ATTACHMENTS:
1) Staff Memo to Council
2) Proposed Ordinance
3) Exhibit A - Applicant Proposed Amendments
4) Exhibit B - Surface Mining Advisory Committee Proposed Amendments
5) Staff report to Planning Commission - Revised Findings and Recommendation
6) Surface Mining Advisory Committee proposal for Conditional Use rather than Administrative Approval
7) Comprehensive Plan Map and Zoning Map Amendment - MRL Designation process comparison
8) Permitting process comparison for mineral extraction

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE: (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)

Proposed amendments to the Mineral Resources portion of the Comprehensive Plan and Zoning Code. The proposed Comprehensive Plan amendments include changes to general mineral extraction policies that implement Goal 8K (adverse impacts), Goal 8Q (MRL designation), and MRL Designation Criteria. Proposed amendments to the zoning code include altering the permitting process from administrative approval use to a conditional use permit, requiring noxious weeds to not be established in buffers of surface mining operations, and an additional review criteria that when the proposed mine is within a forestry zone, prior to moving on to a new phase of mining, previously mined areas shall meet reclamation criteria as approved by DNR.

COMMITTEE ACTION:
11/12/2014: Withdrawn from the Agenda

COUNCIL ACTION:
11/12/2014: Withdrawn from the Agenda

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: October 27, 2014
SUBJECT: Comprehensive Plan and Zoning text amendments for Mineral Resource Lands and surface mining; PLN2013-00008

The accompanying staff report and Exhibits A & B detail the proposed amendments to the comprehensive plan and zoning code with regards to surface mining permitting processes and mineral resource land (MRL) designation criteria and processes. Exhibit A is the proposal as included in the amendment application submitted by councilmembers Weimer and Brenner, while Exhibit B is the Surface Mining Advisory Committee recommendation that was forwarded to the County Council by the Whatcom County Planning Commission. Below is a brief summary of the proposed amendments.

In addition to the proposed amendments, and as part of their deliberation on the proposal, the Planning Commission strongly recommended that the County Council seriously consider designating mineral resource lands of long-term commercial significance at the county-wide level, rather than relying on landowner initiated applications.

Surface Mine Permitting
Both Exhibit A and Exhibit B propose changing the permitting process from an administrative approval use to a conditional use for surface mining subject to the Surface Mining Act. Note that the more limited surface mining activities not subject to the Surface Mining Act remain unaffected by this proposal.

Exhibit A proposes expanding the distance from rural or residential districts where a (proposed) conditional use permit is required from 1,000 feet to 2,000 feet when the activity is located in the forestry zones and is subject to the Forest Practices Act. This exhibit also proposes expanding the notification to neighbors from 1,000 feet to 2,000 feet for all surface mining (proposed) conditional use permits.
Exhibit B includes an additional conditional use approval criterion requiring that if the proposed surface mining activity is phased and within one of the forestry zones, then prior to moving to the next phase, previously mined areas shall meet reclamation criteria as identified on the reclamation permit from the Department of Natural Resources.

**MRL Designation Process**
Exhibit A proposes to require site specific mineral extraction impacts to be anticipated and evaluated, and potential adverse environmental impacts to be addressed through mitigation and/or alternatives, prior to designation.

Exhibit B does not propose to change the existing MRL designation process (i.e. site-specific impacts are not fully evaluated thru SEPA until a permit is applied for, rather than the comprehensive plan map and zoning map amendment application).

**MRL Designation Criteria**
Both Exhibit A and Exhibit B propose that expansion of existing MRL designations will require that existing mines are in full compliance with permits and regulations. Exhibit B clarifies that the proposed expansion area and existing mine must be contiguous and in common ownership so that one mining operation does not impact another mining operations’ ability to expand the MRL designation. This clarification may be necessary when there are multiple mines in separate ownership operating within a single MRL designated area. Both exhibits also propose that MRL designations must be reviewed for internal consistency within the comprehensive plan, so that designation does not preclude achievement of other parts of the plan.

In addition, Exhibit A proposes that site specific designations shall only be approved after mineral extraction impacts are anticipated and evaluated, and any potential adverse environmental impacts are addressed through appropriate mitigation and/or reasonable alternatives. This exhibit also proposes that designations in forestry zones are limited to 20 acres and that before additional areas can be added, previously mined areas are to be returned to sustainable productive forestry conditions, and that the total designated area remains no more than 20 acres.

Exhibit B does not propose any additional amendments to the designation criteria.
ORDINANCE NO. 2014-
AMENDING WHATCOM COUNTY CODE TITLE 20 AND THE COMPREHENSIVE PLAN REGARDING SURFACE MINE PERMITTING, THE MINERAL RESOURCE LANDS DESIGNATION PROCESS AND MINERAL RESOURCE LANDS DESIGNATION CRITERIA.

WHEREAS, an application has been submitted to amend the Rural (R), Agriculture (AG), Rural Forestry (RF), Commercial Forestry (CF) and Mineral Resource Land Special (MRL) zoning districts to require a conditional use permit for surface mining subject to Washington State's Surface Mining Act; 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 zoning text and comprehensive plan amendments; and

WHEREAS, notice of the Whatcom County Planning Commission hearing on the proposed amendment was published in the Bellingham Herald; and

WHEREAS, the Whatcom County Planning Commission held a work session on the proposed 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 a work session in the Natural Resources committee; and

WHEREAS, the Whatcom County Council held a public hearing 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. An application for Comprehensive Plan and related zoning amendments was received by Whatcom County on December 21, 2012.

2. A revised application for Comprehensive Plan and related zoning amendments was received by Whatcom County on January 23, 2013.

3. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on July 5, 2013. The associated comment period ended July 19, 2013 and the appeal period concluded July 29, 2013.

4. The Surface Mining Advisory Committee held work sessions with Whatcom County PDS Staff on March 26, 2014; April 23, 2014; May 28, 2014; June 25, 2014; and July 23, 2014.

5. A press release of the Planning Commission briefing was published in the Bellingham Herald on 09/08/2014.

6. The Planning Commission held a work session on September 11, 2014.

7. The Planning Commission held a public hearing on October 23, 2014.

8. Notice of the proposed amendment was sent to the Department of Commerce on 8/15/2014.

9. On 08/20/2014 the Department of Commerce acknowledged receipt of the notice, and that a copy of the notice had been forwarded to other state agencies.

10. The Growth Management Act (GMA) includes multiple planning goals that are relevant to the proposed comprehensive plan amendments.
11. GMA Planning Goal #7: Applications for both state and local government permits should be processed in a timely and fair manner to ensure predictability.

Through previous MRL designation proposals, it has been affirmed that MRL designation is not a “right-to-mine”, insomuch as upon receiving MRL designation, a permit is still required for the act of mineral extraction.

Exhibit B includes proposed amendments to Policy 8K-2 that clarify that maintenance and upgrade of public roads take place before approving mineral extraction. This would ensure that any necessary maintenance or upgrades are in direct relationship to an impact from a specific mineral extraction permit. This policy also clarifies that all traffic, not just truck traffic, on county roads is addressed in a fair and equitable fashion.

12. GMA Planning Goal #11: Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts

Exhibit B proposes amendments to Policy 8Q-4 altering the permitting process from administrative approval to conditional use. Through the administrative approval use and conditional use processes, State Environmental Policy Act (SEPA) review (and associated public comment period) is only required if certain thresholds are met (which in the case of commercial mineral extraction they would be). The administrative approval use process does not include a public hearing unless a Planning and Development Services (PDS) staff decision is appealed. Presently, the fee to appeal an administrative approval is $500. Through the conditional use process, there is a public hearing before the Hearing Examiner. The proposed amendment would result in a public hearing process that is presently absent without the need for an appeal.

13. Whatcom County’s County-Wide Planning Policy A-3 states: Policy 7D-7: Citizens shall be notified in a timely manner of opportunities to have input and key decision points in the planning process. This should include actions such as use of telephone hotlines, notification to interest groups, pre-development meetings, early incorporation of public comments and broader notification of property owners and residents during a planning process as well as working more extensively with community and neighborhood groups. The cities shall also develop a public participation process to solicit and incorporate comments from residents outside city limits but within proposed Urban Growth Areas.

Exhibit B proposes amendments to Policy 8Q-4 alter the permitting process from administrative approval to conditional use. Through the administrative
approval use and conditional use processes, State Environmental Policy Act (SEPA) review (and associated public comment period) is only required if certain thresholds are met (which in the case of commercial mineral extraction they would be). The administrative approval use process does not include a public hearing unless a Planning and Development Services (PDS) staff decision is appealed. Presently, the fee to appeal an administrative approval is $500. Through the conditional use process, there is a public hearing before the Hearing Examiner. The proposed amendment would result in a public hearing process that is presently absent without the need for an appeal.

14. There are no interlocal agreements affecting the proposed amendments.

15. Whatcom County Comprehensive Plan contains goals and policies that are applicable to the proposal.

16. Proposed Policy SK-2: Consider the maintenance and upgrade of public roads before approving mineral extraction. Address all truck traffic on county roads in a fair and equitable fashion.

The underline represents changed conditions from the present policy. Within the past few years, applications for MRL designation have resulted in a public process where citizens have requested that impacts from mineral extraction be considered as part of MRL designation. Proponents of MRL designation note that the purpose of designation is to protect the resource from incompatible uses, and that designation is not a right-to-mine. Twice since 2006, a Comprehensive Plan map and zoning map amendment application for the expansion of a MRL designation has reached the County Council, and both times the amendment was not approved by Council. Consideration of maintenance and upgrade of public roads may not be possible without a mineral extraction plan, which is not presently required as part of the MRL designation process. Mineral extraction permits are presently reviewed by Public Works – Engineering for potential impacts to public roads, and necessary maintenance and upgrading of the roads may be required for approval.

Exhibit B proposes amendments altering the permitting process from administrative approval to conditional use. Through the administrative approval use and conditional use processes, State Environmental Policy Act (SEPA) review (and associated public comment period) is only required if certain thresholds are met (which in the case of commercial mineral extraction they would be). Through the SEPA process, impacts to public roads are considered through Checklist Item #14 – Transportation as part of the permitting process. Exhibit B proposes that all traffic, not just truck traffic, on county roads be addressed in a fair and equitable fashion.
17. Proposed Policy 8K-8: Expansion of MRL designations to parcels contiguous to, and in common ownership with, an existing mine, may require that the existing mine is in compliance with all operating permits and regulations.

In December 2010, Whatcom County PDS received an application for a Comprehensive Plan map and zoning map amendment to expand an existing MRL designation. The mine associated with the MRL designation has received stop work orders and been assessed penalties as part of a notice of violation. The operation within this MRL is now going through receivership. No work has been done on the Comprehensive Plan MRL expansion amendment for over 2 years, and there is presently no mining activity occurring. The proposed policy in Exhibit B attempts to clarify that non-compliance by a mineral extraction operator would not impact the ability of another landowner to expand an MRL designation.

18. Proposed Policy 8Q-4: Allow mining within designated MRLs through an administrative approval conditional use permit process requiring:
   (1) On-site environmental review, with county as lead agency, and
   (2) application of appropriate site specific conditions, and
   (3) notification to neighboring property owners within 1,000 feet to insure opportunity for written and oral input and/or appeal, and
   (4) access to de novo review by the Hearing Examiner if administrative approval is denied or appealed.

The underlines and strikethroughs represent changed conditions from the present policy. The proposed amendments to Policy 8Q-4 alter the permitting process from administrative approval to conditional use. Criterion #4 of Policy 8Q-4 would be unnecessary through the conditional use process, since conditional use approval is made by the Hearing Examiner. Through the administrative approval use and conditional use processes, State Environmental Policy Act (SEPA) review (and associated public comment period) is only required if certain thresholds are met (which in the case of commercial mineral extraction they would be). The administrative approval use process does not include a public hearing unless a Planning and Development Services (PDS) staff decision is appealed. Presently, the fee to appeal an administrative approval is $500. Through the conditional use process, there is a public hearing before the Hearing Examiner. The proposed amendment would result in a public hearing process that is presently absent without the need for an appeal. However, it is worth noting that, according to former PDS geologist, Doug Goldthorp:

"Since the inception of the surface mining administrative approval use permit requirement in 1997, 24 surface mining administrative approval
use applications (ADMs), and the 3 amendment applications to those ADMs have been conditionally approved. There was either a DNS, MDNS, and one DS SEPA determination in each case. Of the 27 combined ADMs, ADM amendments and associated SEPA determinations, 3 appeals (11%) have been filed and adjudicated by the WC Hearing Examiner. In all 3 cases, the Hearing Examiner has upheld the staff determination. In a few cases, the Hearing Examiner determination has been upheld by the WC Council, and in one case, upheld by the WA Superior Court.”

This information indicates that, while the sample size is relatively small, the Technical Administrator’s determinations have been upheld as appropriate, when challenged. However, the purpose of the amendment is to ensure a public process that is presently absent, and this amendment would provide an avenue for a public process.

