frames for completion set by the hearing examiner, or as further amended by the hearing examiner.

20.13.040 070 Nonconforming uses and structures.
Freestanding and attached Wireless wireless communications facilities, and ancillary equipment facilities in operation as of the effective date of the ordinance codified in this chapter or amendment hereto,
including vested applications for such facilities, that do not conform to the use standards or development standards of this chapter are hereby declared nonconforming uses and shall be subject to the provisions of Chapter 20.83 WCC governing nonconforming uses. Routine maintenance on existing towers and antennas is permitted as provided in WCC 20.13.030(6) WCC 20.13.050. However, any new construction other than routine maintenance on existing non-conforming towers, antennas, buildings or other facilities shall comply fully with the requirements of Chapter 20.83 WCC governing nonconforming uses, and this chapter. (Ord. 2000-006 § 1, 2000).

20.13.080 Prohibited Locations.
(a) New attached antennas or antenna arrays shall not be mounted, installed or affixed to a single family residence, duplex or their accessory structures; this prohibition shall not apply to residential structures such as multi-family housing, condominiums, apartment buildings, hotels, rooming houses, and their appurtenant structures, such as parking garages, and storage buildings.

(b) New freestanding wireless communication support structures (lattice towers) are prohibited in Urban Residential, Urban Residential Medium, Urban Residential Mixed, Neighborhood Commercial, and Eliza Island districts.

(c) New freestanding wireless communication support structures (monopole towers and ground level dishes) are prohibited in Urban Residential, Urban Residential Medium, Urban Residential Mixed, Neighborhood Commercial, and Eliza Island districts on sites that also contain residential uses.

(d) New support structures are prohibited on lands within the jurisdiction of the Whatcom County Shoreline Program. (Ord. 2011-013 § 2 Exh. B, 2011; Ord. 2000-006 § 1, 2000).

20.13.085 Siting priorities and prohibited locations.
(1) In reviewing applications for new freestanding wireless communication facilities, and new attached wireless communication facilities, the approving authority shall evaluate the proposal in relationship to the following siting priorities and prohibited locations. Unless the facility will be located at the highest priority location, the applicant shall demonstrate that:

(a) None of the higher priority locations are available; or

(b) If one is available it is not a feasible location for the proposed facility; or

(c) If feasible, the location is less desirable than the one proposed from the standpoint of minimizing impacts on surrounding land uses.

(2) For the purpose of this section chapter:

(a) Residential related districts shall include Urban Residential (UR), Urban Residential Medium (URM), Urban Residential Mixed (UR-MX), Eliza Island (EI), Neighborhood Commercial (NC), Rural Residential (RR), Rural Residential Island (RR-I), and Rural (R) Districts;
(b). Non-residential related districts include:

(i) Commercial districts shall include Rural, General Commercial (RGC), General Commercial (GC), Resort Commercial (RC) and Tourist Commercial (TC) Districts, Districts and only;

(e)(ii) Industrial districts shall include including Heavy Impact Industrial (HII), Light Impact Industrial (LII), Gateway Industrial (GI), Rural Industrial and Manufacturing (RIM), General Manufacturing (GM), Airport Operations (AO) and the Cherry Point Industrial District (CP-ID);

and

(d)(iii) Resource districts shall include including Agriculture (AG), Commercial Forestry (CF), Rural Forestry (RF) and Recreation Open Space (ROS).

(3). Siting Priorities. Listed in descending order with the highest priority first:

(a). Collocated antennas on attached wireless communication structures that are nonresidential buildings and structures, including and collocated antennas on existing freestanding wireless communications towers in nonresidential related districts.

(b). Collocated antennas on attached wireless communication support structures that are nonresidential buildings and structures, including and collocated antennas on existing freestanding wireless communications towers in residential related districts on property not used exclusively for residential purposes.

(c) Attached antennas New antennas on attached wireless communication structures such as nonresidential buildings and structures in nonresidential related districts.

(d). New freestanding wireless communication support structures at in remote, low visual impact locations in resource and industrial districts.

(e). New Attached antennas on attached wireless communication facilities that utilize nonresidential buildings and structures in residential related zones on property not used exclusively for residential purposes.

(f). New freestanding wireless communication support structures at low visual impact locations in commercial districts.

(g). Locations other than those listed above.

(4). Prohibited Locations.

(a). New support structures are prohibited on lands within the jurisdiction of the Whatcom-County Shoreline Program. (Ord. 2011-013 § 2 Exh. B, 2011; Ord. 2000-006 § 1, 2000);
20.13.060 Design and development standards.

.061 Design and Development Standards. The development standards set forth below shall apply to all wireless communications facilities. These development standards are minimum standards and shall be in addition to any development standards or project review process which applies in the underlying district in which a wireless communication facility is located. In the event of a conflict between the provisions of this chapter and the general development standards of this title, or the project review process, the more stringent provision shall govern; provided, that where a provision of this chapter is the more specific in its application to wireless communication facilities that provision shall prevail regardless of stringency.

(1) Anti-Climbing Devices. All freestanding and attached wireless communications support structures and required fencing shall be equipped with appropriate anti-climbing devices.

(2) Attachment to Trees Prohibited. It is prohibited to attach any wireless communication facility or portion thereof to any tree.

(3) Signage. All freestanding and attached wireless communications support structures shall be identified with a nonilluminated sign not exceeding four square feet. The sign shall list the wireless service provider's name and emergency telephone number and shall be posted in a place visible to the general public. No advertising signs shall be located on support structures or antennas, however arrays may be camouflaged as otherwise permitted signs.

(4) Lighting. All freestanding and attached wireless communications facilities shall not be illuminated except where required by the FAA.

(5) Painting. All freestanding and attached wireless communications facilities shall be painted or finished in a manner that blends with the dominant color of the background except where otherwise required by the FAA. The applicant and the operator of the facility shall have a continuing duty to maintain such paint or finish.

(6) Noise from Accessory Equipment. Accessory Equipment Facilities shall comply with state noise level standards under Chapter 173-60 WAC, as amended. Generators may only be permitted for emergency operation purposes. If air conditioning or other noise generating equipment is proposed, the applicant shall provide information detailing the expected noise level and any proposed abatement measures. This may require noise attenuation devices or other mitigation measures to minimize impacts.

(7) Copies of deeds or other instruments such as lease agreements and site easements that establish the applicant's right to use the site shall be provided at the time of application. These may be in unsigned final draft form pending the outcome of the approval process. The boundaries of a proposed wireless communications facility site shall be defined in such each instrument in a manner that will provide a land surveyor sufficient information to accurately locate the site boundaries using standard survey methods.
(8) If the proposed site is leased, the terms of the lease shall not restrict the land owner in any way from leasing other areas of his property to other wireless communications providers with the exception that the lease may include a provision that any additional facilities so located not materially interfere with the operation of the existing facility.

.062.092 General Design Standards.

(1) Attached antennas. Antennas that are mounted, installed or affixed to an attached wireless communication support structure (excluding collocated antennas on existing WCF structures) shall be designed or placed to blend with the, predominant background or architectural features as seen from abutting residential uses, roadways or other public rights of way.

(2) When located on buildings, panel antennas shall be placed closely against walls or parapets and not extend above the wall or parapet unless an alternative design is required to a) achieve better compatibility with the building design or b) to obtain antenna function.

(3) Accessory equipment facility structures shall be placed underground or wholly enclosed in an existing structure or building, or designed to blend into the architecture and landscaping of the surrounding buildings or structures. When equipment boxes are placed at ground level, they shall be screened from view.

(4) Ground-mounted dishes shall be located outside any required landscaped area and preferably located in service areas or other less visible locations. They shall be solidly screened to at least as high as the center of the dish when viewed from off the site. Solid screening shall be provided as high as the top of the dish on sides adjacent to residential zones.

Roof-mounted dishes shall be solidly screened at least as high as the center of the dish. The screening shall be of a material and design compatible with the building, and can include penthouse screening, parapet walls, or other similar screening. The dish should be placed as close to the center of the roof as possible.

(5) Antennas on utility poles shall be limited to whip antennas that are no more than two feet in length unless the approving authority finds that the visual impact of a longer antenna would not have an appreciable affect on surrounding uses. No more than one whip antenna is permitted per pole. No utility pole shall be extended in height in order to accommodate an antenna. No antenna shall be allowed on light standards.

(6) Setbacks Applicable. The following setback standards shall apply to wireless communications facilities:

(a) Accessory equipment structures shall comply with the setback requirements for principle nonaccessory structures in the underlying district. An antenna and its attachment device attached to a building or other permanent structures shall comply with the setback requirements
for principle nonaccessory structures in the underlying district. Where the setback requirement in
the underlying zone is based on the height of the structure, the height used to compute the
setback for the antenna array shall be the height of the structure plus the additional height that
will be added by the antenna array and its attachment device.

(b) Nonattached Freestanding wireless communications support structures located in a
residential related district as set out described in WCC 20.13.050-20.13.085 shall be set back
from any property line by a distance equal to the height of the wireless communications support
structure or the setback of the underlying use district, whichever is greater.

(c) Nonattached Freestanding wireless communications support structures located in other than
residential related districts shall be set back from any property line abutting or adjacent to a
residential related district a distance equal to the height of the wireless communications support
structure or the setback of the underlying use district, whichever is greater.

(d) Regardless of the district, nonattached freestanding wireless communications structures shall
be setback from dwellings not on the same legal lot, a distance equal to the height of the
freestanding wireless communications support structure or the setback of the underlying use
district whichever is greater.

(e) Setbacks for nonattached freestanding wireless communications support structures shall be
measured from the ground-level base of the structure.

(f) The setback requirements for freestanding and attached wireless communication facilities
under this chapter may be reduced by the approving authority subject to the satisfaction of the
special exception criteria in WCC 20.13.110.

(7) In the event that a new freestanding or attached wireless communications facility is proposed on land
zoned agriculture or in an agriculture overlay zone and the land is otherwise suitable for agricultural use,
the facility shall be located and maintained so as not to interfere with current agricultural activities or the
potential future use of the site for agricultural activities.

(8) Screening Standards. Freestanding and attached Wireless wireless communications facilities shall be
subject to the following standards for visual screening:

(a) The perimeter of the wireless communication support structure and any guyed wires and
anchors shall be enclosed by a fence or wall at least six feet in height. A row of evergreen
shrubs, spaced not more than five feet apart and capable of growing to form a continuous hedge
at least five feet high within five years of planting, and at least one row of evergreen trees or
shrubs spaced not more than 10 feet apart nor less than six feet high when planted shall be
installed outside and adjacent to the fence.
(b) Landscape material used for screening should be selected and sited to produce a hardy and drought-resistant landscape area. Native plant materials are preferred.

(c) Maintenance of landscaped areas shall be the responsibility of the applicant and/or operator of the facility. Required landscaping must be maintained in a healthy manner. Trees and shrubs that die must be replaced with healthy in-kind materials such that during the life of the facility the landscaping continues to satisfy the requirements of the permit. Temporary irrigation shall be provided to help ensure survival during the plant establishment period. If the approving authority determined that existing vegetation provided adequate screening without the need for additional landscaping, than no action shall be taken by the applicant or his assigns or successors that would diminish its effectiveness in screening the site. In the event that natural vegetation is removed to the extent that the area required to be screened is made more visible, the operator of the facility shall prepare a revegetation plan and submit the plan to the administrator for review and approval. Upon approval the operator shall implement the plan.

(d) The administrator or the hearing examiner as appropriate may approve any combination of existing vegetation, topography, walls, decorative fences or other features instead of landscaping, if they achieve the same degree of screening as the required landscaping. Either, as appropriate, may waive the requirement for the installation of screening for those sides of the facility that are naturally screened so as not to be visible from public streets or adjoining properties.

(e) Existing vegetation shall be preserved to the maximum extent practicable.

(f) When landscaping is required to be installed a maintenance bond, assignment of funds or other financial guaranty acceptable to the county shall be provided in the amount of 50 percent of the value of the labor and materials. The guaranty shall be in effect for two years from the date of planting.

9) General Height Standards. The following standards shall apply to wireless communications facilities:

(a) The height of a freestanding or attached wireless communications facility shall be measured to include the support structure and any antennas proposed to be attached to the structure at the time of application; provided, provided that a lightning rod, not to exceed 10 feet or FAA required lighting shall not be included in the height measurement.

(b) For a nonattached wireless communications facility, the height limit on a freestanding wireless communications facility shall be the minimum height necessary for the facility to function satisfactorily provided the height does not exceed height restriction imposed elsewhere in this chapter. The applicant shall provide technical documentation that the height proposed is the minimum necessary. As provided in WCC 20.13.160, the administrator or the hearing examiner may require a third party review of this information.
(c) The height of attached antennas mounted or installed on an attached wireless communication support structure may exceed the height limit of the underlying zone; provided, provided that the height does not exceed height restriction imposed elsewhere in this chapter.

(10) Parking. Each freestanding and attached wireless communications support structure shall be provided with at least one adjacent parking space or more if needed to accommodate staff. All unstaffed wireless communications facilities shall have access to parking for maintenance personnel, however such parking may be shared or public parking at the discretion of the county. Staffed facilities shall require one parking space per staff under the standard provisions of the zone in which it is located.

(11) Performance Bond. The operator of the facility shall obtain and keep in force throughout the time the facility is located on the site a performance bond payable to Whatcom County in the amount of 150 percent of the estimated cost of removal as determined by the director, but not less than $1,000. The bond is intended to cover the costs of removal of such facility at such time as the facility may be required to be removed pursuant to WCC 20.13.150.

(12) Building and Utility Permits. Approval of a WCF permit does not exempt or otherwise remove any requirements for obtaining building permits and other applicable construction, development or operation related permits, licenses or approvals for the project. It shall be the permittee’s responsibility to secure all other necessary permits and approvals prior to beginning work on the installation of the facility. (Ord. 2000-006 § 1, 2000).

20.13.070 Additional standards for residential related districts.

The following requirements and restrictions shall apply to the location of wireless communications facilities in the county’s residential related districts. For the purposes of this section, residential related districts shall include Urban Residential (UR), Urban Residential Medium (URM), Urban Residential Mixed (UR-MX), Eliza Island (EI), Neighborhood Commercial, (NC) Rural Residential (RR), Rural Residential Island (RR-I), and Rural (R) Districts.

(1) Support Structures.

(a) When not otherwise prohibited, new wireless communications support structures in residential related zones shall require conditional use approval pursuant to WCC 20.84.200 and subject to the following; provided, that new support structures collocated or clustered on an existing approved and conforming site may be permitted through a wireless communications facility (WCF) permit. Collocation or clustering on a nonconforming site may be approved as an expansion of a nonconforming use by conditional use as provided in WCC 20.83.020.
(i) Lattice towers are prohibited in the following residential-related zones: Urban Residential, Urban Residential Medium, Urban Residential Mixed, Neighborhood Commercial, and Eliza Island Districts.

(ii) Monopole wireless communication support structures and ground-level dishes shall not be located on land parcels or lots in Urban Residential, Urban Residential Medium, Urban Residential Mixed, Neighborhood Commercial and Eliza Island Districts that also contain residential uses.

(b) A monopole WCF may exceed the height limits of the underlying residential related zone by 15 feet; provided, the applicant demonstrates the structure's height is the minimum necessary to adequately function, or if collocation is specifically provided for on the tower. The additional 15 feet for collocation may be added to the 15 feet necessary for adequate function for a total of 30 feet in the event both situations pertain.

(2) Attached Antennas.

(a) Attached antennas are prohibited on single-family dwellings, duplexes and their accessory structures. Dish antennas shall not be mounted on roofs without a special exception under the provisions of WCC 20.13.110.

(b) The following antennas may be permitted through a wireless communications facility (WCF) permit:

(i) Collocation on an existing, approved and conforming, wireless communication support structure; provided, that no more than 15 feet is added to the height of the facility. Collocation on a nonconforming site may be approved as an expansion of a nonconforming use by conditional use as provided in WCC 20.83.020.

(ii) Attachment to a nonresidential structure on a land parcel or lot not used primarily for residential purposes; provided, the antenna does not extend more than 15 feet above the roof or top of the structure if not a building.

(iii) Ground-mounted dish antennas may be located on sites not used exclusively for residential purposes; provided, the antenna is not more than 15 feet in height above ground level nor more than 12 feet in diameter.

(c) Attached antennas on a structure located on a land parcel or lot used exclusively for residential purposes or attached to a residential building, other than those residential buildings prohibited in subsection (1)(a) of this section, may be approved as a conditional use provided the antenna shall not extend more than 15 feet above the roof or top of the structure if not a building and that the requirements of WCC 20.13.062(1) are met. The hearing examiner shall have the
authority to restrict the height of the attached antenna to a figure less than 15 feet in order to attain compliance with WCC 20.13.062(1). (Ord. 2000-006 § 1, 2000).

20.13.080 Additional standards for nonresidential related districts. The following requirements and restrictions shall apply to the location of wireless communications facilities in the county's nonresidential districts. For the purposes of this section, nonresidential related districts shall include commercial districts, industrial districts and resource districts each as described in WCC 20.13.050.

(1) Support Structures.

(a) New support structures shall require a conditional use permit pursuant to WCC 20.84.200; provided, that new support structures collocated or clustered on an existing approved and conforming site may be permitted through a wireless communications facility (WCF) permit. Collocation or clustering on a nonconforming site may be approved as an expansion of a nonconforming use by conditional use as provided in WCC 20.83.020. The height of new support structures shall be subject to requirements of 20.13.062(9)(b); provided, that the height does not exceed 150 feet. Additional height may only be approved by special exception as provided for in WCC 20.13.110.