19. There is no anticipated effect upon the rate or distribution of population growth, employment growth or development of land as envisioned in the Comprehensive Plan, as a result of the proposed Comprehensive Plan amendments under Exhibit B.

20. Staff does not anticipate Exhibit B will affect the ability of the County or other service providers to provide adequate services and public facilities.

21. Staff does not anticipate Exhibit B will impact designated agricultural, forest or mineral resource lands.

22. Goal 2G: Encourage citizen participation in the decision-making process

The proposed amendments to Policy 8Q-4 alter the permitting process from administrative approval to conditional use. Through the administrative approval use and conditional use processes, State Environmental Policy Act (SEPA) review (and associated public comment period) is only required if certain thresholds are met (which in the case of commercial mineral extraction they would be). The administrative approval use process does not include a public hearing unless a Planning and Development Services (PDS) staff decision is appealed. Presently, the fee to appeal an administrative approval is $500. Through the conditional use process, there is a public hearing before the Hearing Examiner. The proposed amendment would result in a public hearing process that is presently absent without the need for an appeal.

23. Policy 2D-3: Streamline development regulations to eliminate unnecessary time delays.
Surface mining can be controversial, with neighbors of mines sometimes opposed due to possible impacts of mining activities. This opposition may take the form of appealing administrative decisions made by PDS staff to the Hearing Examiner. By changing the review process to conditional use, the Hearing Examiner would make an initial determination based on a staff report, potentially resulting in one less step between an application and a final outcome.

24. **Policy 7D-7**: Streamline and coordinate the permit process and sustain a supportive customer service approach towards permitting.

Surface mining can be controversial, with neighbors of mines sometimes opposed due to possible impacts of mining activities. This opposition may take the form of appealing administrative decisions made by PDS staff to the Hearing Examiner. By changing the review process to conditional use, the Hearing Examiner would make an initial determination based on a staff report, potentially resulting in one less step between an application and a final outcome.

25. **Policy 8K-1**: Avoid significant mineral extraction impacts on adjacent or nearby land uses, public health and safety, or natural resources.

The proposed amendments to Policy 8Q-4 alter the permitting process from administrative approval to conditional use. Through the administrative approval use and conditional use processes, State Environmental Policy Act (SEPA) review (and associated public comment period) is only required if certain thresholds are met (which in the case of commercial mineral extraction they would be). The administrative approval use process does not include a public hearing unless a Planning and Development Services (PDS) staff decision is appealed. Presently, the fee to appeal an administrative approval is $500. Through the conditional use process, there is a public hearing before the Hearing Examiner. The proposed amendment would result in a public hearing process that is presently absent without the need for an appeal. In addition to SEPA review and a public hearing before the Hearing Examiner, the Hearing Examiner has the authority to condition permits in order to minimize or avoid significant impacts to neighboring lands, health and safety, and natural resources.

26. **Policy 8N-2**: Allow rock crushing, washing and sorting in the forest zones when appropriate as long as conflicts with other land uses can be mitigated.

Rock crushing, washing and sorting are presently, and will continue to be, allowed uses within the forest zones, when within a MRL. Proposed amendments to Policy 8Q-4 alter the permitting process from administrative approval to conditional use. Through the administrative approval use and
conditional use processes, State Environmental Policy Act (SEPA) review (and associated public comment period) is only required if certain thresholds are met (which in the case of commercial mineral extraction they would be). Through the conditional use process, there is a public hearing before the Hearing Examiner. In addition to SEPA review and a public hearing before the Hearing Examiner, the Hearing Examiner has the authority to condition permits in order to minimize or avoid significant impacts to neighboring lands, health and safety, and natural resources.

27. Policy 8N-3: Allow commercial surface mining operations in the forest zones when appropriate as long as conflicts with other land use zones can be mitigated.

Commercial surface mining operations are presently, and will continue to be, allowed uses within the forest zones, when within a MRL. Proposed amendments to Policy 8Q-4 alter the permitting process from administrative approval to conditional use. Through the administrative approval use and conditional use processes, State Environmental Policy Act (SEPA) review (and associated public comment period) is only required if certain thresholds are met (which in the case of commercial mineral extraction they would be). Through the conditional use process, there is a public hearing before the Hearing Examiner. In addition to SEPA review and a public hearing before the Hearing Examiner, the Hearing Examiner has the authority to condition permits in order to minimize or avoid significant impacts to neighboring lands, health and safety, and natural resources.

28. Goal 10J: Minimize conflicts between different land uses.

The proposed amendments to Policy 8Q-4 alter the permitting process from administrative approval to conditional use. Through the administrative approval use and conditional use processes, State Environmental Policy Act (SEPA) review (and associated public comment period) is only required if certain thresholds are met (which in the case of commercial mineral extraction they would be). The administrative approval use process does not include a public hearing unless a Planning and Development Services (PDS) staff decision is appealed. Presently, the fee to appeal an administrative approval is $500. Through the conditional use process, there is a public hearing before the Hearing Examiner. The proposed amendment would result in a public hearing process that is presently absent without the need for an appeal. In addition to SEPA review and a public hearing before the Hearing Examiner, the Hearing Examiner has the authority to condition permits in order to minimize or avoid significant impacts to neighboring lands, health and safety, and natural resources.
29. Policy 11B-5: Process the environmental review of building and development applications within an established time-frame that is predictable and expeditious.

The proposed amendments to Policy 8Q-4 alter the permitting process from administrative approval to conditional use. Through the administrative approval use and conditional use processes, State Environmental Policy Act (SEPA) review (and associated public comment period) is only required if certain thresholds are met (which in the case of commercial mineral extraction they would be). Whatcom County Code (WCC) 2.33 – Permit Review Procedures states that unless otherwise exempted in WCC 2.33.020 or 2.33.090(C), the county shall issue a notice of final decision on an administrative approval use or conditional use within 90 days of the date of completeness if the project is exempt from SEPA review. If the project is subject to SEPA review, the county shall issue a notice of final decision within 120 days.

30. The Washington State Department of Natural Resources completed a study entitled *Reconnaissance Investigation of Sand, Gravel, and Quarried Bedrock Resources in the Bellingham 1:100,000 Quadrangle, Washington* (Jan. 2001). This study indicates that the working lifetime of most of the significant pits in the county is 10 to 20 years (p. 5).

31. The *Whatcom County Surface Mining Advisory Committee Final Report and Recommendations* (October 20, 2004) states:

   . . . Theoretically, there is enough total supply in existing MRLs to satisfy demand over the first 20 years of the planning period. However, there is an imbalance in the demand and supply of sand and gravel. There is a greater need for gravel resources than sand and, as we approach the end of the 20-year planning period, we can anticipate a shortage of gravel. Additionally, shortly after the 20-year planning period, we will run out of sand and gravel resources if existing MRLs are not expanded. . . (p. 7).

**CONCLUSIONS**

1. The subject Comprehensive Plan amendments are consistent with the approval criteria of WCC 2.160.080. The subject zoning text amendments were processed in accordance with WCC 20.90.050

**NOW, THEREFORE, BE IT ORDAINED** by the Whatcom County Council that the Whatcom County Zoning Code is hereby amended as shown in Exhibit B.
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

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Carl Weimer, Council Chair

APPROVED AS TO FORM:

Karen N. Frakes  Royce Beckington
Civil Deputy Prosecutor

WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON

Jack Louws, County Executive

(  ) Approved    (  ) Denied

Date Signed:___________________
EXHIBIT A

Title 20 Zoning Amendments

Chapter 20.36
RURAL (R) DISTRICT

20.36.130 Administrative approval uses

Surface mining subject to Washington State’s Surface Mining Act (Chapter 78.44 RCW), and accessory washing and sorting, when within a Mineral Resource Land Special District subject to the requirements of Chapter 20.73 WCC and all other applicable regulations.

20.36.150 Conditional uses.

Surface mining subject to Washington State’s Surface Mining Act (Chapter 78.44 RCW), and accessory washing and sorting, when within a Mineral Resource Land Special District subject to the requirements of Chapter 20.73 WCC and all other applicable regulations.

Chapter 20.40
AGRICULTURE (AG) DISTRICT

20.40.130 Administrative approval uses

Surface mining subject to Washington State’s Surface Mining Act (Chapter 78.44 RCW), and accessory washing and sorting, when within a Mineral Resource Land Special District subject to the requirements of Chapter 20.73 WCC and all other applicable regulations. Site reclamation must be to agricultural use within any MRLs adopted after May 1, 2001. No off-site dust shall be generated from the operation.

20.40.150 Conditional uses.

Surface mining subject to Washington State’s Surface Mining Act (Chapter 78.44 RCW), and accessory washing and sorting, when within a Mineral Resource Land Special District subject to the requirements of Chapter 20.73 WCC and all other applicable regulations. Site reclamation must be to agricultural use within any MRLs adopted after May 1, 2001. No off-site dust shall be generated from the operation.

Chapter 20.42
RURAL FORESTRY (RF) DISTRICT
20.42.050 Permitted uses.
.058 Surface mining, rock crushing, washing and sorting subject to the Forest Practices Act (Chapter 76.09 RCW); provided, that administrative approval a conditional use permit is required for accessory rock crushing activities located within ±2,000 feet from a rural or residential district.

20.42.130 Administrative approval uses.
.133 Surface mining subject to Washington State’s Surface Mining Act (Chapter 78.44 RCW), and accessory washing, sorting, and rock crushing, when within a Mineral Resource Land Special District subject to the requirements of Chapter 20.73 WCC and all other applicable regulations.

20.42.150 Conditional uses.
.197 Surface mining subject to Washington State’s Surface Mining Act (Chapter 78.44 RCW), and accessory washing, sorting, and rock crushing, when within a Mineral Resource Land Special District subject to the requirements of Chapter 20.73 WCC and all other applicable regulations.

Chapter 20.43
COMMERCIAL FORESTRY (CF) DISTRICT

20.43.050 Permitted uses.
.055 Surface mining, rock crushing, washing and sorting subject to the Forest Practices Act (Chapter 76.09 RCW); provided, that administrative approval a conditional use permit is required for accessory rock crushing activities located within ±2,000 feet from a rural or residential district.

20.43.130 Administrative approval uses.
.133 Surface mining subject to Washington State’s Surface Mining Act (Chapter 78.44 RCW), and accessory washing, sorting, and rock crushing when within a Mineral Resource Land Special District subject to the requirements of Chapter 20.73 WCC and all other applicable regulations.

20.43.150 Conditional uses.
.189 Surface mining subject to Washington State’s Surface Mining Act (Chapter 78.44 RCW), and accessory washing, sorting, and rock crushing when within a Mineral Resource Land Special District subject to the requirements of Chapter 20.73 WCC and all other applicable regulations.

Chapter 20.73
MINERAL RESOURCE LANDS SPECIAL DISTRICT (MRL)
20.73.130 Administrative approval uses.
The following uses are permitted subject to administrative approval pursuant to WCC 20.84.235.

.131 Surface mining subject to Washington State’s Surface Mining Act (Chapter 78.44 RCW) and accessory washing and sorting; provided that:

(1) The notification requirements of WCC 20.84.235 shall be expanded to all property owners within 1,000 feet of the external boundaries of the subject property.

(2) At minimum, the activity adheres to the development and performance standards of WCC 20.73.650 and 20.73.700. In addition, no excavation shall occur within the five-year zone of contribution for designated well head protection areas. Excavations may occur within the 10-year zone of contribution outside of the five-year zone of contribution if they are not within 10 vertical feet of the seasonal high water table. If a fixed radii method is used to delineate a well head protection area, the surface mining applicant may elect to more precisely delineate the well head protection boundary using an analytical model; provided, that the delineated boundary proposed by the surface mining applicant is prepared by a professional hydrogeologist; and further provided, that the delineated boundary has been reviewed and approved by the Washington State Department of Health. The hydrogeologist shall be selected by mutual agreement of the county, water purveyor, and applicant; provided, if agreement cannot be reached the applicant shall select a consultant from a list of no less than three qualified consultants supplied by the county and water purveyor.

(3) Buffers are established of sufficient size and with sufficient vegetation or berming to ensure that noise, dust, and other impacts to surrounding property owners are within applicable regulations and performance standards. When completing a reclamation segment, buffer may be reduced for a three-month period to establish the final reclaimed topography.

(4) The applicant provides insurance policies or a similar type of protection as appropriate to cover potential liabilities associated with the proposed activity; renewals of bonds or insurance be submitted upon expiration of previous bonds or insurance. The bonding agent shall notify the county on any change of status in the bond.
(5) Application of additional site-specific conditions may be required to mitigate potential impacts that are not otherwise regulated through WCC 20.73.650 and 20.73.700 or through federal, state, or local regulations.

(6) Notice of the decision shall be mailed to all property owners within 1,000 feet of the external boundaries of the subject property within two days of issuance of the decision. The applicant shall provide typed, self-adhering mailing labels with the names and addresses of all property owners within 1,000 feet of the subject property with the application to facilitate the notice.

(7) Appeal to the hearing examiner under WCC 20.84.235 of an administrative permit shall be made by de novo review.

.132 Rock crushing within Commercial and Rural Forestry Districts when located further than 2,000 feet from a rural or residential district.

20.73.150 Conditional uses.
.152 Mineral processing facilities including rock crushing, asphalt and concrete batch plants and accessory washing and sorting.

.153 Surface mining subject to Washington State’s Surface Mining Act (Chapter 78.44 RCW); provided that:

(1) The notification requirements of WCC 2.33.060.D.2.b shall be expanded to all property owners within 2,000 feet of the external boundaries of the subject property.

(2) At minimum, the activity adheres to the development and performance standards of WCC 20.73.650 and 20.73.700. In addition, no excavation shall occur within the five-year zone of contribution for designated well head protection areas. Excavations may occur within the 10-year zone of contribution outside of the five-year zone of contribution if they are not within 10 vertical feet of the seasonal high water table. If a fixed radius method is used to delineate a well head protection area, the surface mining applicant may elect to more precisely delineate the well head protection boundary using an analytical model; provided, that the delineated boundary proposed by the surface mining applicant is prepared by a professional hydrogeologist; and further provided, that the delineated boundary has been reviewed and approved by the Washington State Department of Health. The hydrogeologist shall be selected by mutual agreement of the county, water purveyor, and applicant; provided, if agreement cannot be reached the applicant shall select a consultant from a list of no less than three qualified consultants supplied by the county and water purveyor.
(3) Buffers are established of sufficient size and with sufficient vegetation or berming to ensure that noise, dust, noxious weeds and other impacts to surrounding property owners are within applicable regulations and performance standards. When completing a reclamation segment, buffer may be reduced for a three-month period to establish the final reclaimed topography.

(4) The applicant provides insurance policies or a similar type of protection as appropriate to cover potential liabilities associated with the proposed activity, renewals of bonds or insurance be submitted upon expiration of previous bonds or insurance. The bonding agent shall notify the county on any change of status in the bond.

(5) Application of additional site specific conditions may be required to mitigate potential impacts that are not otherwise regulated through WCC 20.73.650 and 20.73.700 or through federal, state, or local regulations.

(6) Notice of the decision shall be mailed to all property owners within 2,000 feet of the external boundaries of the subject property within two days of issuance of the decision. The applicant shall provide typed, self-adhering mailing labels with the names and addresses of all property owners within 2,000 feet of the subject property with the application to facilitate the notice.
Comprehensive Plan Amendments

MINERAL RESOURCES – ISSUES, GOALS, AND POLICIES

General Issues

GOAL 8K: Ensure that mineral extraction industries do not adversely affect the quality of life in Whatcom County, by establishing appropriate and beneficial designation and resource conservation policies, while recognizing the rights of all property owners.

Policy 8K-2: Consider the maintenance and upgrade of public roads before designating MRLs and approving mineral extraction. Address all truck traffic on county roads in a fair and equitable fashion.

Policy 8K-3: Avoid adversely impacting water quality. The protection of aquifers and recharge zones should have precedence over surface mining in the event it is determined by the county that adverse impacts cannot be avoided through the standard use of best management practices. Avoid contamination of aquifers by using uncontaminated and inert materials for reclamation or onsite storage.

Policy 8K-7: Designate site-specific mineral resource lands only after mineral extraction impacts have been anticipated and evaluated, and potential adverse environmental impacts have been addressed through appropriate mitigation and/or reasonable alternatives.

Policy 8K-8: Expansion of existing MRL designations for a mine site will require that the existing mine is in full compliance with all permits and regulations.

Goal 8Q: Designate Mineral Resource Lands (MRLs) containing commercially significant deposits throughout the county in proximity to markets in order to avoid construction aggregate shortages, higher transport costs, future land use conflicts and environmental degradation. Balance MRL designations with other competing land uses and resources.

Policy 8Q-4: Allow mining within designated MRLs through an administrative approval conditional use permit process requiring:
(1) on-site environmental review, with county as lead agency, and
(2) application of appropriate site specific conditions, and
(3) notification to neighboring property owners within 1,000 feet to insure opportunity for written and oral input, and/or appeal, and
(4) access to de novo review by the Hearing Examiner if administrative approval is denied or appealed.
MINERAL RESOURCE LANDS (MRL) – DESIGNATION
CRITERIA I. Non-Metallic Mineral Deposits

General Criteria

10. Site-specific MRL Designations shall only be approved after mineral extraction impacts have been anticipated and evaluated, and potential adverse environmental impacts have been addressed through appropriate mitigation and/or reasonable alternatives.

11. MRL Designations must be reviewed for internal consistency with other parts of the comprehensive plan so that the MRL designation does not preclude achievement of other parts of the comprehensive plan.

12. MRL expansions will not be considered if adjoining mine activities are not fully compliant with all permits and county and state regulations regarding mine operations and reclamation.

Additional Criteria for Designated Urban and Rural Areas

103. Abutting parcel size density must not exceed one unit per nominal five acres for more than 25% of the perimeter of the site unless project specific mitigation is created.

Additional Criteria for Designated Forestry Areas

114. Must demonstrate higher value as mineral resource than forestry resource based upon:
   • soil conditions,
   • accessibility to market,
   • quality of mineral resource,
   • sustainable productivity of forest resource.

15. MRL Designation in forestry zones can be no greater than 20 acres. Additional areas can be added only after previously mined areas are returned to sustainable productive forest resource condition and the total MRL Designation remains no more than 20 acres.

Additional Criteria for Designated Agricultural Areas


River and Stream Gravel

137. MRL Designation status applies to river gravel bards possessing necessary permits and containing significant quality reserves.

148. MRL Designation status may apply to those upland sites located in proximity to river gravel sources and used primarily for handling and processing significant amounts of river gravel.

Metallic and Industrial Mineral Deposits
159. For metallic and rare minerals, mineral designation status extends to all patented mining claims.


1721. All other non-patented mineral deposits must meet the non-metallic MRL Designation criteria, numbers 6 through 12, as applicable.
EXHIBIT B

Title 20 Zoning Amendments

Chapter 20.36
RURAL (R) DISTRICT

20.36.130 Administrative approval uses
.133 Surface mining subject to Washington State's Surface Mining Act (Chapter 78.44 RCW), and accessory washing and sorting, when within a Mineral Resource Land Special District subject to the requirements of Chapter 20.73 WCC and all other applicable regulations.

20.36.150 Conditional uses.
.197 Surface mining subject to Washington State’s Surface Mining Act (Chapter 78.44 RCW), and accessory washing and sorting, when within a Mineral Resource Land Special District subject to the requirements of Chapter 20.73 WCC and all other applicable regulations.

Chapter 20.40
AGRICULTURE (AG) DISTRICT

20.40.130 Administrative approval uses
.136 Surface mining subject to Washington State’s Surface Mining Act (Chapter 78.44 RCW), and accessory washing and sorting, when within a Mineral Resource Land Special District subject to the requirements of Chapter 20.73 WCC and all other applicable regulations. Site reclamation must be to agricultural use within any MRLs adopted after May 1, 2001. No off-site dust shall be generated from the operation.

20.40.150 Conditional uses.
.197 Surface mining subject to Washington State’s Surface Mining Act (Chapter 78.44 RCW), and accessory washing and sorting, when within a Mineral Resource Land Special District subject to the requirements of Chapter 20.73 WCC and all other applicable regulations. Site reclamation must be to agricultural use within any MRLs adopted after May 1, 2001. No off-site dust shall be generated from the operation.

Chapter 20.42
RURAL FORESTRY (RF) DISTRICT
20.42.050 Permitted uses.
.058 Surface mining, rock crushing, washing and sorting subject to the Forest Practices Act (Chapter 76.09 RCW); provided, that administrative approval a conditional use permit is required for accessory rock crushing activities located within 1,000 feet from a rural or residential district.

20.42.130 Administrative approval uses.
.133 Surface mining subject to Washington State's Surface Mining Act (Chapter 78.44 RCW), and accessory washing, sorting, and rock crushing, when within a Mineral Resource Land Special District subject to the requirements of Chapter 20.73 WCC and all other applicable regulations.

20.42.150 Conditional uses.
.197 Surface mining subject to Washington State's Surface Mining Act (Chapter 78.44 RCW), and accessory washing, sorting, and rock crushing, when within a Mineral Resource Land Special District subject to the requirements of Chapter 20.73 WCC and all other applicable regulations.

Chapter 20.43
COMMERCIAL FORESTRY (CF) DISTRICT

20.43.050 Permitted uses.
.055 Surface mining, rock crushing, washing and sorting subject to the Forest Practices Act (Chapter 76.09 RCW); provided, that administrative approval a conditional use permit is required for accessory rock crushing activities located within 1,000 feet from a rural or residential district.

20.43.130 Administrative approval uses.
.133 Surface mining subject to Washington State's Surface Mining Act (Chapter 78.44 RCW), and accessory washing, sorting, and rock crushing when within a Mineral Resource Land Special District subject to the requirements of Chapter 20.73 WCC and all other applicable regulations.

20.43.150 Conditional uses.
.189 Surface mining subject to Washington State's Surface Mining Act (Chapter 78.44 RCW), and accessory washing, sorting, and rock crushing when within a Mineral Resource Land Special District subject to the requirements of Chapter 20.73 WCC and all other applicable regulations.

Chapter 20.73
MINERAL RESOURCE LANDS SPECIAL DISTRICT (MRL)
20.73.130 Administrative approval uses.
The following uses are permitted subject to administrative approval pursuant to WCC 20.84.235.

131 Surface mining subject to Washington State’s Surface Mining Act (Chapter 78.44 RCW) and accessory washing and sorting; provided that:

(1) The notification requirements of WCC 20.84.235 shall be expanded to all property owners within 1,000 feet of the external boundaries of the subject property.

(2) At minimum, the activity adheres to the development and performance standards of WCC 20.73.650 and 20.73.700. In addition, no excavation shall occur within the five-year zone of contribution for designated well head protection areas. Excavations may occur within the 10-year zone of contribution outside of the five-year zone of contribution if they are not within 10 vertical feet of the seasonal high water table. If a fixed radius method is used to delineate a well head protection area, the surface mining applicant may elect to more precisely delineate the well head protection boundary using an analytical model; provided, that the delineated boundary proposed by the surface mining applicant is prepared by a professional hydrogeologist; and further provided, that the delineated boundary has been reviewed and approved by the Washington State Department of Health. The hydrogeologist shall be selected by mutual agreement of the county, water purveyor, and applicant; provided, if agreement cannot be reached the applicant shall select a consultant from a list of no less than three qualified consultants supplied by the county and water purveyor.

(3) Buffers are established of sufficient size and with sufficient vegetation or berming to ensure that noise, dust, and other impacts to surrounding property owners are within applicable regulations and performance standards. When completing a reclamation segment, buffer may be reduced for a three-month period to establish the final reclaimed topography.

(4) The applicant provides insurance policies or a similar type of protection as appropriate to cover potential liabilities associated with the proposed activity, renewals of bonds or insurance be submitted upon expiration of previous bonds or insurance. The bonding agent shall notify the county on any change of status in the bond.
(5) Application of additional site-specific conditions may be required to mitigate potential impacts that are not otherwise regulated through WCC 20.73.650 and 20.73.700 or through federal, state, or local regulations.

(6) Notice of the decision shall be mailed to all property owners within 1,000 feet of the external boundaries of the subject property within two days of issuance of the decision. The applicant shall provide typed, self-adhering mailing labels with the names and addresses of all property owners within 1,000 feet of the subject property with the application to facilitate the notice.

(7) Appeal to the hearing examiner under WCC 20.84.235 of an administrative permit shall be made by de novo review.

.132 Rock crushing within Commercial and Rural Forestry Districts when located further than 1,000 feet from a rural or residential district.

20.73.150 Conditional uses.
.152 Mineral processing facilities including rock crushing, asphalt and concrete batch plants and accessory washing and sorting.

.153 Surface mining subject to Washington State’s Surface Mining Act (Chapter 78.44 RCW); provided that:

(1) The notification requirements of WCC 2.33.060.D.2.b shall be expanded to all property owners within 1,000 feet of the external boundaries of the subject property.

(2) At minimum, the activity adheres to the development and performance standards of WCC 20.73.650 and 20.73.700. In addition, no excavation shall occur within the five-year zone of contribution for designated well head protection areas. Excavations may occur within the 10-year zone of contribution outside of the five-year zone of contribution if they are not within 10 vertical feet of the seasonal high water table. If a fixed radii method is used to delineate a well head protection area, the surface mining applicant may elect to more precisely delineate the well head protection boundary using an analytical model; provided, that the delineated boundary proposed by the surface mining applicant is prepared by a professional hydrogeologist; and further provided, that the delineated boundary has been reviewed and approved by the Washington State Department of Health. The hydrogeologist shall be selected by mutual agreement of the county, water purveyor, and applicant; provided, if agreement cannot be reached the applicant shall select a consultant from a list of no less than three qualified consultants supplied by the county and water purveyor.
(3) Buffers are established of sufficient size and with sufficient vegetation or berming to ensure that noise, dust, noxious weeds and other impacts to surrounding property owners are within applicable regulations and performance standards. When completing a reclamation segment, buffer may be reduced for a three-month period to establish the final reclaimed topography.