(2) Attached Antennas.

(a) Antennas shall not be attached to single-family residences, duplexes or their accessory structures.

(b) Where not otherwise prohibited by this chapter, attached wireless communications facilities on sites used exclusively for residential purposes and wireless communications facilities attached to residential structures shall require a conditional use permit.

(c) Other attached antennas, ground-mounted dishes and collocated antennas, on existing, approved and conforming sites, shall require a WCF permit; provided, that new support structures collocated on an existing approved and conforming site may be permitted through a wireless communications facility (WCF) permit. Collocation on a nonconforming site may be approved as an expansion of a nonconforming use by conditional use as provided in WCC 20.83.020.

(d) Antennas attached to structures shall not extend more than 15 feet above the roof or parapet. Collocated antennas shall not extend more than 15 feet above the attachment device. (Ord. 2000-006 § 1, 2000).

20.13.090 Temporary uses. Wireless Freestanding or attached wireless communication facilities may be permitted as a temporary use with review by the administrator in order to facilitate continuity in wireless communications service during
repair or maintenance of existing wireless communications facilities or prior to completion of construction of new wireless communications facilities. Such temporary wireless communications facilities shall be operated for not more than 60 days at any one location within a six-month period commencing when transmission from such facility begins. The wireless communications facilities shall be removed within 30 days after the facility is no longer needed for telecommunications purposes. (Ord. 2000-006 § 1, 2000).

20.13.100 Wireless communication facility permit.

A wireless communication facility (WCF) permit is an administrative approval permit, except where a conditional-use permit is required in WCC 20.13.080 and 20.13.070, and shall be processed and approved pursuant to WCC 20.84.235, provided, that the notice requirements shall be as follows:

Applications that are categorically exempt from environmental review under SEPA (WAC 197-11-800) shall also be exempt from the public notice requirements of WCC 20.84.235 and Chapter 2.33 WCC.

Applications not exempt from environmental review under SEPA shall be provided notice of completeness, notice of application and notice of decision as provided by Chapter 2.33 WCC.

The administrator may refer an application for a WCF permit to the technical review committee for review and comment prior to making a decision on the proposal. (Ord. 2000-006 § 1, 2000).

20.13.110 Special exceptions.

When adherence to all development standards of this chapter would result in a physical barrier which would block signal reception or transmission or prevent effective communication in all permissible locations, a special exception may be permitted provided criteria outlined below are met. Exceptions do not apply to variations from the current code as adopted and amended per WCC Title 15, Buildings and Construction. A variance pursuant to Chapter 20.84 WCC is required for variations from applicable zoning regulations not described in this section.

The approval authority for granting of the special exception shall be the same as that of that of the authority authorized to approve the permit for the antenna location. A request for a special exception shall be processed in conjunction with the permit approving the antenna location.

Upon review of special exception requests, the approval authority shall consider first those standards having the least effect upon the resulting aesthetic compatibility of the antenna or tower with the surrounding environment. The approval authority shall review setback, size, screening requirements, and height limits.

(1) Special Exception Criteria.

(a) The applicant shall justify the request for a special exception by documenting and providing evidence that the full application of a particular standard or standards of this chapter would result in an obstruction or inability to send and receive a communication signal from the proposed
location of the facility and further, that the obstruction or inability to send or receive a signal from that location is the result of factors beyond the property owner’s or applicant’s control. Pictures, scaled drawings, maps and/or manufacturer’s specifications, and other technical information as necessary, should be provided to substantiate the need for the special exception.

(b) The applicant for a special exception shall demonstrate that the proposed materials, shape, and color of the antenna will minimize negative visual impacts on adjacent or nearby residential uses to the greatest extent possible. The use of certain materials, shapes and colors may be required in order to minimize visual impacts.

(c) Attached any request for a special exception to heights for new antennas that are proposed to be mounted or installed on an attached wireless communication support structure, requesting a special exception for height shall be reviewed relative to through the same process as a support structure height limitations set for structures in the underlying zone district in which the antenna is to be located.

(d) Requests for special exceptions for setback reductions shall also be judged based on the following criteria:

(i) The extent to which screening and camouflaging will be employed to mitigate the effects of the structure versus the value of the setback in providing such screening.

(ii) The need for the setback reduction to facilitate a location or design that better satisfies the criteria of this chapter.

(iii) The impact on adjacent properties.


20.13.120 Application requirements and conditions of issuance.

Applicants shall submit the following information in addition to standard application materials:

(1) A scaled site plan clearly indicating the location of the proposed facility, all other structures and uses on the site, adjacent roadways, proposed means of access, parking, existing and proposed landscaping and setbacks from property lines. Elevation drawings of the proposed tower, the equipment structure, existing structure with proposed antenna, fencing, buffering/screening, type of architectural treatment, and any other feature necessary to show compliance with the applicable standards.

(2) Photo-simulations of the proposed facility from adjacent residential properties, public properties and public rights-of-way.

(3) Legal description and ownership of the parcel.
(4) A valid agreement for collocation on an existing WCF support structure or on an existing building or structure; or a location evaluation study as described in subsection (5) of this section.

(5) For new freestanding support structures, a location evaluation study shall be provided as follows:

(a) A study shall be provided showing that the structure is required for present and future network coverage, that the height requested is the minimum necessary to provide for the function and potential collocated antennas and why the antennas could not be collocated on an existing structure. In residential zones, the applicant shall provide adequate proof that the facility could not be located in a nonresidential zone.

(6) The applicant shall submit a letter of credit, performance bond or other security acceptable to the county, as described in WCC 20.13.060(11) 20.13.091(11), to cover the future costs of removal of the antenna and/or tower facility.

(7) A report from a licensed professional engineer documenting that:

(a) The support structure is designed for collocation of other antennas (if applicable.)

(b) The antenna usage will not interfere with other adjacent or neighboring transmission or reception communications signals.

(c) The wireless communications facility complies with all applicable standards of the FCC for such facilities including EMF emission standards, if applicable.

(8) A projection of the wireless communication facilities which the applicant and/or prospective operator of the facility reasonably anticipates will be sited by his company within Whatcom County during the next five years.

(9) Proof of license by the FCC, if applicable.

(10) A copy of the findings from the FAA’s Aeronautical Study Determination regarding the proposed wireless communication support structure.

(11) A copy of the instrument that establishes the right of the applicant to use the site for the intended purpose as required in WCC 20.13.061 20.13.091(7).

(12) If the site is a leased site, a copy of lease agreement which specifies or shows that it does not preclude the site owner from entering into leases on the site with other providers. (Ord. 2000-006 § 1, 2000).

20.13.130 General criteria for issuance of permits.
(1) Any applicant for a land use permit (other than a building permit) proposing to install an antenna support structure or mount an antenna on an existing structure shall demonstrate by engineering evidence that:

(a) The antenna must be located at the site to satisfy its function in the applicant’s local wireless service provider’s local grid system. The county may require the applicant to provide feasibility studies which demonstrate that locations on existing structures and/or in higher priority locations have been explored and are not feasible or available.

(b) The height requested is the minimum height necessary to fulfill the site’s function within the grid-wireless service provider’s system.

(2) In addition to standard criteria, the authority granting the permit shall find that, unless the facility will be located at the highest priority location as set forth in WCC 20.13.050 20.13.085, the applicant has demonstrated that none of the higher priority locations are available or if one is available it is not a feasible location for the proposed facility; or if feasible is less desirable than the one proposed from the standpoint of minimizing impacts on surrounding land uses.

(3) The permit may include requirements which:

(a) Minimize visual impacts to the greatest extent possible by maximum feasible use of camouflage or screening, including but not limited to fencing, landscaping, strategic placement adjacent to existing buildings or live or simulated vegetation, undergrounding of accessory equipment structures, incorporation of wireless communications support structures, antennas and other appurtenances into the architectural features of existing buildings or structures and by requiring compatibility with key design elements in the surrounding area; for example, use of brick or other material similar to that used in adjacent buildings or structures, incorporation of support structures into compatible architectural features such as flag poles, bell towers or cornices, or use of simulated vegetation to camouflage support structures.

(b) Locate wireless communication facilities so as to minimize the visibility of the facility to residentially zoned land and so as to minimize the obstruction of scenic views from residentially zoned land.

(c) Require the mounting of the facility on existing buildings or structures, or use of other, alternatives with less visual, aesthetic or safety impacts, as an alternative to use of a monopole or lattice tower. (Ord. 2000-006 § 1, 2000).

20.13.140 Federal requirements.

All wireless communications support structures must meet or exceed current standards and regulations of the FAA, the FCC and any other agency of the federal government with the authority to regulate wireless communications support structures and antennas. If such standards and regulations are changed, owners of the freestanding or attached wireless communication support structure, antennas and electronic
equipment governed by this chapter shall bring such wireless communication support structure, antennas and electronic equipment facility into compliance with such revised standards and regulations within the compliance schedule of the federal agency. Failure to bring such facilities wireless communication support structures and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the wireless communication support structure, antenna or electronic equipment facility at the owner's expense. (Ord. 2000-006 § 1, 2000).

20.13.150 Removal of antennas and support structures.

No less than 30 days prior to the date that a personal wireless service provider plans to abandon or discontinue operation of a facility, the provider must notify the Whatcom County planning and development services director by certified U.S. mail of the proposed date of abandonment or discontinuation of operation. The owner of the facility shall then remove the abandoned components of the facility the antenna within 90 days of discontinuation or abandonment unless an additional period of time is authorized by the county. In any case, if the county finds that any antenna component or wireless communication support structure of a facility has not operated for a continuous period of six months, the owner or lessee of the property on which the wireless communication support structure or antenna is situated or the owner of the wireless communications antenna or support structure or site shall remove the facility within 90 days of receipt of notice to remove from the county. If the antenna and/or wireless communication support structure the abandoned facility or abandoned component of the facility is not removed within said time period, the county may remove the antenna or wireless communication support structure at the such facility at the owner's expense. If there are two or more wireless communications providers on a single wireless communication support structure, this provision shall not become effective until all providers cease using the wireless communication support structure. (Ord. 2000-006 § 1, 2000).

20.13.160 Third party review.

Personal wireless service providers use various methodologies and analyses, including geographically-based computer software, to determine the specific technical parameters of their services and low power mobile radio service facilities, such as expected coverage area, antenna configuration, topographic constraints that affect signal paths, etc. Because of the technical nature of methodologies and analyses, the county may find it necessary to require a third party technical review of the material submitted by the applicant as part of a permitting process. The expert review is intended to address interference and public safety issues and be a site-specific review of technical aspects of the facilities or a review of the provider's methodology and equipment used and not a subjective review of the site which was selected by a provider. Based on the results of the expert review, the county may require changes to the provider's application. The expert review shall address the following:

(1) The accuracy and completeness of submissions;

(2) The applicability of analysis techniques and methodologies;

(3) The validity of conclusions reached; and
1 (4) Any specific technical issues designated by the county.

2 In general, and if necessary, the administrator shall consider requiring a third party review of technical
3 information submitted in support of a special exception, and technical information submitted in support of
4 a wireless communications facility proposed at a low priority, high visual impact location.

5 The selection of the third party expert may be by mutual agreement between the provider and the
6 county, or at the discretion of the county, with a provision for the provider and interested parties to
7 comment on the proposed expert and review its qualifications. The cost of the technical review shall be
8 borne by the applicant. (Ord. 2000-006 § 1, 2000).

9 20.13.170 Appeals.
10 The hearing examiner shall have the authority to decide, in conformity with this chapter, appeals from any
11 order, requirement, permit decision or determination made by an administrative official in the
12 administration or enforcement of this chapter where more than one interpretation is possible;
13 provided that such appeal shall be filed within 14 days of the action being appealed. The hearing
14 examiner shall hear appeals under this chapter in the same manner as those appeals he has authority to
MEMORANDUM

TO: Honorable Members of the Whatcom County Planning Commission

FROM: Erin Osborn, Planner

THROUGH: Mark Personius, Long Range Planning Manager

DATE: June 12, 2014

SUBJECT: Wireless Communication Code Amendments (PLN2014-00010)

This memo follows staff’s June 3rd memo which summarizes action taken at your May 22, 2014 meeting on the above referenced application.

At the May 22nd hearing, Planning Commissioners voted to hold open the public record for additional comments, and to hold a second public hearing on the proposal, scheduled for June 12, 2014.

On June 11, 2014, staff received a letter from Bush Law Firm (who represents interests of AT&T), outlining four suggested amendments for consideration by the Planning Commission. This letter was forwarded to your attention by email, and copies will also be made available at the June 12, 2014 hearing, scheduled for this evening.

The four areas covered in the Bush Law Firm letter are generally covered in staff’s June 3rd memo and it’s attached June 2nd, Exhibit “A”. Additional suggested areas for code amendment from Bush Law Firm, followed by a brief discussion on each, with staff recommendations, including alternative language for your consideration, are listed below:

1. Bonding

Staff agrees with recommendations made by Bush Law Firm to delete provisions for performance bonds and the associated application requirements. This recommendation is made after considering a variety of different viewpoints expressed by County staff including Public Works Engineering, County Finance, the County Prosecuting Attorney’s Office, and County Facilities. Staff also agrees with Bush Law Firm suggested language to add “Removal” language shown in the June 2nd Exhibit “A”, Page 25, Line 11, starting with, “In any case”. In addition, staff
recommends that the Planning Commission consider inserting City of Woodinville language at the end of this same sentence as noted on P. 3 of the June 3rd memo from staff. This language would give Whatcom County authority to obtain a court order to direct removal and to lien property to recover costs should the County take action to remove a facility and associated equipment:

Staff recommends the following amendments per the above discussion:

WCC 20.13.062(11) Performance Bond. The operator of the facility shall obtain and keep in force throughout the time the facility is located on the site a performance bond payable to Whatcom County in the amount of 150 percent of the estimated cost of removal as determined by the director, but not less than $1,000. The bond is intended to cover the costs of removal of such facility at such time as the facility may be required to be removed pursuant to WCC 20.13.150.

WCC 20.13.120(6) The applicant shall submit a letter of credit, performance bond or other security acceptable to the county, as described in WCC 20.13.091(11), to cover the future costs of removal of the facility.

WCC 20.13.150 Removal of antennas and support structures.
No less than 30 days prior to the date that a personal wireless service provider plans to abandon or discontinue operation of a facility, the provider must notify the Whatcom County planning and development services director by certified U.S. mail of the proposed date of abandonment or discontinuation of operation. The owner of the facility shall then remove the antenna within 90 days of discontinuation or abandonment unless an additional period of time is authorized by the county. In any case, if the county finds that any antenna or wireless communication support structure has not operated for a continuous period of six months, the owner or lessee of the property on which the wireless communication support structure or antenna is situated or the owner of the wireless communications antenna or support structure shall remove the facility within 90 days of receipt of notice to remove from the county. If the antenna and/or wireless communication support structure abandoned facility is not removed within said time period, the county may remove the antenna or wireless communication support structure at the owner’s expense. If there are two or more wireless communications providers on a single wireless communication support structure, this provision shall not become effective until all providers cease using the wireless communication support structure. (Ord. 2000-006 § 1, 2000). If a facility and associated equipment are not removed within 90 days after receipt of a notice from the county requiring said removal, the Director of Whatcom County Planning and Development Services may seek and obtain a court order directing such removal and imposing a lien upon the real property upon which such wireless service facility is situated in an amount equal to the cost of removal.

2. Third Party Review

Recommendations made by Bush Law Firm to amend existing provisions for “third party review” were considered and approved by the Planning Commission at their May 22nd meeting. This is in regards to modifying specific language to state that selection of a third party expert “shall” be by mutual agreement between the
county and the provider. This was noted in the June 3rd memo and June 2nd Exhibit “A”, as well.

3. Emergency and Routine Repair and Maintenance

Staff agrees with recommendations made by Bush Law Firm to keep provisions for emergency and routine repair and maintenance where it currently resides in the section on exemptions; however, staff recommends that the Planning Commission consider adding a proviso to qualify that such uses shall be required to conform to the chapter’s design and development standards. This recommendation is made after reviewing provisions in a variety of different city and county jurisdictions, and after discussion with Permit Center staff.

Staff recommends the following amendments per the above discussion:

The requirements of this chapter shall apply to all new personal wireless communications facilities and the expansion and/or alteration of any existing personal wireless communications facilities. The following are exempt from the provisions of this chapter:

(1) Satellite earth stations using antenna(s) not more than two meters in diameter in commercial and industrial districts and direct-to-home satellite services.

(2) Send and receive citizen band radio antennas or antennas operated by federally licensed amateur (“ham”) radio operators.

(3) Industrial, scientific and medical equipment using frequencies regulated by the FCC.

(4) Military and government radar antennas and associated communication towers used for navigational purposes as regulated by the FCC under 47 Congressional Federal Register Parts 97 and 95 respectively.

(5) Military and federal, state and local government communications facilities used for emergency preparedness and public safety purposes.

(6) Normal, routine and emergency maintenance and repair of existing wireless communications facilities and related equipment which do not increase the size, footprint or bulk of such facilities and which otherwise comply with the county, state, and federal law and regulations. Provided, that compliance with design and development standards of this chapter is maintained. (Ord. 2000-006 § 1, 2000).

WCC 20.13.040 Permitted Uses.
The following uses shall be considered permitted uses and shall comply with federal, state, and local laws and regulations and the provisions of this chapter; the following uses shall also be subject to environmental review under the State Environmental Policy Act (SEPA), unless categorically exempt.