(4) The applicant provides insurance policies or a similar type of protection as appropriate to cover potential liabilities associated with the proposed activity, renewals of bonds or insurance be submitted upon expiration of previous bonds or insurance. The bonding agent shall notify the county on any change of status in the bond.

(5) Application of additional site specific conditions may be required to mitigate potential impacts that are not otherwise regulated through WCC 20.73.650 and 20.73.700 or through federal, state, or local regulations.

(6) Notice of the decision shall be mailed to all property owners within 1,000 feet of the external boundaries of the subject property within two days of issuance of the decision. The applicant shall provide typed, self-adhering mailing labels with the names and addresses of all property owners within 1,000 feet of the subject property with the application to facilitate the notice.

(7) Where the underlying zoning is Rural Forestry or Commercial Forestry, prior to moving on to a new phase, previously mined areas shall meet reclamation criteria as identified on an approved Department of Natural Resources Surface Mining Reclamation Permit.
Comprehensive Plan Amendments

MINERAL RESOURCES – ISSUES, GOALS, AND POLICIES

General Issues

GOAL 8K: Ensure that mineral extraction industries do not adversely affect the quality of life in Whatcom County, by establishing appropriate and beneficial designation and resource conservation policies, while recognizing the rights of all property owners.

Policy 8K-2: Consider the maintenance and upgrade of public roads before approving mineral extraction. Address all truck traffic on county roads in a fair and equitable fashion.

Policy 8K-3: Avoid adversely impacting water quality. The protection of aquifers and recharge zones should have precedence over surface mining in the event it is determined by the county that adverse impacts cannot be avoided through the standard use of best management practices. Avoid contamination of aquifers by using uncontaminated and inert materials for reclamation or onsite storage.

Policy 8K-7 Expansion of MRL designations to parcels contiguous to, and in common ownership with, an existing mine, may require that the existing mine is in compliance with all operating permits and regulations.

Goal 8Q: Designate Mineral Resource Lands (MRLs) containing commercially significant deposits throughout the county in proximity to markets in order to minimize avoid construction aggregate shortages, higher transport costs, future land use conflicts and environmental degradation. Balance MRL designations with other competing land uses and resources.

Policy 8Q-4: Allow mining within designated MRLs through an administrative approval conditional use permit process requiring:
(1) on-site environmental review, with county as lead agency, and
(2) application of appropriate site specific conditions, and
(3) notification to neighboring property owners within 1,000 feet to insure opportunity for written and oral input, and/or appeal, and
(4) access to de novo review by the Hearing Examiner if administrative approval is denial is appealed.

MINERAL RESOURCE LANDS (MRL) – DESIGNATION CRITERIA I. Non-Metallic Mineral Deposits
General Criteria
10. MRL Designations must be reviewed for internal consistency with other parts of the comprehensive plan so that the MRL designation does not preclude achievement of other parts of the comprehensive plan.

11. Expansion of MRL designations to parcels contiguous to, and in common ownership with, an existing mine, may require that the existing mine is in compliance with all operating permits and regulations.

Additional Criteria for Designated Urban and Rural Areas

12. Abutting parcel size density must not exceed one unit per nominal five acres for more than 25% of the perimeter of the site unless project specific mitigation is created.

Additional Criteria for Designated Forestry Areas

13. Must demonstrate higher value as mineral resource than forestry resource based upon:
   - soil conditions.
   - accessibility to market.
   - quality of mineral resource.
   - sustainable productivity of forest resource.

Additional Criteria for Designated Agricultural Areas


River and Stream Gravel

15. MRL Designation status applies to river gravel bards possessing necessary permits and containing significant quality reserves.

16. MRL Designation status may apply to those upland sites located in proximity to river gravel sources and used primarily for handling and processing significant amounts of river gravel.

Metallic and Industrial Mineral Deposits

17. For metallic and rare minerals, mineral designation status extends to all patented mining claims.


19. All other non-patented mineral deposits must meet the non-metallic MRL Designation criteria, numbers 6 through 12, as applicable.
WHATCOM COUNTY
PLANNING & DEVELOPMENT SERVICES
STAFF REPORT

I. OVERVIEW

File # PLN2013-00008

File Name: MRL – Application Process

Applicant: Barbara Brenner and Carl Weimer

Summary of Request: In December 2012, an application was submitted proposing changes to the comprehensive plan and zoning code regarding mineral resource land.

There are 2 exhibits associated with this staff report. Exhibit A represents the proposed changes as provided in the application, while Exhibit B represents the proposed changes as recommended by the Surface Mining Advisory Committee (SMAC)

The proposed Comprehensive Plan amendments include changes to general mineral extraction policies that implement Goal 8K (adverse impacts), Goal 8Q (MRL designation), and MRL Designation Criteria.

Both exhibits propose designation criteria requiring internal consistency with other parts of the comprehensive plan. Both exhibits also include policies supporting their respective proposed MRL designation process, changing the permitting process from administrative approval use to conditional use and considering maintenance and upgrade of public roads before mineral extraction.

Exhibit A proposes new MRL designation criteria that provide the public and decision-makers with environmental information prior to MRL lands being designated, require that adjoining mine activities are compliant with permits and regulations prior to MRL expansion, and limit forestry zones within MRLs. Exhibit A also includes policies considering maintenance and upgrading roads prior to designation.

Exhibit B proposes new MRL designation criteria providing discretion whether existing mines must be compliant with permits and regulations prior to adjacent MRL expansion.
Both Exhibit A and Exhibit B propose amendments to the zoning code altering the permitting process from an administrative approval use (staff decision with no public hearing) to a conditional use permit (Hearing Examiner decision with a public hearing). Both exhibits also propose additional changes to include requiring noxious weeds to not be established in buffers of surface mining operations.

Exhibit A proposes changing the distance from rural or residential districts for rock crushing activities that would require a conditional use permit from 1,000 feet to 2,000 ft. Exhibit A proposes the notification requirements for surface mining be expanded to 2,000 from the external boundaries of the subject property and requires conditional use permits for mining and processing activities within forest resource zones when within 2,000 feet of a rural or Residential district.

Exhibit B proposes an additional review criterion that, within forestry zones, prior to moving on to a new phase of mining, previously mined areas shall meet reclamation criteria as approved by DNR.

The specific Comprehensive Plan and zoning code amendments are included with this report as exhibits A and B. Exhibit A shows the amendments as provided by the applicant. Exhibit B shows amendments proposed the SMAC.

**Location:** The proposed zoning text amendments affect portions of the Rural, Agriculture, Rural Forestry and Commercial Forestry zones, and the Mineral Resource Lands overlay.

**II. BACKGROUND**

One of the goals of the Growth Management Act (GMA) is to maintain and enhance resource based industries, including the aggregate and mineral resource industries, with the purpose of assuring the long-term conservation of resource lands for future use. In addition, the Act mandates that each county shall classify mineral resource lands and then designate and conserve appropriate areas that are not already characterized by urban growth and that have long-term commercial significance.

To address the mandates of the GMA, Whatcom County formed a Surface Mining Citizens’ Advisory Committee (SMAC) in the 1990s to produce the issues, goals, and policies found in the Whatcom County Comprehensive Plan. The County Council adopted the original mineral resource provisions in the 1997 Comprehensive Plan. These provisions were updated in 2004-2005 after reviewing the GMA, SMAC recommendations, and new information.

In 2004, there were 24 Mineral Resource Land (MRL) designations throughout the County, covering 4,204 acres. For planning purposes, the SMAC recommended using an annual demand for sand and gravel of 12.2 cubic yards per capita and annual demand for bedrock of 1.3 cubic yards per capita in the 2004-05 Comprehensive Plan update, consistent with the rates in the 1997 Comprehensive Plan.
While urbanization creates demand for sand and gravel resources, it may also encroach upon or build over those same resources, rendering them inaccessible. Strong community opposition to mining near residential, agricultural, or sensitive environmental areas may also limit extractive opportunities. Adequate resource protection could help to assure the long-term conservation of resource lands for future use. It may also help to ensure a competitive market and to guard against inflated land prices by allowing the supply of minerals to respond to the demand of a free market. Helping the aggregate industry and the associated businesses, trades and export markets create jobs and stimulate the economy, to the benefit of the county.

Potential conflicts with other land uses, however, may include increased noise, dust, visual blight, traffic, road wear, and neighboring property devaluation. Unreclaimed mines may affect property values while at the same time nearby residents may use the area for other activities. Controlling trespassing to surface mining may be a significant safety issue for mine operators. Property rights issues range from the right to mine and use the value of mineral resource land to the right to live in an area with a high quality of life and retain home values. Citizens may be generally unaware of the county zoning of surrounding property and the mining uses that area allowed. These and other factors may contribute to a climate of distrust and hostility between aggregate industry and adjacent property owners.

Environmental issues associated with surface mining may include groundwater contamination and disruption of fish and wildlife habitat. Surface mines may have the potential, however, to create wetlands and fish and wildlife habitat, possible productive agricultural land for a limited number of crops, and provide land for parks, housing, industrial and other uses, through mine reclamation.

Associated mining activities such as rock crushing on-site may increase the “industrial atmosphere” experience by nearby property owners. This activity, however, helps to keep material transportation costs down. In addition, accessory uses are a necessary part of most operations, and to carry them out on site is cost-effective.

In October 2006, PDS staff provided a staff report to the Planning Commission for a proposed MRL designation expansion east of the City of Nooksack, off of Breckenridge Road. The staff report recommended approval, subject to conditions, based on designation criteria within the Comprehensive Plan and review criteria within Whatcom County Code. The Planning Commission forwarded their findings for approval to the County Council. The Council Natural Resource committee recommended approval of the proposal to the County Council. At the County Council meeting, partially due to public opposition, the proposal was not adopted.

In December 2008, an application was filed to amend the Comprehensive Plan map and zoning map to expand an MRL designation off of Bowman and Doran roads, south of Acme. The SEPA threshold determination of Mitigated Determination of Non-Significance was appealed by some of the local community and the applicant.
The Hearing Examiner upheld the applicant appeal. The Hearing Examiner decision was appealed to the County Council, which upheld the Hearing Examiner’s decision. In May 2011, PDS staff provided a staff report to the Planning Commission for the proposed MRL designation amendment. The staff report recommended approval based on the designation criteria within the Comprehensive Plan and review criteria within Whatcom County Code. The Planning Commission forwarded their findings for approval to the County Council. On July 26, 2011, the County Council moved to refer the proposal to committee for a work session. At the August 9, 2011 Planning and Development Committee meeting, the Committee was unable to recommend approval for the proposal. That evening, the County Council forwarded the proposal to concurrent review. On February 14, 2012, the County Council motion to adopt the proposed ordinance failed, partially due to public concerns about potential environmental impacts of future mining.

The purpose of the present proposal is to address some of the concerns that have been raised in previous years. As stated in the application for this proposal:

- “The current MRL process fails to provide sufficient information to evaluate the potential impacts of MRL designation proposal. Recent decisions of the hearing Examiner have concluded that the current process limits the initial MRL designation mainly to the value and location of mineral deposits while leaving the determination of the impacts and approval of operations to the administrative approval process that requires appeals in order to gain a public hearing. As noted by the Hearing Examiner, Whatcom County could have chosen a different process with designation criteria that included environmental review of mining impacts at the beginning of the process.”

“This amendment does propose a different process – a process that provides the public and decision-makers with environmental information prior to MRL lands being designated, and then requires a public hearing on surface mining permit applications rather than having such decisions made by staff that must be appealed in order to gain a hearing.”

III. ANALYSIS OF THE PROPOSED AMENDMENT

The proposed amendments include both Comprehensive Plan text amendments, as well as zoning text amendments.

In order to approve the proposed Comprehensive Plan amendments, pursuant to Whatcom County Code (WCC) 2.160, the planning commission and county council must find:

- The amendment conforms to the requirements of the Growth Management Act, is internally consistent with the county-wide planning policies and is consistent with any interlocal planning agreements.
- Further studies made or accepted by the department of planning and development services indicate changed conditions that show need for the amendment.
- The public interest will be served by approving the amendment.
A. That the amendment conforms to the requirements of the Growth Management Act, is internally consistent with the county-wide planning policies and is consistent with any interlocal planning agreements.

Growth Management Act

The Growth Management Act (GMA) includes multiple planning goals that are relevant to the proposed comprehensive plan amendments.

GMA planning goal #7 states: “Applications for both state and local government permits should be processed in a timely and fair manner to ensure predictability” (RCW 36.70A.020(7)).

**Staff Comment:** Through previous MRL designation proposals, it has been affirmed that MRL designation is not a “right-to-mine” (unlike agricultural and forest lands of long-term commercial significance), insomuch as upon receiving MRL designation, a permit is still required for the act of mineral extraction. Neither Exhibit A nor B proposes to change that.