(1) Replacement construction:
In all districts: Replacement of any component of an existing freestanding or attached wireless communication facility, and/or replacement of any component of an existing ancillary equipment facility on existing, approved and conforming sites; provided that such replacement does increase the total number of components lawfully existing on the site at the time of application for such replacement construction, and further provided that such replacement construction does not "substantially increase change the physical dimensions" of the individual components being replaced as defined in WCC 20.13.020(19).

Determinations made as to whether or not replacement proposals substantially increase change the physical dimensions of existing facilities shall be made by the administrator, as follows:

(a) The applicant or applicant's agent must submit documentation to the administrator that demonstrates that replacement construction proposals do not substantially increase change the dimensions of such facilities as defined in WCC 20.13.020(19). Examples of such documentation may include specification sheets and/or area calculations for both the existing and proposed replacement equipment. Such documentation must be submitted at the time of pre-application interview for the required commercial building permit(s).

(b) The applicant or applicant’s agent must also submit documentation to the administrator demonstrating that replacement construction meets Federal Communication Commission (FCC) Emission Standards. Examples of such documentation include engineered analyses, such as a Non-ionization emission report (NIER). Such documentation must be submitted at time of application for the required commercial building permit(s).

(2) New antenna or new antenna array construction:

In all districts: New antennas or new antenna arrays may be constructed on or added to existing, attached or freestanding wireless communication facilities on existing, approved and conforming sites; provided that such new antennas or antenna arrays do not "substantially increase change the physical dimensions" of such facilities, as defined in WCC 20.13.020(19);

Determinations made as to whether or not new construction proposals substantially increase the physical dimensions of existing facilities shall be made by the administrator, as follows:

(a) The applicant or applicant's agent must submit documentation to the administrator that demonstrates that the proposed new antenna or new antenna array construction does not substantially increase change the dimensions of such facilities. Examples of such documentation may include specification sheets and/or area calculations for both the existing and the proposed new equipment. Such documentation must be submitted at the time of pre-application interview for the required commercial building permit(s).

(b) The applicant or applicant’s agent must also submit documentation to the administrator that demonstrates that any new antenna(s) meet Federal Communication Commission (FCC) Emission Standards. Examples of such documentation include engineered analyses, such as a Non-
Proposed changes outlined on top of P. 3 in the June 11th Bush Law Firm letter regarding existing application requirements would exempt any of the proposed permitted uses from a requirement of having to provide documentation that the applicant has the right to use the site. This would be contrary to existing requirements for issuing building permits. The County may not issue building permits on sites without documentation to verify that the applicant in fact has permission of the owner to apply for and obtain permits that authorize construction on the premises, and staff does not recommend that this language be modified.

4. Definition of Substantial Change

At the May 22, 2014 Planning Commission meeting, representatives from Bush Law Firm made recommendations to indicate that a definition for “substantial change” should match the SEPA definition for “substantial change”. This recommendation was considered and approved by the Planning Commission at their May 22nd meeting. In addition, commissioners requested that staff draft additional language to address incremental changes and limit overall facility size. These changes, along with a new definition for “substantial change” that matches the SEPA definition is reflected in the staff June 3rd memo and June 2nd Exhibit “A”. In their June 11th letter, Bush Law Firm indicates that they recommend that the Planning Commission consider draft language proposed by staff in the June 2nd Exhibit “A”.

Staff recommends the following amendments per the above discussion:

WCC 20.13.020(19) “Substantially increase the physical dimensions” means:

(a) The installation or mounting of wireless services equipment on an existing support structure that would increase the overall height of the structure by more than ten percent, or ten twenty feet, whichever is less greater; provided that any such increase in height must conform to the provisions of this chapter; or

(b) The installation or mounting of equipment that would add an appurtenance to the body of the structure protruding from the edge of the structure, The installation or mounting of equipment that would involve adding an appurtenance to the body of the structure that would protrude from the edge of the structure more than twenty feet resulting in an increase in the overall width of the structure by more than ten percent, or 10 feet, or more than the width of the structure at the level of the appurtenance, whichever is less greater; or:

Provided, that in making determinations as to whether or not project proposals constitute a substantial change as described in (a) or (b) above, and in order to limit incremental and cumulative effects concerning the overall size of such facilities, measurements shall be taken to establish a base line for determining whether or not proposed changes constitute a substantial change; such measurements shall be taken from the dimensions of the existing facility as it was approved and constructed under the original building permit issued by Whatcom County.
Additional changes to definitions are outlined in the June 11th Bush Law Firm letter in regards to “collocation”, and also new definitions for wireless communications services” and “wireless communications facilities” are proposed. Staff agrees with recommendations made by Bush Law Firm on definitions for wireless communications services, and wireless communications facilities, with the proviso that the “s” in communications is deleted, and that these definitions are stricken from WCC 20.97 - Definitions.

Staff also recommends that the Planning Commission not approve a proposed definition of “collocation” that is outlined in the Bush Law Firm letter of June 11th. This recommendation is based on a review of the language proposed, and a conclusion that such language would constitute a substantive change, and would inadvertently confuse the distinction that staff maintains is necessary to differentiate between the different types of wireless communication facilities: i.e. free standing wireless communication facilities and attached wireless communication facilities.

The proposed language in this definition refers to collocation on an existing structure, and describes an existing structure as “any existing tower, pole, building, or other structure capable of supporting wireless service facilities”. (Emphasis added) The key word in the above phrase is “capable”.

While this definition appears to satisfy the intent of making determinations on what type of action may be exempt from environmental review under SEPA, if adopted in WCC 20.13 it would have the effect of blurring a necessary distinction that is required to make determinations on what is considered an “attached wireless communication facility”. For example: Existing structures such as Bonneville Power Authority Transmission Towers, Multi-Family Dwelling Units, Apartment Garages, and Water Towers may be “capable” of supporting wireless service facilities, but they are not designed specifically to support such equipment; however under the definition for “collocation” proposed by the Bush Law Firm these uses would be considered “existing”, and therefore exempt from requirements of obtaining WCF permit on new attached wireless communication facility sites, as the code currently requires.

**Staff recommends the following amendments per the above discussion:**

**Note:** Numbering for the proposed definitions will be considered at a later date.

WCC 20.13.020(16) “Wireless communications facilities” (WCF) means the site, wireless communications support structures, antennas, accessory equipment structures, and appurtenances used to transmit, receive, distribute, provide or offer personal wireless communications services. Wireless communications facilities include, but are not limited to antennas, poles, towers, cables, wires, conduits, ducts, pedestals, vaults, buildings, and electronic switching equipment.

“Wireless communication facilities” means facilities for the provision of wireless service. Wireless communication facilities included, but are not limited to, antennas, poles, towers, cables, wires, conduits, ducts, pedestals, vaults, buildings, and electronic and switching equipment.
WCC 20-13.020(17) "Wireless communications service" means the sending and receiving of radio or microwave signals used for communication, including, but not limited to cellular telephone, personal communications services (PCS), enhanced/specialized mobile radio (ESMR), commercial paging services, and any other technology which provides similar wireless services licensed by the FCC and unlicensed wireless services.

"Wireless communication service" means wireless data and telecommunications services, including commercial mobile services, commercial mobile data services, unlicensed wireless services, and common carrier wireless exchange access services, as defined by federal laws and regulations.

WCC 20.97.456 Wireless communications facilities.
"Wireless communications facilities" means the site, wireless communications support structures, antennas, accessory equipment structures, and appurtenances used to transmit, receive, distribute, provide or offer wireless telecommunications services. Wireless communications facilities includes, but are not limited to antennas, poles, towers, cables, wires, conduits, ducts, pedestals, vaults, buildings, electronic and switching equipment. (Ord. 2000-006 § 3, 2000).

WCC 20.97.457 Wireless communications service.
"Wireless communications service" means the sending and receiving of radio or microwave signals used for communication, including, but not limited to cellular telephone, personal communications services (PCS), enhanced/specialized mobile radio (ESMR), commercial paging services, and any other technology which provides similar wireless services licensed by the FCC and unlicensed wireless services. (Ord. 2000-006 § 4, 2000).

I look forward to presenting my report, making recommendations, and answering your questions at your June 12, 2014 meeting.

Thank you.
BACKGROUND

INFORMATION ON

FILE

IN THE

COUNCIL OFFICE
**WHATCOM COUNTY COUNCIL AGENDA BILL**

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**TITLE OF DOCUMENT:**
Ordinance amending WCC 24.13, Illegal Drug Manufacturing or Storage Sites

**ATTACHMENTS:**
- Illegal Drug Manufacturing or Storage Sites Ordinance
- Strike out version of proposed amendments to WCC 24.13
- Illegal Drug Manufacturing or Storage Sites Ordinance
- Clean version of WCC 24.13

**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:**
The purpose of the proposed amendments to WCC 24.13 is to be consistent with Chapter 246-205 WAC- Illegal Drug Manufacturing or Storage Sites by removing references to illicit meth use sites.

**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

FROM: Regina A. Delahunt, Health Director

DATE: June 27, 2014

RE: Ordinance Amending WCC 24.13, Decontamination of Illegal Drug Manufacturing or Storage Sites

Requested Action
Attached is an ordinance amending WCC 24.13, Decontamination of Illegal Drug Manufacturing or Storage Sites, for introduction July 8th followed by public hearing before the County Council July 22nd.

Background and Purpose
On July 12, 2005, Council adopted WCC 24.13, Decontamination of Illegal Drug Manufacturing or Storage Sites regulations which mirrored WAC 246-205 with the addition of requirements for illicit use sites.

On April 15, 2014, health staff presented to the Health Board information about how current enforcement of WCC 24.13 has shown to be onerous for property owners with confirmed illicit use sites. The enforcement and cleanup process for use sites is the same as for manufacturing sites although the level of public health risk at use sites is considerably lower. The Health Board directed the Public Health Advisory Board (PHAB) and Health Department staff to draft recommendations to amend WCC 24.13.

On May 1, 2014 and June 5, 2014, the PHAB discussed eliminating restrictive decontamination requirements thereby decreasing financial and enforcement barriers to self-reporting and clean-up. By providing technical assistance to use site property owners rather than enforcement, the result would actually increase cleanups. To be consistent with state requirements, the attached revisions to WCC 24.13 eliminate enforcement of the regulations for use sites.

Information
Enclosed are an agenda bill, ordinance, and the revised WCC 24.03 both strike-out version and final (clean) version.

Thank you for your consideration. Please call me at extension 50801 if you have any questions.

Encl.
ORDINANCE NO. 2014-______

AMENDING WHATCOM COUNTY HEALTH CODE WCC 24.13,
DECONTAMINATION OF ILLEGAL DRUG MANUFACTURING OR STORAGE SITES

WHEREAS, the state Board of Health enacted Washington Administrative Code section 246-205 Decontamination of Illegal Drug Manufacturing or Storage Sites effective January 23, 2003; and

WHEREAS, local Boards of Health are required to adopt the WAC by reference or local regulations that are at least as stringent; and

WHEREAS, the Whatcom County Board of Health adopted local regulation July 12, 2005; and

WHEREAS, those regulations included additional language for illicit meth use sites; and

WHEREAS, the Health Department on May 1, 2014, presented to the local Board of Health compelling financial and enforcement barriers for property owners with illicit meth use sites; and

WHEREAS, the Public Health risk associated with illicit meth use sites can be minimized more effectively through technical assistance guidance; and

WHEREAS, the Whatcom County Board of Health requested the Public Health Advisory Board to recommend amendment language of the local regulation to address these issues; and

WHEREAS, the proposed amendment language eliminates references to illicit meth use sites and provides consistency with state regulation;

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council, acting as the Whatcom County Board of Health, that WCC 24.13 Decontamination of Illegal Drug Manufacturing or Storage Sites be amended as outlined in Exhibit A.

ADOPTED this _____ day of __________ 2014.

ATTEST:

Dana Brown Davis, Clerk of the Board

Carl Weimer, Chair

APPROVED AS TO FORM:

Karen Frakes, Civil Deputy Prosecutor

( ) Approved ( ) Denied

Jack Louws, County Executive
Date: ____________________
Chapter 24.13

DECONTAMINATION OF ILLEGAL DRUG MANUFACTURING OR STORAGE SITES

Sections:
24.13.010 Authority.
24.13.020 Purpose.
24.13.030 Adoption by reference.
24.13.040 Applicability.
24.13.050 Definitions.
24.13.060 Determination of contamination.
24.13.070 Decontamination.
24.13.080 Violations.
24.13.090 Appeals.
24.13.100 Fees.
24.13.110 Severability.

24.13.010 Authority.

The statutory authority for the adoption of this chapter is provided in Chapter 64.44 RCW, Contaminated Properties, and Chapter 70.05 RCW, Local Health Departments, Boards, Officers – Regulations. Any subsequent amendment to these chapters shall be incorporated into this chapter without the need for further amendment. (Ord. 2005-055 Exh. A).

24.13.020 Purpose.

This chapter provides for the protection of the health, safety, and welfare of the public by reducing the potential for exposure to hazardous chemicals associated with illegal drug manufacturing or storage sites. (Ord. 2005-055 Exh. A).

24.13.030 Adoption by reference.

Chapter 246-205 WAC, Decontamination of Illegal Drug Manufacturing or Storage Sites, is hereby adopted by reference. If a conflict arises between Chapter 246-205 WAC and this chapter, the more restrictive regulation shall apply. Any subsequent amendment to Chapter 246-205 WAC shall be incorporated into this chapter without the need for further amendment. (Ord. 2005-055 Exh. A).
24.13.040 Applicability.

This chapter shall apply to any new or existing site defined as an illegal drug manufacturing or storage site as per WCC 24.13.050, as of the effective date of the ordinance codified in this chapter. (Ord. 2005-055 Exh. A).

24.13.050 Definitions.

The following definitions apply to this chapter:

A. “Abatement” means any actions taken or ordered by the director to remove or reduce unsanitary, unsafe or nuisance conditions regarding property associated with illegal drug manufacturing or storage.

B. “Approved” or “approval” means agreed to in writing by the director.

C. “Certified contractor” means a person who has been issued written approval by the Washington State Department of Health to decontaminate, demolish, or dispose of contaminated property as required by this chapter.

D. “Contaminated” or “contamination” means polluted by hazardous chemicals so that the property is unfit for human habitation or use due to immediate or long-term hazards, or exceeds the decontamination standards listed in WCC 24.13.070. Property that at one time was contaminated but has subsequently been satisfactorily decontaminated according to procedures established by this chapter is not contaminated.

E. “Decontamination” means the process of reducing levels of known contaminants to the lowest practical level using currently available methods and processes.

F. “Director” means the administrative director of the Whatcom County health department or the director’s authorized representative.

G. “Disposal of contaminated property” means the disposition of contaminated property under the provisions of Chapter 70.105 RCW.

H. “Hazardous chemicals” means the following substances used in the manufacture of illegal drugs:

1. Hazardous substances as defined in RCW 70.105D.020; and

2. Precursor substances as defined in RCW 69.43.010 which the State Board of Health, in consultation with the State Board of Pharmacy, has determined present an immediate or long-term health hazard to humans.

I. “Illegal drug manufacturing or storage site” means any property where a person illegally manufactures or illegally stores a controlled substance, or a law enforcement agency or the property owner believes a person illegally manufactured or stored a controlled substance. This chapter shall also apply to any property that exceeds the decontamination standards listed in WCC 24.13.070.
J. “Initial site assessment” means the first evaluation of a property to determine the nature and extent of observable damage and contamination.

K. “Person” means an individual, firm, association, copartnership, political subdivision, government agency, municipality, industry, public or private corporation, or other entity.

L. “Posting” means attaching a written or printed announcement conspicuously on property, which may be, or is determined to be, contaminated by illegal drug manufacturing or the storage of a hazardous chemical.

M. “Property” means any site, lot, parcel of land, structure, or part of a structure involved in the illegal manufacture of a drug or storage of a hazardous chemical including, but not limited to: single-family residences, units or multiplexes, condominiums, apartment buildings, motels and hotels, boats, motor vehicles, trailers, manufactured housing, any ship, booth, or garden; or any site, lot, parcel of land, structure, or part of a structure that may be contaminated by previous use.

N. “Property owner” means a person with a lawful right of possession of the property by reason of obtaining it by purchase, exchange, gift, lease, inheritance, or legal action.

O. “Violation” means an act or omission contrary to a health regulation or permit including an act or omission at the same or different location by the same person and including a condition resulting from such act or omission. (Ord. 2005-055 Exh. A).

24.13.060 Determination of contamination.

A. Within one working day of notification from a law enforcement agency of potential contamination, the director shall post a written warning on the property informing potential occupants that entry is unsafe, in accordance with WAC 246-205-520, Posting property.

B. Within 14 days of notification, the director shall inspect the property in accordance with WAC 246-205-530, Inspecting property.

C. The director shall make a determination of contamination when the inspection reveals the property is contaminated. The property will be considered contaminated if (1) law enforcement has declared the property an illegal drug manufacturing or storage site, (2) the inspection reveals evidence of illegal drug manufacturing, or (3) the property exceeds decontamination standards listed in WCC 24.13.070.

D. Any property determined to be contaminated as defined in this chapter is considered a health violation and is subject to orders and notices issued in accordance with Chapter 24.07 WCC, Administrative Notice Proceedings, Civil Penalties, and Abatement.

E. Within 10 days after the director determines that a property is contaminated, the director shall issue a notice of contamination in accordance with WCC 24.07.070(A).