However, Exhibit A would require that a site specific environmental analysis, as well as consideration of the maintenance and upgrade of public roads, be conducted on a site prior to MRL designation. If, in keeping with recent decisions, MRL designation does not include a “right-to-mine”, subject to the results of the environmental analysis, then a mineral extraction permit applicant would have no assurances that the results of their site specific environmental analysis would result in an approved MRL designation or permit. Further, if designation is predicated on an operating plan, if a mineral extraction company goes out of business or is sold, or if the property is sold, it is unclear if the new owner would be bound to the operating plan, need to complete a new environmental analysis, or risk losing MRL designation based on the lack of an environmental analysis.

Exhibit B includes proposed amendments to Policy 8K-2 that clarify that maintenance and upgrade of public roads take place before approving mineral extraction. This would ensure that any necessary maintenance or upgrades are in direct relationship to an impact from a specific mineral extraction permit. This policy also clarifies that all traffic, not just truck traffic, on county roads is addressed in a fair and equitable fashion.

GMA planning goal #11 states: “Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts” (RCW 36.70A.020(11)).

**Staff Comment:** In both Exhibit A and Exhibit B, the proposed amendments to Policy 8Q-4 alter the permitting process from administrative approval to conditional use. Through the administrative approval use and conditional use
processes, State Environmental Policy Act (SEPA) review (and associated public comment period) is only required if certain thresholds are met (which in the case of commercial mineral extraction they would be). The administrative approval use process does not include a public hearing unless a Planning and Development Services (PDS) staff decision is appealed. Presently, the fee to appeal an administrative approval is $500. Through the conditional use process, there is a public hearing before the Hearing Examiner. The proposed amendment would result in a public hearing process that is presently absent without the need for an appeal.

County-Wide Planning Policies

County-Wide Planning Policy A-3 states that:

Citizens shall be notified in a timely manner of opportunities to have input and key decision points in the planning process. This should include actions such as use of telephone hotlines, notification to interest groups, pre-development meetings, early incorporation of public comments and broader notification of property owners and residents during a planning process as well as working more extensively with community and neighborhood groups. The cities shall also develop a public participation process to solicit and incorporate comments from residents outside city limits but within proposed Urban Growth Areas.

Staff Comment: In both Exhibit A and Exhibit B, the proposed amendments to Policy 8Q-4 alter the permitting process from administrative approval to conditional use. Through the administrative approval use and conditional use processes, State Environmental Policy Act (SEPA) review (and associated public comment period) is only required if certain thresholds are met (which in the case of commercial mineral extraction they would be). The administrative approval use process does not include a public hearing unless a Planning and Development Services (PDS) staff decision is appealed. Presently, the fee to appeal an administrative approval is $500. Through the conditional use process, there is a public hearing before the Hearing Examiner. The proposed amendment would result in a public hearing process that is presently absent without the need for an appeal.

Interlocal Agreement

Staff Comment: Staff is not aware of any interlocal agreements affecting the proposed amendments.

B. That further studies made or accepted by the department of planning and development services indicate changed conditions that show the need for the amendment.

There have been no studies made or accepted by the PDS that indicate changed conditions that show the need for the amendments. However, in recent history
Exhibit A – Proposed Policy 8K-2: Consider the maintenance and upgrade of public roads before designating MRLs and approving mineral extraction. Address all truck traffic on county roads in a fair and equitable fashion.

Exhibit B – Proposed Policy 8K-2: Consider the maintenance and upgrade of public roads before approving mineral extraction. Address all truck traffic on county roads in a fair and equitable fashion.

Staff Comment: The underline represents changed conditions from the present policy. Within the past few years, applications for MRL designation have resulted in a public process where citizens have requested that impacts from mineral extraction be considered as part of MRL designation. Proponents of MRL designation note that the purpose of designation is to protect the resource from incompatible uses, and that designation is not a right-to-mine. Twice since 2006, a Comprehensive Plan map and zoning map amendment application for the expansion of a MRL designation has reached the County Council, and both times the amendment was not approved by Council. Consideration of maintenance and upgrade of public roads may not be possible without a mineral extraction plan, which is not presently required as part of the MRL designation process. Mineral extraction permits are presently reviewed by Public Works – Engineering for potential impacts to public roads, and necessary maintenance and upgrading of the roads may be required for approval.

Exhibit A - Proposed Policy 8K-7: Designate site-specific mineral resource lands only after mineral extraction impacts have been anticipated and evaluated, and potential adverse environmental impacts have been addressed through appropriate mitigation and/or reasonable alternatives.

Exhibit B – Proposed Policy 8K-7: The surface Mining Advisory Committee did not recommend approval of this proposed policy.

Staff Comment: Within the past few years, applications for MRL designation have resulted in a public process where citizens have requested that impacts from mineral extraction be considered as part of MRL designation. Proponents of MRL designation note that the purpose of designation is to protect the resource from incompatible uses, and that designation is not a right-to-mine. Twice since 2006, a Comprehensive Plan map and zoning map amendment application for the expansion of a MRL designation has reached the County Council, and both times the amendment was not approved by Council. Anticipation and evaluation of potential adverse environmental impacts associated with mineral extraction, and mitigation and/or reasonable alternatives may not be possible without a mineral extraction plan, which is not presently required as part of the MRL designation process.
• **Exhibit A – Proposed Policy 8K-8:** Expansion of existing MRL designations for a mine site will require that the existing mine is in full compliance with all permits and regulations.

• **Exhibit B – Proposed Policy 8K-8:** Expansion of MRL designations to parcels contiguous to, and in common ownership with, an existing mine, may require that the existing mine is in compliance with all operating permits and regulations.

**Staff Comment:** In December 2010, Whatcom County PDS received an application for a Comprehensive Plan map and zoning map amendment to expand an existing MRL designation. The mine associated with the MRL designation has received stop work orders and been assessed penalties as part of a notice of violation. The operation within this MRL is now going through receivership. No work has been done on the Comprehensive Plan MRL expansion amendment for over 2 years, and there is presently no mining activity occurring. The proposed policy in Exhibit B attempts to clarify that non-compliance by a mineral extraction operator would not impact the ability of another landowner to expand an MRL designation.

• **Exhibit A and Exhibit B - Proposed Policy 8Q-4:** Allow mining within designated MRLs through an administrative approval conditional use permit process requiring:
  1. on-site environmental review, with county as lead agency, and
  2. application of appropriate site specific conditions, and
  3. notification to neighboring property owners within 1,000 feet to insure opportunity for written and oral input and/or appeal, and
  4. access to de novo review by the Hearing Examiner if administrative approval is denied or appealed.

**Staff Comment:** The underlines and strikethroughs represent changed conditions from the present policy. In both Exhibit A and Exhibit B, the proposed amendments to Policy 8Q-4 alter the permitting process from administrative approval to conditional use. Through the administrative approval use and conditional use processes, State Environmental Policy Act (SEPA) review (and associated public comment period) is only required if certain thresholds are met (which in the case of commercial mineral extraction they would be). The administrative approval use process does not include a public hearing unless a Planning and Development Services (PDS) staff decision is appealed. Presently, the fee to appeal an administrative approval is $500. Through the conditional use process, there is a public hearing before the Hearing Examiner. The proposed amendment would result in a public hearing process that is presently absent without the need for an appeal. However, it is worth noting that, according to former PDS geologist, Doug Goldthorp:
"Since the inception of the surface mining administrative approval use permit requirement in 1997, 24 surface mining administrative approval use applications (ADMs), and the 3 amendment applications to those ADMs have been conditionally approved. There was either a DNS, MDNS, and one DS SEPA determination in each case. Of the 27 combined ADMs, ADM amendments and associated SEPA determinations, 3 appeals (11%) have been filed and adjudicated by the WC Hearing Examiner. In all 3 cases, the Hearing Examiner has upheld the staff determination. In a few cases, the Hearing Examiner determination has been upheld by the WC Council, and in one case, upheld by the WA Superior Court."

This information indicates that, while the sample size is relatively small, the Technical Administrator's determinations have been upheld as appropriate, when challenged. However, the purpose of the amendment is to ensure a public process that is presently absent, and this amendment would provide an avenue for a public process.

C. That the public interest will be served by approving the amendment. In determining whether the public interest will be served, factors including but not limited to the following shall be considered:

1. The anticipated effect upon the rate or distribution of population growth, employment growth, development, and conversion of land as envisioned in the Comprehensive Plan.

   **Staff Comment:** There is no anticipated effect upon the rate or distribution of population growth, employment growth or development of land as envisioned in the Comprehensive Plan, as a result of the proposed Comprehensive Plan amendments under Exhibit B. However, under Exhibit A, lands that have a proven resource may become converted to a use incompatible with surface mining if mineral resource extraction companies don't pursue designation as a result of increased costs and lack certainty in the designation process.

2. The anticipated effect upon the ability of the County and/or other service providers, such as cities, schools, water and/or sewer purveyors, fire districts, and others as applicable, to provide adequate services and public facilities including transportation facilities.

   **Staff Comment:** Under Exhibit A, the proposed Comprehensive Plan amendments may affect the ability of the County and/or other service providers to provide adequate services and public facilities including transportation facilities, though not necessarily through an increased demand for services. Recent efforts to designate lands for mineral extraction have failed. Mining companies may be hesitant to apply for designation, due to the costs associated with studies to determine potential impacts/mitigation/alternatives, if there are no reassurances that they could recoup the costs through designation and subsequent mineral extraction.
Additionally, by limiting MRL designations in forest lands to 20 acres at a time, large areas of potential resources may not be efficiently extracted. This situation may result in increased costs for the resource. If mining companies decide to not apply for new designations in Whatcom County, the costs of mineral resources would likely climb as the local supply diminishes and more costly imports become a primary source of material. If the costs of capital facilities increase, there may be less money throughout the rest of the provider’s budget.

Staff does not anticipate Exhibit B will affect the ability of the County or other service providers to provide adequate services and public facilities.

3. **Anticipated impact upon designated agricultural, forest and mineral resource lands.**

   **Staff Comment:** Under Exhibit A, the proposed amendments may discourage mining companies from applying for designation, due to the costs associated with studies to determine potential impacts/mitigation/alternatives, if there are no reassurances that they could recoup the costs through designation and subsequent mineral extraction. If true, the rate of conversion to mineral resource lands from agriculture and forestry would likely slow, positively impacting the protection of agriculture and forestry lands. However, the proposed amendments would then, necessarily, negatively impact the availability of mineral resource lands.

   Staff does not anticipate Exhibit B will impact designated agricultural, forest or mineral resource lands.

D. **That the amendment does not include nor facilitate illegal spot zoning.**

According to the Official Whatcom County Zoning Ordinance:

“Illegal spot zoning” means a zoning action by which a smaller area is singled out of a larger area or district and specially zoned for a use classification totally different from, and inconsistent with, the classification of surrounding land and not in accordance with the Comprehensive Plan. Spot zoning is zoning for private gain designed to favor or benefit a particular individual or group and not the welfare of the community as a whole (WCC 20.97.186).

   **Staff Comment:** The proposed amendments within Exhibit A and Exhibit B do not change the zoning of any area; therefore the amendment does not include nor facilitate illegal spot zoning.

For zoning text amendments, Planning and Development Services shall conduct environmental review under SEPA and prepare a staff report including recommendations and/or options for the initiated amendment. The report and
result of environmental review to the appropriate hearing body, in this case the Planning Commission. The Planning Commission shall evaluate the merits of each amendment in relationship to the goals, policies and objectives of the Comprehensive Plan and make a recommendation as to whether the amendment should be approved, approved with modifications or denied. The following goals and policies of the Comprehensive Plan apply to the subject zoning text amendments.

**Goal 2G:** Encourage citizen participation in the decision-making process  
**Staff Comment:** In both Exhibit A and Exhibit B, the proposed amendments to Policy 8Q-4 alter the permitting process from administrative approval to conditional use. Through the administrative approval use and conditional use processes, State Environmental Policy Act (SEPA) review (and associated public comment period) is only required if certain thresholds are met (which in the case of commercial mineral extraction they would be). The administrative approval use process does not include a public hearing unless a Planning and Development Services (PDS) staff decision is appealed. Presently, the fee to appeal an administrative approval is $500. Through the conditional use process, there is a public hearing before the Hearing Examiner. The proposed amendment would result in a public hearing process that is presently absent without the need for an appeal.

**Policy 2D-3:** Streamline development regulations to eliminate unnecessary time delays.  
**Staff Comment:** Surface mining can be controversial, with neighbors of mines sometimes opposed due to possible impacts of mining activities. This opposition may take the form of appealing administrative decisions made by PDS staff to the Hearing Examiner. In both Exhibit A and Exhibit B, by changing the review process to conditional use, the Hearing Examiner would make an initial determination based on a staff report, potentially resulting in one less step between an application and a final outcome.

**Policy 7D-7:** Streamline and coordinate the permit process and sustain a supportive customer service approach towards permitting.  
**Staff Comment:** Surface mining can be controversial, with neighbors of mines sometimes opposed due to possible impacts of mining activities. This opposition may take the form of appealing administrative decisions made by PDS staff to the Hearing Examiner. In both Exhibit A and Exhibit B, by changing the review process to conditional use, the Hearing Examiner would make an initial determination based on a staff report, potentially resulting in one less step between an application and a final outcome.

**Policy 8K-1:** Avoid significant mineral extraction impacts on adjacent or nearby land uses, public health and safety, or natural resources.  
**Staff Comment:** In both Exhibit A and Exhibit B, the proposed amendments to Policy 8Q-4 alter the permitting process from administrative approval to conditional use. Through the administrative approval use and conditional use processes, State Environmental Policy Act (SEPA) review (and associated public comment period) is only required if certain thresholds are met (which in the case
of commercial mineral extraction they would be). The administrative approval use process does not include a public hearing unless a Planning and Development Services (PDS) staff decision is appealed. Presently, the fee to appeal an administrative approval is $500. Through the conditional use process, there is a public hearing before the Hearing Examiner. The proposed amendment would result in a public hearing process that is presently absent without the need for an appeal. In addition to SEPA review and a public hearing before the Hearing Examiner, the Hearing Examiner has the authority to condition permits in order to minimize or avoid significant impacts to neighboring lands, health and safety, and natural resources.

**Exhibit A – Proposed Policy 8K-2:** Consider the maintenance and upgrade of public roads before designating MRLs and approving mineral extraction. Address all truck traffic on county roads in a fair and equitable fashion.

**Exhibit B – Proposed Policy 8K-2:** Consider the maintenance and upgrade of public roads before approving mineral extraction. Address all truck traffic on county roads in a fair and equitable fashion.

**Staff Comment:** In both Exhibit A and Exhibit B, the proposed amendments to Policy 8Q-4 alter the permitting process from administrative approval to conditional use. Through the administrative approval use and conditional use processes, State Environmental Policy Act (SEPA) review (and associated public comment period) is only required if certain thresholds are met (which in the case of commercial mineral extraction they would be). Through the SEPA process, impacts to public roads are considered through Checklist Item #14 – Transportation as part of the permitting process. Exhibit B proposes that all traffic, not just truck traffic, on county roads be addressed in a fair and equitable fashion.

**Policy 8N-2:** Allow rock crushing, washing and sorting in the forest zones when appropriate as long as conflicts with other land uses can be mitigated.

**Staff Comment:** Rock crushing, washing and sorting are presently, and will continue to be, allowed uses within the forest zones, when within a MRL. Both exhibits propose amendments to Policy 8Q-4 that alter the permitting process from administrative approval to conditional use. Through the administrative approval use and conditional use processes, State Environmental Policy Act (SEPA) review (and associated public comment period) is only required if certain thresholds are met (which in the case of commercial mineral extraction they would be). Through the conditional use process, there is a public hearing before the Hearing Examiner. In addition to SEPA review and a public hearing before the Hearing Examiner, the Hearing Examiner has the authority to condition permits in order to minimize or avoid significant impacts to neighboring lands, health and safety, and natural resources.
Policy 8N-3: Allow commercial surface mining operations in the forest zones when appropriate as long as conflicts with other land use zones can be mitigated.

Staff Comment: Commercial surface mining operations are presently, and will continue to be, allowed uses within the forest zones, when within a MRL. Both exhibits propose amendments to Policy 8Q-4 that alter the permitting process from administrative approval to conditional use. Through the administrative approval use and conditional use processes, State Environmental Policy Act (SEPA) review (and associated public comment period) is only required if certain thresholds are met (which in the case of commercial mineral extraction they would be). Through the conditional use process, there is a public hearing before the Hearing Examiner. In addition to SEPA review and a public hearing before the Hearing Examiner, the Hearing Examiner has the authority to condition permits in order to minimize or avoid significant impacts to neighboring lands, health and safety, and natural resources.

Policy 8Q-4: Allow mining within designated MRLs through an administrative approval conditional use permit process requiring:

1. on-site environmental review, with county as lead agency, and
2. application of appropriate site specific conditions, and
3. notification to neighboring property owners within 1,000 feet to insure opportunity for written and oral input and/or appeal, and
4. access to de novo review by the Hearing Examiner if administrative approval or denial is appealed.

Staff Comment: In both Exhibit A and Exhibit B, the proposed amendments to Policy 8Q-4 alter the permitting process from administrative approval to conditional use. Criterion #4 of Policy 8Q-4 would be unnecessary through the conditional use process, since conditional use approval is made by the Hearing Examiner. Since conditional use permits undergo a public hearing before the Hearing Examiner, the conditional use permitting process allows for oral input, as opposed to the administrative approval process which has no associated public hearing.

Goal 10J: Minimize conflicts between different land uses.

Staff Comment: In both Exhibit A and Exhibit B, the proposed amendments to Policy 8Q-4 alter the permitting process from administrative approval to conditional use. Through the administrative approval use and conditional use processes, State Environmental Policy Act (SEPA) review (and associated public comment period) is only required if certain thresholds are met (which in the case of commercial mineral extraction they would be). The administrative approval use process does not include a public hearing unless a Planning and Development Services (PDS) staff decision is appealed. Presently, the fee to appeal an administrative approval is $500. Through the conditional use process, there is a public hearing before the Hearing Examiner. The proposed amendment would result in a public hearing process that is presently absent without the need for an appeal. In addition to SEPA review and a public hearing
before the Hearing Examiner, the Hearing Examiner has the authority to
condition permits in order to minimize or avoid significant impacts to neighboring
lands, health and safety, and natural resources.

**Policy 11B-5:** Process the environmental review of building and development
applications within an established time-frame that is predictable and expeditious.

**Staff Comment:** In both Exhibit A and Exhibit B, the proposed amendments to
Policy 8Q-4 alter the permitting process from administrative approval to
conditional use. Through the administrative approval use and conditional use
processes, State Environmental Policy Act (SEPA) review (and associated
public comment period) is only required if certain thresholds are met (which
in the case of commercial mineral extraction they would be). Whatcom
County Code (WCC) 2.33 – Permit Review Procedures states that unless
otherwise exempted in WCC 2.33.020 or 2.33.090(C), the county shall issue a
notice of final decision on an administrative approval use or conditional use
within 90 days of the date of completeness if the project is exempt from SEPA
review. If the project is subject to SEPA review, the county shall issue a
notice of final decision within 120 days.

**Lack of Goals or Policy:** The following are proposed amendments to the zoning
code that are neither supported, nor opposed, by the goals and policies within the
comprehensive plan. The present zoning code language is presented first, followed
by the proposed amendments within Exhibits A and B.

**WCC 20.42.058 and 20.43.055 – Permitted uses within Rural and
Commercial Forestry:** Surface mining, rock crushing, washing and sorting subject
to the Forest Practices Act (Chapter 76.09 RCW); provided that administrative
approval is required for accessory rock crushing activities located within 1,000 feet
from a rural or residential district.

- **Exhibit A:** Proposes changing the permitting process from administrative
  approval use to conditional use and extending the locational criteria to 2,000 ft.
- **Exhibit B:** Proposes changing the permitting process from administrative
  approval use to conditional use, but leaving the locational criteria at 1,000 ft.

**WCC 20.73.132 – Administrative Approval uses in the Mineral Resource
Lands overlay:** Rock crushing within Commercial and Rural Forestry Districts.

- **Exhibit A:** Proposes adding the following language to the end of the code:
  "when located further than 2,000 feet from a rural or residential district."
- **Exhibit B:** Proposes adding the following language to the end of the code:
  "when located further than 1,000 feet from a rural or residential district."

**Proposed WCC 20.73.153(1) – Conditional uses in the Mineral Resource
Lands Overlay (note: this language would replace administrative approval
use language, if the permitting process is changed from administrative
approval use to conditional use):** The notification requirements of WCC

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2.33.060.D.2.b shall be expanded to all property owners within 1,000 ft. of the external boundaries of the subject property.

- **Exhibit A**: Proposes expanding the notification area to 2,000 ft.
- **Exhibit B**: Proposes leaving the notification area at 1,000 ft.

**Proposed WCC 20.73.153(6) – Conditional uses in the Mineral Resource Lands overlay (note: this language would replace administrative approval use language, if the permitting process is changed from administrative approval use to conditional use):** Notice of the decision shall be mailed to all property owners within 1,000 feet of the external boundaries of the subject property within two days of issuance of the decision. The applicant shall provide typed, self-adhering mailing labels with the names and addresses of all property owners within 1,000 feet of the subject property with the application to facilitate the notice.

- **Exhibit A**: Proposes expanding the notification area to 2,000 ft.
- **Exhibit B**: Proposes leaving the notification area at 1,000 ft.

**Exhibit B - Proposed WCC 20.73.153(7) – Conditional uses in the Mineral Resources Lands overlay (note: this language is new and is not proposed in Exhibit A):** Where the underlying zoning is Rural Forestry or Commercial Forestry, prior to moving on to a new phase, previously mined areas shall meet reclamation criteria as identified on an approved Department of Natural Resources Surface Mining Reclamation Permit.

**State Environmental Policy Act**

*Staff Comment*: A SEPA Determination of Nonsignificance was issued on July 5, 2013. The associated comment period ended on July 19th, 2013 and the appeal period concluded July 29th, 2013.

**IV. PROPOSED FINDINGS OF FACT AND REASONS FOR ACTION**

1. An application for Comprehensive Plan and related zoning amendments was received by Whatcom County on December 21, 2012.

2. A revised application for Comprehensive Plan and related zoning amendments was received by Whatcom County on January 23, 2013.

3. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on July 5, 2013. The associated comment period ended July 19, 2013 and the appeal period concluded July 29, 2013.

4. The Surface Mining Advisory Committee held work sessions with Whatcom County PDS Staff on March 26, 2014; April 23, 2014; May 28, 2014, June 25, 2014; and July 23, 2014.

5. A press release of the Planning Commission briefing was published in the Bellingham Herald on 09/08/2014
6. The Planning Commission held a work session on September 11, 2014.

7. The Planning Commission held a public hearing on October 23, 2014.

8. Notice of the proposed amendment was sent to the Department of Commerce on 8/15/2014.

9. On 08/20/2014 the Department of Commerce acknowledged receipt of the notice, and that a copy of the notice had been forwarded to other state agencies.

10. The Growth Management Act (GMA) includes multiple planning goals that are relevant to the proposed comprehensive plan amendments.

11. GMA Planning Goal #7: Applications for both state and local government permits should be processed in a timely and fair manner to ensure predictability.

Through previous MRL designation proposals, it has been affirmed that MRL designation is not a “right-to-mine”, inasmuch as upon receiving MRL designation, a permit is still required for the act of mineral extraction.

Exhibit B includes proposed amendments to Policy 8K-2 that clarify that maintenance and upgrade of public roads take place before approving mineral extraction. This would ensure that any necessary maintenance or upgrades are in direct relationship to an impact from a specific mineral extraction permit. This policy also clarifies that all traffic, not just truck traffic, on county roads is addressed in a fair and equitable fashion.

12. GMA Planning Goal #11: Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts

Exhibit B proposes amendments to Policy 8Q-4 altering the permitting process from administrative approval to conditional use. Through the administrative approval use and conditional use processes, State Environmental Policy Act (SEPA) review (and associated public comment period) is only required if certain thresholds are met (which in the case of commercial mineral extraction they would be). The administrative approval use process does not include a public hearing unless a Planning and Development Services (PDS) staff decision is appealed. Presently, the fee to appeal an administrative approval is $500. Through the conditional use process, there is a public hearing before the Hearing Examiner. The proposed amendment would result in a public hearing process that is presently absent without the need for an appeal.
13. Whatcom County’s County-Wide Planning Policy A-3 states: Policy 7D-7: Citizens shall be notified in a timely manner of opportunities to have input and key decision points in the planning process. This should include actions such as use of telephone hotlines, notification to interest groups, pre-development meetings, early incorporation of public comments and broader notification of property owners and residents during a planning process as well as working more extensively with community and neighborhood groups. The cities shall also develop a public participation process to solicit and incorporate comments from residents outside city limits but within proposed Urban Growth Areas.

Exhibit B proposes amendments to Policy 8Q-4 altering the permitting process from administrative approval to conditional use. Through the administrative approval use and conditional use processes, State Environmental Policy Act (SEPA) review (and associated public comment period) is only required if certain thresholds are met (which in the case of commercial mineral extraction they would be). The administrative approval use process does not include a public hearing unless a Planning and Development Services (PDS) staff decision is appealed. Presently, the fee to appeal an administrative approval is $500. Through the conditional use process, there is a public hearing before the Hearing Examiner. The proposed amendment would result in a public hearing process that is presently absent without the need for an appeal.

14. There are no interlocal agreements affecting the proposed amendments.

15. Whatcom County Comprehensive Plan contains goals and policies that are applicable to the proposal.

16. Proposed Policy 8K-2: Consider the maintenance and upgrade of public roads before approving mineral extraction. Address all truck traffic on county roads in a fair and equitable fashion.