1. When a notice of contamination is issued, the director shall:
a. File a copy of the notice prohibiting use of the property with the county auditor;

b. Provide a copy of the notice to the local building or code enforcement department; and

c. Post the notice in a conspicuous place on the property within one working day of issuance of the notice. (Ord. 2005-055 Exh. A).

24.13.070 Decontamination.

A. As per Chapter 246-205 WAC, the decontamination standards are as follows:

1. Methamphetamine of less than or equal to 0.1 micrograms per 100 square centimeters;

2. Total lead of less than or equal to 20 micrograms per square foot;

3. Mercury of less than or equal to 50 nanograms per cubic meter in air; or

4. Volatile organic compounds (VOC) of one part per million total hydrocarbons and VOCs in air.

B. All sampling performed for an initial site assessment or following decontamination procedures shall be conducted by a certified contractor or the director using standardized sampling protocols and methodology.

C. The owner shall decontaminate the property in accordance with this chapter, or dispose of the property in accordance with state and local laws. The owner of the contaminated property shall submit a decontamination plan within 45 days and decontaminate or dispose of the property within 90 days of notification of contamination by the director, unless otherwise approved by the director.

1. Any decontamination or disposal activities shall be performed through the services of a certified contractor unless otherwise authorized by the director.

2. Prior to commencing any decontamination or disposal activities, a decontamination work plan must be approved by the director, unless otherwise authorized by the director. Any deviations from the work plan must be approved in advance by the director.

D. Any person submitting a work plan for approval by the director shall use the Washington State Department of Health Work Plan Template, as amended.

1. Upon review and approval of a decontamination work plan, the director shall provide written approval of the work plan to the owner.

2. After decontamination activities are completed, a final decontamination report shall be submitted for review by the director, which includes disposal receipts and post sampling results. (Ord. 2005-055 Exh. A).
24.13.080 Violations.

Violations of this chapter are subject to Chapter 24.07 WCC, Administrative Notice Proceedings, Civil Penalties, and Abatement. As per WCC 24.07.140, contaminated properties used as illegal drug manufacturing facilities or storage sites that are abated by the county shall be foreclosed. (Ord. 2005-055 Exh. A).

24.13.090 Appeals.


24.13.100 Fees.

A fee for review of decontamination work plans may be established in the unified fee schedule, and shall be payable at the time of plan submittal. (Ord. 2005-055 Exh. A).

24.13.110 Severability.

Should any section, subsection, paragraph, sentence, clause or phrase of this regulation be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this regulation. (Ord. 2005-055 Exh. A).
Chapter 24.13

DECONTAMINATION OF ILLEGAL DRUG MANUFACTURING OR STORAGE SITES

Sections:
24.13.010  Authority.
24.13.020  Purpose.
24.13.030  Adoption by reference.
24.13.040  Applicability.
24.13.050  Definitions.
24.13.060  Determination of contamination.
24.13.070  Decontamination.
24.13.080  Violations.
24.13.090  Appeals.
24.13.100  Fees.
24.13.110  Severability.

24.13.010 Authority.

The statutory authority for the adoption of this chapter is provided in Chapter 64.44 RCW, Contaminated Properties, and Chapter 70.05 RCW, Local Health Departments, Boards, Officers – Regulations. Any subsequent amendment to these chapters shall be incorporated into this chapter without the need for further amendment. (Ord. 2005-055 Exh. A).

24.13.020 Purpose.

This chapter provides for the protection of the health, safety, and welfare of the public by reducing the potential for exposure to hazardous chemicals associated with illegal drug manufacturing or storage sites. (Ord. 2005-055 Exh. A).

24.13.030 Adoption by reference.

Chapter 246-205 WAC, Decontamination of Illegal Drug Manufacturing or Storage Sites, is hereby adopted by reference. If a conflict arises between Chapter 246-205 WAC and this chapter, the more restrictive regulation shall apply. Any subsequent amendment to Chapter 246-205 WAC shall be incorporated into this chapter without the need for further amendment. (Ord. 2005-055 Exh. A).
24.13.040 Applicability.

This chapter shall apply to any new or existing site defined as an illegal drug manufacturing or storage site as per WCC 24.13.050, as of the effective date of the ordinance codified in this chapter. (Ord. 2005-055 Exh. A).

24.13.050 Definitions.

The following definitions apply to this chapter:

A. “Abatement” means any actions taken or ordered by the director to remove or reduce unsanitary, unsafe or nuisance conditions regarding property associated with illegal drug manufacturing or storage.

B. “Approved” or “approval” means agreed to in writing by the director.

C. “Certified contractor” means a person who has been issued written approval by the Washington State Department of Health to decontaminate, demolish, or dispose of contaminated property as required by this chapter.

D. “Contaminated” or “contamination” means polluted by hazardous chemicals so that the property is unfit for human habitation or use due to immediate or long-term hazards. Property that at one time was contaminated but has subsequently been satisfactorily decontaminated according to procedures established by this chapter is not contaminated.

E. “Decontamination” means the process of reducing levels of known contaminants to the lowest practical level using currently available methods and processes.

F. “Director” means the administrative director of the Whatcom County health department or the director’s authorized representative.

G. “Disposal of contaminated property” means the disposition of contaminated property under the provisions of Chapter 70.105 RCW.

H. “Hazardous chemicals” means the following substances used in the manufacture of illegal drugs:

1. Hazardous substances as defined in RCW 70.105D.020; and

2. Precursor substances as defined in RCW 69.43.010 which the State Board of Health, in consultation with the State Board of Pharmacy, has determined present an immediate or long-term health hazard to humans.

I. “Illegal drug manufacturing or storage site” means any property where a person illegally manufactures or illegally stores a controlled substance, or a law enforcement agency or the property owner believes a person illegally manufactured or stored a controlled substance.

J. “Initial site assessment” means the first evaluation of a property to determine the nature and extent of observable damage and contamination.
K. "Person" means an individual, firm, association, copartnership, political subdivision, government agency, municipality, industry, public or private corporation, or other entity.

L. "Posting" means attaching a written or printed announcement conspicuously on property, which may be, or is determined to be, contaminated by illegal drug manufacturing or the storage of a hazardous chemical.

M. "Property" means any site, lot, parcel of land, structure, or part of a structure involved in the illegal manufacture of a drug or storage of a hazardous chemical including, but not limited to: single-family residences, units or multiplexes, condominiums, apartment buildings, motels and hotels, boats, motor vehicles, trailers, manufactured housing, any ship, booth, or garden; or any site, lot, parcel of land, structure, or part of a structure that may be contaminated by previous use.

N. "Property owner" means a person with a lawful right of possession of the property by reason of obtaining it by purchase, exchange, gift, lease, inheritance, or legal action.

O. "Violation" means an act or omission contrary to a health regulation or permit including an act or omission at the same or different location by the same person and including a condition resulting from such act or omission. (Ord. 2005-055 Exh. A).

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B. Within 14 days of notification, the director shall inspect the property in accordance with WAC 246-205-530, Inspecting property.

C. The director shall make a determination of contamination when the inspection reveals the property is contaminated.

D. Any property determined to be contaminated as defined in this chapter is considered a health violation and is subject to orders and notices issued in accordance with Chapter 24.07 WCC, Administrative Notice Proceedings, Civil Penalties, and Abatement.

E. Within 10 days after the director determines that a property is contaminated, the director shall issue a notice of contamination in accordance with WCC 24.07.070(A).

1. When a notice of contamination is issued, the director shall:

   a. File a copy of the notice prohibiting use of the property with the county auditor;

   b. Provide a copy of the notice to the local building or code enforcement department; and
c. Post the notice in a conspicuous place on the property within one working day of issuance of the notice. (Ord. 2005-055 Exh. A).

24.13.070 Decontamination.

A. As per Chapter 246-205 WAC, the decontamination standards are as follows:

1. Methamphetamine of less than or equal to 0.1 micrograms per 100 square centimeters;
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3. Mercury of less than or equal to 50 nanograms per cubic meter in air; or
4. Volatile organic compounds (VOC) of one part per million total hydrocarbons and VOCs in air.

B. All sampling performed for an initial site assessment or following decontamination procedures shall be conducted by a certified contractor or the director using standardized sampling protocols and methodology.

C. The owner shall decontaminate the property in accordance with this chapter, or dispose of the property in accordance with state and local laws. The owner of the contaminated property shall submit a decontamination plan within 45 days and decontaminate or dispose of the property within 90 days of notification of contamination by the director, unless otherwise approved by the director.

1. Any decontamination or disposal activities shall be performed through the services of a certified contractor unless otherwise authorized by the director.
2. Prior to commencing any decontamination or disposal activities, a decontamination work plan must be approved by the director, unless otherwise authorized by the director. Any deviations from the work plan must be approved in advance by the director.

D. Any person submitting a work plan for approval by the director shall use the Washington State Department of Health Work Plan Template, as amended.