The underline represents changed conditions from the present policy. Within the past few years, applications for MRL designation have resulted in a public process where citizens have requested that impacts from mineral extraction be considered as part of MRL designation. Proponents of MRL designation note that the purpose of designation is to protect the resource from incompatible uses, and that designation is not a right-to-mine. Twice since 2006, a Comprehensive Plan map and zoning map amendment application for the expansion of a MRL designation has reached the County Council, and both times the amendment was not approved by Council. Consideration of maintenance and upgrade of public roads may not be possible without a mineral extraction plan, which is not presently required as part of the MRL designation process. Mineral extraction permits are presently reviewed by Public Works – Engineering for potential impacts to public roads, and necessary maintenance and upgrading of the roads may be required for approval.
Exhibit B proposes amendments altering the permitting process from administrative approval to conditional use. Through the administrative approval use and conditional use processes, State Environmental Policy Act (SEPA) review (and associated public comment period) is only required if certain thresholds are met (which in the case of commercial mineral extraction they would be). Through the SEPA process, impacts to public roads are considered through Checklist Item #14 – Transportation as part of the permitting process. Exhibit B proposes that all traffic, not just truck traffic, on county roads be addressed in a fair and equitable fashion.

17. Proposed Policy 8K-8: Expansion of MRL designations to parcels contiguous to, and in common ownership with, an existing mine, may require that the existing mine is in compliance with all operating permits and regulations.

In December 2010, Whatcom County PDS received an application for a Comprehensive Plan map and zoning map amendment to expand an existing MRL designation. The mine associated with the MRL designation has received stop work orders and been assessed penalties as part of a notice of violation. The operation within this MRL is now going through receivership. No work has been done on the Comprehensive Plan MRL expansion amendment for over 2 years, and there is presently no mining activity occurring. The proposed policy in Exhibit B attempts to clarify that non-compliance by a mineral extraction operator would not impact the ability of another landowner to expand an MRL designation.

18. Proposed Policy 8Q-4: Allow mining within designated MRLs through an administrative approval conditional use permit process requiring:
   (1) On-site environmental review, with county as lead agency, and
   (2) application of appropriate site specific conditions, and
   (3) notification to neighboring property owners within 1,000 feet to insure opportunity for written and oral input and/or appeal, and
   (4) access to de novo review by the Hearing Examiner if administrative approval is denied or appealed.

The underlines and strikethroughs represent changed conditions from the present policy. The proposed amendments to Policy 8Q-4 alter the permitting process from administrative approval to conditional use. Criterion #4 of Policy 8Q-4 would be unnecessary through the conditional use process, since conditional use approval is made by the Hearing Examiner. Through the administrative approval use and conditional use processes, State Environmental Policy Act (SEPA) review (and associated public comment period) is only required if certain thresholds are met (which in the case of commercial mineral extraction they would be). The administrative approval use process does not include a public hearing unless a Planning and Development Services (PDS) staff decision is appealed. Presently, the fee to appeal an administrative approval is $500. Through the conditional use process, there is a public hearing before the Hearing Examiner. The proposed
amendment would result in a public hearing process that is presently absent without the need for an appeal. However, it is worth noting that, according to former PDS geologist, Doug Goldthorp:

"Since the inception of the surface mining administrative approval use permit requirement in 1997, 24 surface mining administrative approval use applications (ADMs), and the 3 amendment applications to those ADMs have been conditionally approved. There was either a DNS, MDNS, and one DS SEPA determination in each case. Of the 27 combined ADMs, ADM amendments and associated SEPA determinations, 3 appeals (11%) have been filed and adjudicated by the WC Hearing Examiner. In all 3 cases, the Hearing Examiner has upheld the staff determination. In a few cases, the Hearing Examiner determination has been upheld by the WC Council, and in one case, upheld by the WA Superior Court."

This information indicates that, while the sample size is relatively small, the Technical Administrator’s determinations have been upheld as appropriate, when challenged. However, the purpose of the amendment is to ensure a public process that is presently absent, and this amendment would provide an avenue for a public process.

19. There is no anticipated effect upon the rate or distribution of population growth, employment growth or development of land as envisioned in the Comprehensive Plan, as a result of the proposed Comprehensive Plan amendments under Exhibit B.

20. Staff does not anticipate Exhibit B will affect the ability of the County or other service providers to provide adequate services and public facilities.

21. Staff does not anticipate Exhibit B will impact designated agricultural, forest or mineral resource lands.

22. Goal 2G: Encourage citizen participation in the decision-making process

The proposed amendments to Policy 8Q-4 alter the permitting process from administrative approval to conditional use. Through the administrative approval use and conditional use processes, State Environmental Policy Act (SEPA) review (and associated public comment period) is only required if certain thresholds are met (which in the case of commercial mineral extraction they would be). The administrative approval use process does not include a public hearing unless a Planning and Development Services (PDS) staff decision is appealed. Presently, the fee to appeal an administrative approval is $500. Through the conditional use process, there is a public hearing before the Hearing Examiner. The proposed amendment would result in a public hearing process that is presently absent without the need for an appeal.
23. Policy 2D-3: Streamline development regulations to eliminate unnecessary time delays.

Surface mining can be controversial, with neighbors of mines sometimes opposed due to possible impacts of mining activities. This opposition may take the form of appealing administrative decisions made by PDS staff to the Hearing Examiner. By changing the review process to conditional use, the Hearing Examiner would make an initial determination based on a staff report, potentially resulting in one less step between an application and a final outcome.

24. Policy 7D-7: Streamline and coordinate the permit process and sustain a supportive customer service approach towards permitting.

Surface mining can be controversial, with neighbors of mines sometimes opposed due to possible impacts of mining activities. This opposition may take the form of appealing administrative decisions made by PDS staff to the Hearing Examiner. By changing the review process to conditional use, the Hearing Examiner would make an initial determination based on a staff report, potentially resulting in one less step between an application and a final outcome.

25. Policy 8K-1: Avoid significant mineral extraction impacts on adjacent or nearby land uses, public health and safety, or natural resources.

The proposed amendments to Policy 8Q-4 alter the permitting process from administrative approval to conditional use. Through the administrative approval use and conditional use processes, State Environmental Policy Act (SEPA) review (and associated public comment period) is only required if certain thresholds are met (which in the case of commercial mineral extraction they would be). The administrative approval use process does not include a public hearing unless a Planning and Development Services (PDS) staff decision is appealed. Presently, the fee to appeal an administrative approval is $500. Through the conditional use process, there is a public hearing before the Hearing Examiner. The proposed amendment would result in a public hearing process that is presently absent without the need for an appeal. In addition to SEPA review and a public hearing before the Hearing Examiner, the Hearing Examiner has the authority to condition permits in order to minimize or avoid significant impacts to neighboring lands, health and safety, and natural resources.

26. Policy 8N-2: Allow rock crushing, washing and sorting in the forest zones when appropriate as long as conflicts with other land uses can be mitigated.

Rock crushing, washing and sorting are presently, and will continue to be, allowed uses within the forest zones, when within a MRL. Proposed amendments to Policy 8Q-4 alter the permitting process from administrative approval to conditional use. Through the administrative approval use and conditional use processes, State Environmental Policy Act (SEPA) review (and associated public comment period) is only required if certain thresholds are met (which in the case of commercial mineral extraction they would be).
Through the conditional use process, there is a public hearing before the Hearing Examiner. In addition to SEPA review and a public hearing before the Hearing Examiner, the Hearing Examiner has the authority to condition permits in order to minimize or avoid significant impacts to neighboring lands, health and safety, and natural resources.

27. Policy BN-3: Allow commercial surface mining operations in the forest zones when appropriate as long as conflicts with other land use zones can be mitigated.

Commercial surface mining operations are presently, and will continue to be, allowed uses within the forest zones, when within a MRL. Proposed amendments to Policy 8Q-4 alter the permitting process from administrative approval to conditional use. Through the administrative approval use and conditional use processes, State Environmental Policy Act (SEPA) review (and associated public comment period) is only required if certain thresholds are met (which in the case of commercial mineral extraction they would be). Through the conditional use process, there is a public hearing before the Hearing Examiner. In addition to SEPA review and a public hearing before the Hearing Examiner, the Hearing Examiner has the authority to condition permits in order to minimize or avoid significant impacts to neighboring lands, health and safety, and natural resources.

28. Goal 10J: Minimize conflicts between different land uses.

The proposed amendments to Policy 8Q-4 alter the permitting process from administrative approval to conditional use. Through the administrative approval use and conditional use processes, State Environmental Policy Act (SEPA) review (and associated public comment period) is only required if certain thresholds are met (which in the case of commercial mineral extraction they would be). The administrative approval use process does not include a public hearing unless a Planning and Development Services (PDS) staff decision is appealed. Presently, the fee to appeal an administrative approval is $500. Through the conditional use process, there is a public hearing before the Hearing Examiner. The proposed amendment would result in a public hearing process that is presently absent without the need for an appeal. In addition to SEPA review and a public hearing before the Hearing Examiner, the Hearing Examiner has the authority to condition permits in order to minimize or avoid significant impacts to neighboring lands, health and safety, and natural resources.

29. Policy 11B-5: Process the environmental review of building and development applications within an established time-frame that is predictable and expeditious.

The proposed amendments to Policy 8Q-4 alter the permitting process from administrative approval to conditional use. Through the administrative approval use and conditional use processes, State Environmental Policy Act (SEPA) review (and associated public comment period) is only required if
certain thresholds are met (which in the case of commercial mineral extraction they would be). Whatcom County Code (WCC) 2.33 – Permit Review Procedures states that unless otherwise exempted in WCC 2.33.020 or 2.33.090(C), the county shall issue a notice of final decision on an administrative approval use or conditional use within 90 days of the date of completeness if the project is exempt from SEPA review. If the project is subject to SEPA review, the county shall issue a notice of final decision within 120 days.

30. The Washington State Department of Natural Resources completed a study entitled Reconnaissance Investigation of Sand, Gravel, and Quarried Bedrock Resources in the Bellingham 1:100,000 Quadrangle, Washington (Jan. 2001). This study indicates that the working lifetime of most of the significant pits in the county is 10 to 20 years (p. 5).

31. The Whatcom County Surface Mining Advisory Committee Final Report and Recommendations (October 20, 2004) states:

   ... Theoretically, there is enough total supply in existing MRLs to satisfy demand over the first 20 years of the planning period. However, there is an imbalance in the demand and supply of sand and gravel. There is a greater need for gravel resources than sand and, as we approach the end of the 20-year planning period, we can anticipate a shortage of gravel. Additionally, shortly after the 20-year planning period, we will run out of sand and gravel resources if existing MRLs are not expanded... (p. 7).

V. PROPOSED CONCLUSION

The subject Comprehensive Plan amendments are consistent with the approval criteria of WCC 2.160.080. The subject zoning text amendments were processed in accordance with WCC 20.90.050.

VI. RECOMMENDATION

Based upon the above findings and conclusions, the Whatcom County Planning Commission recommends approval of the proposed amendments as shown in Exhibit B. The Whatcom County Planning Commission also strongly recommends that Whatcom County take a lead role in designating mineral resource lands of long-term commercial significance in order to protect the resource from incompatible uses, as opposed to the present process of landowner initiated amendments.
PROPOSAL BY THE WHATCOM COUNTY SURFACE MINING COMMITTEE TO USE CONDITIONAL USE RATHER THAN ADMINISTRATIVE REVIEW AS THE PROCESS FOR MINE PERMITTING

Proposal

The Whatcom County Surface Mining Advisory Committee (SMAC) is proposing use of the conditional use rather than the administrative approval review process for mine permitting. The Committee is making this recommendation because the majority of Committee members believe that this will result in a more open, efficient and timely process.

Introduction

The Whatcom County Planning Commission questioned the Whatcom County Surface Mining Advisory Committee’s recommendation for using conditional use permits. Administrative review based on a staff decision without a public hearing is the current procedure for mine permitting in Whatcom County. The SMAC decision is based on a review of Comprehensive Plan amendments proposed by Whatcom County Councilman Carl Weimer and Councilwoman Barbara Brenner, and Whatcom County Planning and Development Services staff recommendations. Both sets of recommendations are intended to, “ensure that mineral extraction industries do not adversely affect the quality of life in Whatcom County...” ¹ address the Mineral Resource Land (MRL) approval process ² and identify criteria for designating MRLs ³. Membership of the SMAC includes a citizen who lives close to an existing mine, two representatives from the mining industry, two geologists, a geotechnical engineer, an ecologist, a forester, and a representative from the Whatcom Conservation District.

Discussion

A majority of the SMAC believe, as is the current practice, that public hearings should occur before an MRL designation is made by the County Council, with the understanding that an MRL designation does not constitute a right to mine nor should the impact of mining be addressed prior to an MRL designation. Because of the cost, as well as uncertainty in designation, mining impacts should be addressed in the State Environmental Policy Act (SEPA) review for a site-specific mining permit. The estimated costs for an Environmental Impact Statement through SEPA review range from $50K to $200K. In addition to the SEPA review, site-specific comments by affected citizens and any site-specific conditions should be considered by a Hearing Examiner before a decision is made to permit mining.