1. Upon review and approval of a decontamination work plan, the director shall provide written approval of the work plan to the owner.
2. After decontamination activities are completed, a final decontamination report shall be submitted for review by the director, which includes disposal receipts and post sampling results. (Ord. 2005-055 Exh. A).

24.13.080 Violations.

Violations of this chapter are subject to Chapter 24.07 WCC, Administrative Notice Proceedings, Civil Penalties, and Abatement. As per WCC 24.07.140, contaminated properties used as illegal drug
manufacturing facilities or storage sites that are abated by the county shall be foreclosed. (Ord. 2005-055 Exh. A).

24.13.090 Appeals.


24.13.100 Fees.

A fee for review of decontamination work plans may be established in the unified fee schedule, and shall be payable at the time of plan submittal. (Ord. 2005-055 Exh. A).

24.13.110 Severability.

Should any section, subsection, paragraph, sentence, clause or phrase of this regulation be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this regulation. (Ord. 2005-055 Exh. A).
**WHATCOM COUNTY COUNCIL AGENDA BILL**

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<tr>
<th>CLEARANCES</th>
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<th>Date</th>
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**TITLE OF DOCUMENT:**

Ordinance amending WCC 2.03 Boards and Commissions

**ATTACHMENTS:**

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<th>SEPA review required?</th>
<th>( ) Yes</th>
<th>( ) NO</th>
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<td>SEPA review completed?</td>
<td>( ) Yes</td>
<td>( ) NO</td>
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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.)

Ordinance amending Whatcom County code 2.03, Boards and Commissions - Appointment of noncouncil members to boards, commissions and committees.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

<table>
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<tr>
<th>Related County Contract #:</th>
<th>Related File Numbers:</th>
<th>Ordinance or Resolution Number:</th>
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</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.
ORDINANCE NO. ___

AMENDING WHATCOM COUNTY CODE 2.03, BOARDs AND COMMISSIONs

WHEREAS, Whatcom County Code Section 2.03 sets forth guidelines for the appointment of councilmembers and non-councilmembers to boards, commissions, and committees; and

WHEREAS, citizens have indicated that the current application deadline in the County Code for Council-appointed boards, commissions, and committees does not allow sufficient time for the public to review the applications; and

WHEREAS, the current deadline in the County Code does not allow sufficient time for councilmembers to fully review and consider applications submitted after the publication of the Council packet; and

WHEREAS, the current deadline in the County Code does not allow sufficient time for councilmembers to contact and/or interview applicants pursuant to WCC 2.03.075 (A) and WCC 2.03.075 (B); and

WHEREAS, amendments to Whatcom County Code 2.03 are necessary to change the application deadline for all applicants.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that Whatcom County Code 2.03 is hereby amended as indicated in Exhibit A to this ordinance.

ADOPTED this ___ day of _________, 2014.

ATTEST:

Dana Brown-Davis, Clerk of the Council

APPROVED AS TO FORM:

☐ Approved ☐ Denied

Civil Deputy Prosecutor

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Carl Weimer, Council Chair

Jack Louws, County Executive
EXHIBIT A

Chapter 2.03
BOARDS AND COMMISSIONS

2.03.060 Appointment of noncouncilmembers to boards, commissions and committees.

For appointment by the council of noncouncilmembers to those boards, commissions and committees performing either an administrative or a legislative function, the council shall publish vacancies on its website and include an application deadline of 4:00 p.m. on the day of the 10 a.m. on Tuesday of the week prior to the regularly scheduled council meeting at which nominations and possible vote to appoint are scheduled to occur. Councilmembers shall make nominations from the list of applicants at this same regularly scheduled council meeting. Nominations for appointment to any position having a residency requirement as to council district shall be made only by the councilmembers from the district or the councilmember at large. Appointment of the nominees shall occur by an affirmative roll-call vote by a majority of the entire council. In the case of only one applicant for a given vacancy, nomination and appointment by general consent may occur. (Ord. 2010-045 Exh. A; Ord. 2001-028 Exh. A; Ord. 95-006 Exh. A; Ord. 93-003 Attachment E (part); Ord. 91-030 (part)).
# WHATCOM COUNTY COUNCIL AGENDA BILL

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**TITLE OF DOCUMENT:**
Resolution amending WCC 100.02 FCZD and subzone advisory committee vacancies

**ATTACHMENTS:**

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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.)

Resolution amending WCC 100.02 Flood Control Zone District Advisory Committee Vacancies and Whatcom County 100.06, Subzone advisory committee vacancies.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

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**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. ______
(RESOLUTION OF THE FCZD BOARD OF SUPERVISORS)

AMENDING WHATCOM COUNTY CODE 100.02, FLOOD CONTROL ZONE DISTRICT ADVISORY COMMITTEE VACANCIES, AND WHATCOM COUNTY CODE 100.06, SUBZONE ADVISORY COMMITTEE VACANCIES

WHEREAS, Whatcom County Code Sections 100.02.080 and 100.06.080 set forth guidelines for the appointment of citizens to the Flood Control Zone District Advisory Committee and all flood subzone advisory committees; and

WHEREAS, citizens have indicated that the current application deadline in the County Code for Board of Supervisor-appointed advisory committees does not allow sufficient time for the public to review the applications; and

WHEREAS, the current deadline in the County Code does not allow sufficient time for board members to fully review and consider applications submitted after the publication of the County Council packet; and

WHEREAS, amendments to Whatcom County Code Sections 100.02 and 100.06 by the Whatcom County Council on behalf of the Whatcom County Flood Control Zone District Board of Supervisors are necessary to change the application deadline for all advisory committee applicants.

NOW, THEREFORE, BE IT RESOLVED by the Whatcom County Council, acting as the Whatcom County Flood Control Zone District Board of Supervisors, that Whatcom County Code 100.02 and 100.06 are hereby amended as indicated in Exhibit A to this resolution.

APPROVED this _____ day of __________, 2014.

ATTEST:

Dana Brown-Davis, Clerk of the Council

WHATCOM COUNTY COUNCIL

Carl Weimer, Chair
Flood Control Zone District Board of Supervisors

APPROVED AS TO FORM:

Civil Deputy Prosecutor
Chapter 100.02
FLOOD CONTROL ZONE DISTRICT ADVISORY COMMITTEE

100.02.080 Vacancies.

When a vacancy occurs as the result of a completed term, or due to the death, resignation, or unexcused absence from two consecutive regular meetings of the advisory committee, or if for any other reason a member is unable to fulfill the duties of membership, the vacancy will be filled by appointment of the Whatcom County flood control zone district board of supervisors.

Any person interested in serving on the advisory committee may be appointed by the board of supervisors to a list of alternate members for a period of six years. Alternate members shall be notified of each meeting of the advisory committee and encouraged to attend when possible.

When a mid-term vacancy occurs, the board may choose to solicit additional applications, or it may decide to fill the vacancy from the alternate list without soliciting additional applications if it determines that an alternate can fill the vacancy while maintaining the desired geographic and stakeholder diversity or the appropriate governmental representation on the committee.

When a vacancy occurs following a completed term, the board will solicit applications for the vacancy from the community as well as considering appointment from the alternate list.

The Whatcom County flood control zone district board of supervisors shall advertise a vacancy and include an application deadline of 4:00 p.m. on the day of 10 a.m. on Tuesday of the week prior to the regularly scheduled council meeting at which nominations and possible vote to appoint are scheduled to occur. Board members shall make nominations from the list of applicants and list of alternate members at this same regularly scheduled meeting. Appointment of the nominees shall occur by an affirmative roll-call vote by a majority of the entire board. In the case of only one applicant/alternate member for a given vacancy, nomination and appointment by general consent may occur. (Res. 2010-039 Exh. A; Res. 2009-027 Exh. A; Res. 2001-046; Res. 92-029 (part). Formerly 2.92.080).

Chapter 100.06
SUBZONE ADVISORY COMMITTEES

100.06.080 Vacancies.

When a vacancy occurs as the result of a completed term, or due to the death, resignation, or unexcused absence from two consecutive regular meetings of an advisory committee, or if for any other reason a member is unable to fulfill the duties of membership, the vacancy will be filled by appointment of the Whatcom County flood control zone district board of supervisors.

The Whatcom County flood control zone district board of supervisors shall advertise a vacancy and include an application deadline of 4:00 p.m. on the day of 10 a.m. on Tuesday of the week prior to the regularly scheduled council meeting at which nominations and possible vote to appoint are scheduled to occur. Board members shall make nominations
from the list of applicants and list of alternate members at this same regularly scheduled meeting. Appointment of the nominees shall occur by an affirmative roll-call vote by a majority of the entire board. In the case of only one applicant/alternate member for a given vacancy, nomination and appointment by general consent may occur.

If a position has remained vacant for more than 90 days due to a lack of qualified applications having been received, an applicant who has previously served on the advisory committee may be appointed to serve an additional term, notwithstanding any other provisions of this title. (Res. 2012-005 Exh. A; Res. 2010-039 Exh. A; Res. 2008-054 Exh. A).