¹ Whatcom County Comprehensive Plan, Chapter 8 Resource Lands, Section 8K Adverse Impacts
² Whatcom County Comprehensive Plan, Chapter 8 Resource Lands, Section 8P MRL Approval Process
The rationale for changing from an administrative review to a conditional use mine permitting process includes the following:

- Uncertainties and inconsistencies in the approach the Whatcom County Planning and Development Services staff may take when reviewing permit applications,
- Citizens should be encouraged to engage early in the decision making process,
- Citizen participation will provide applicants for mining permits with early identification of perceived as well as real pitfalls, safety concerns and impacts of mining thus enabling applicants to address mitigation before concerns spiral out of control,
- Citizen involvement will result in recognition of conflicts between competing land uses, and
- Early citizen participation in the decision making process may reduce the number of challenges through appeals, thus minimizing time delays during the mine permitting process.

Conclusion

The Whatcom County Surface Mining Advisory Committee recommends the conditional use rather than the administrative approval review process because the Committee believes the conditional use process promotes open decision making, allows citizens to consider and understand alternatives and voice their concerns before any decision is made. Open decision making and early discussion may also shorten the time between application and issuance of a permit to mine. Criteria to be used by a Hearing Officer should be clearly identified when deciding whether a mine should be permitted during the conditional use review process. It is essential that all interested parties have an early understanding of issues influencing a decision so that these can be discussed and understood before a decision is made to assure maximum efficiency.
Permitting process for mineral extraction

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<td>- SEPA (project specific action) if over 500</td>
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Comprehensive Plan Map and Zoning Map Amendment - MRL Designation process

**Present/SMAC Recommendation**
- MRL Comprehensive Plan Map and Zoning Map amendment application
- SEPA (Non-Project Action, historically DNS)
  - Legal notice published in newspaper
- Staff Report
  - Zoning Review
  - Comp Plan Review
  - GMA Review
- Planning Commission (Public Hearing)
  - At least 10 days prior to hearing; legal notice published in newspaper; notification to neighbors within 1,000 ft; Notice posted on site
- County Council (Public Hearing)**
  - Notification in Herald 10-days prior to hearing
- County Council - Concurrent Review (Public Hearing)**
  - Decision
  - Notification in Herald 10-days prior to hearing

**Applicant Proposal**
- MRL Comprehensive Plan Map and Zoning Map amendment application
- SEPA (Project-Specific Action; may require EIS if DSS is issued)
  - Legal notice published in newspaper
  - Review extraction, impacts, and address potential adverse
- Staff Report
  - Zoning Review
  - Comp Plan Review
  - GMA Review
- Planning Commission (Public Hearing)
  - At least 10 days prior to hearing; legal notice published in newspaper; notification to neighbors within 1,000 ft; Notice posted on site
- County Council (Public Hearing)**
  - Notification in Herald 10-days
- County Council - Concurrent Review (Public Hearing)**
  - Decision
  - Notification in Herald 10-days prior to hearing

** County Council may deny amendment regardless of whether the application meets designation criteria.
WHATCOM COUNTY
PLANNING COMMISSION

Designated Mineral Resources Lands Comprehensive Plan
and Zoning Code Amendments

FINDINGS OF FACT AND REASONS FOR ACTION

1. An application for Comprehensive Plan and related zoning amendments was received by Whatcom County on December 21, 2012.

2. A revised application for Comprehensive Plan and related zoning amendments was received by Whatcom County on January 23, 2013.

3. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on July 5, 2013. The associated comment period ended July 19, 2013 and the appeal period concluded July 29, 2013.

4. The Surface Mining Advisory Committee held work sessions with Whatcom County PDS Staff on March 26, 2014; April 23, 2014; May 28, 2014, June 25, 2014; and July 23, 2014.

5. A press release of the Planning Commission briefing was published in the Bellingham Herald on 09/08/2014.

6. The Planning Commission held a work session on September 11, 2014.

7. The Planning Commission held a public hearing on October 23, 2014.

8. Notice of the proposed amendment was sent to the Department of Commerce on 8/15/2014.

9. On 08/20/2014 the Department of Commerce acknowledged receipt of the notice, and that a copy of the notice had been forwarded to other state agencies.

10. The Growth Management Act (GMA) includes multiple planning goals that are relevant to the proposed comprehensive plan amendments.

11. GMA Planning Goal #7: Applications for both state and local government permits should be processed in a timely and fair manner to ensure predictability.

Through previous MRL designation proposals, it has been affirmed that MRL designation is not a “right-to-mine”, insomuch as upon receiving MRL
designation, a permit is still required for the act of mineral extraction.

Exhibit B includes proposed amendments to Policy 8K-2 that clarify that maintenance and upgrade of public roads take place before approving mineral extraction. This would ensure that any necessary maintenance or upgrades are in direct relationship to an impact from a specific mineral extraction permit. This policy also clarifies that all traffic, not just truck traffic, on county roads is addressed in a fair and equitable fashion.

12. GMA Planning Goal #11: Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts

Exhibit B proposes amendments to Policy 8Q-4 altering the permitting process from administrative approval to conditional use. Through the administrative approval use and conditional use processes, State Environmental Policy Act (SEPA) review (and associated public comment period) is only required if certain thresholds are met (which in the case of commercial mineral extraction they would be). The administrative approval use process does not include a public hearing unless a Planning and Development Services (PDS) staff decision is appealed. Presently, the fee to appeal an administrative approval is $500. Through the conditional use process, there is a public hearing before the Hearing Examiner. The proposed amendment would result in a public hearing process that is presently absent without the need for an appeal.

13. Whatcom County’s County-Wide Planning Policy A-3 states: Policy 7D-7: Citizens shall be notified in a timely manner of opportunities to have input and key decision points in the planning process. This should include actions such as use of telephone hotlines, notification to interest groups, pre-development meetings, early incorporation of public comments and broader notification of property owners and residents during a planning process as well as working more extensively with community and neighborhood groups. The cities shall also develop a public participation process to solicit and incorporate comments from residents outside city limits but within proposed Urban Growth Areas

Exhibit B proposes amendments to Policy 8Q-4 altering the permitting process from administrative approval to conditional use. Through the administrative approval use and conditional use processes, State Environmental Policy Act (SEPA) review (and associated public comment period) is only required if certain thresholds are met (which in the case of commercial mineral extraction they would be). The administrative approval use process does not include a public hearing unless a Planning and Development Services (PDS) staff decision is appealed. Presently, the fee to appeal an administrative approval is $500. Through the conditional use process, there is a public hearing before the Hearing Examiner. The proposed amendment would result in a public hearing process that is presently absent without the need for an appeal.
14. There are no interlocal agreements affecting the proposed amendments.

15. Whatcom County Comprehensive Plan contains goals and policies that are applicable to the proposal.

16. Proposed Policy 8K-2: Consider the maintenance and upgrade of public roads before approving mineral extraction. Address all truck traffic on county roads in a fair and equitable fashion.

The underline represents changed conditions from the present policy. Within the past few years, applications for MRL designation have resulted in a public process where citizens have requested that impacts from mineral extraction be considered as part of MRL designation. Proponents of MRL designation note that the purpose of designation is to protect the resource from incompatible uses, and that designation is not a right-to-mine. Twice since 2006, a Comprehensive Plan map and zoning map amendment application for the expansion of a MRL designation has reached the County Council, and both times the amendment was not approved by Council. Consideration of maintenance and upgrade of public roads may not be possible without a mineral extraction plan, which is not presently required as part of the MRL designation process. Mineral extraction permits are presently reviewed by Public Works – Engineering for potential impacts to public roads, and necessary maintenance and upgrading of the roads may be required for approval.

Exhibit B proposes amendments altering the permitting process from administrative approval to conditional use. Through the administrative approval use and conditional use processes, State Environmental Policy Act (SEPA) review (and associated public comment period) is only required if certain thresholds are met (which in the case of commercial mineral extraction they would be). Through the SEPA process, impacts to public roads are considered through Checklist Item #14 – Transportation as part of the permitting process. Exhibit B proposes that all traffic, not just truck traffic, on county roads be addressed in a fair and equitable fashion.

17. Proposed Policy 8K-8: Expansion of MRL designations to parcels contiguous to, and in common ownership with, an existing mine, may require that the existing mine is in compliance with all operating permits and regulations.

In December 2010, Whatcom County PDS received an application for a Comprehensive Plan map and zoning map amendment to expand an existing MRL designation. The mine associated with the MRL designation has received stop work orders and been assessed penalties as part of a notice of violation. The operation within this MRL is now going through receivership. No work has been done on the Comprehensive Plan MRL expansion amendment for over 2 years, and there is presently no mining activity occurring. The proposed policy in Exhibit B attempts to clarify that non-compliance by a mineral extraction operator would not impact the ability of
another landowner to expand an MRL designation.

18. Proposed Policy 8Q-4: Allow mining within designated MRLs through an administrative approval conditional use permit process requiring:
(1) On-site environmental review, with county as lead agency, and
(2) application of appropriate site specific conditions, and
(3) notification to neighboring property owners within 1,000 feet to insure opportunity for written and oral input and/or appeal, and
(4) access to de novo review by the Hearing Examiner if administrative approval is denied or appealed.

The underlines and strikethroughs represent changed conditions from the present policy. The proposed amendments to Policy 8Q-4 alter the permitting process from administrative approval to conditional use. Criterion #4 of Policy 8Q-4 would be unnecessary through the conditional use process, since conditional use approval is made by the Hearing Examiner. Through the administrative approval use and conditional use processes, State Environmental Policy Act (SEPA) review (and associated public comment period) is only required if certain thresholds are met (which in the case of commercial mineral extraction they would be). The administrative approval use process does not include a public hearing unless a Planning and Development Services (PDS) staff decision is appealed. Presently, the fee to appeal an administrative approval is $500. Through the conditional use process, there is a public hearing before the Hearing Examiner. The proposed amendment would result in a public hearing process that is presently absent without the need for an appeal. However, it is worth noting that, according to former PDS geologist, Doug Goldthorp:

"Since the inception of the surface mining administrative approval use permit requirement in 1997, 24 surface mining administrative approval use applications (ADM) and the 3 amendment applications to those ADMs have been conditionally approved. There was either a DNS, MDNS, and one DS SEPA determination in each case. Of the 27 combined ADMs, ADM amendments and associated SEPA determinations, 3 appeals (11%) have been filed and adjudicated by the WC Hearing Examiner. In all 3 cases, the Hearing Examiner has upheld the staff determination. In a few cases, the Hearing Examiner determination has been upheld by the WC Council, and in one case, upheld by the WA Superior Court."

This information indicates that, while the sample size is relatively small, the Technical Administrator’s determinations have been upheld as appropriate, when challenged. However, the purpose of the amendment is to ensure a public process that is presently absent, and this amendment would provide an avenue for a public process.

19. There is no anticipated effect upon the rate or distribution of population growth, employment growth or development of land as envisioned in the
Comprehensive Plan, as a result of the proposed Comprehensive Plan amendments under Exhibit B.

20. Staff does not anticipate Exhibit B will affect the ability of the County or other service providers to provide adequate services and public facilities.

21. Staff does not anticipate Exhibit B will impact designated agricultural, forest or mineral resource lands.

22. Goal 2G: Encourage citizen participation in the decision-making process

The proposed amendments to Policy 8Q-4 alter the permitting process from administrative approval to conditional use. Through the administrative approval use and conditional use processes, State Environmental Policy Act (SEPA) review (and associated public comment period) is only required if certain thresholds are met (which in the case of commercial mineral extraction they would be). The administrative approval use process does not include a public hearing unless a Planning and Development Services (PDS) staff decision is appealed. Presently, the fee to appeal an administrative approval is $500. Through the conditional use process, there is a public hearing before the Hearing Examiner. The proposed amendment would result in a public hearing process that is presently absent without the need for an appeal.

23. Policy 2D-3: Streamline development regulations to eliminate unnecessary time delays.

Surface mining can be controversial, with neighbors of mines sometimes opposed due to possible impacts of mining activities. This opposition may take the form of appealing administrative decisions made by PDS staff to the Hearing Examiner. By changing the review process to conditional use, the Hearing Examiner would make an initial determination based on a staff report, potentially resulting in one less step between an application and a final outcome.

24. Policy 7D-7: Streamline and coordinate the permit process and sustain a supportive customer service approach towards permitting.

Surface mining can be controversial, with neighbors of mines sometimes opposed due to possible impacts of mining activities. This opposition may take the form of appealing administrative decisions made by PDS staff to the Hearing Examiner. By changing the review process to conditional use, the Hearing Examiner would make an initial determination based on a staff report, potentially resulting in one less step between an application and a final outcome.

25. Policy 8K-1: Avoid significant mineral extraction impacts on adjacent or nearby land uses, public health and safety, or natural resources.
The proposed amendments to Policy 8Q-4 alter the permitting process from administrative approval to conditional use. Through the administrative approval use and conditional use processes, State Environmental Policy Act (SEPA) review (and associated public comment period) is only required if certain thresholds are met (which in the case of commercial mineral extraction they would be). The administrative approval use process does not include a public hearing unless a Planning and Development Services (PDS) staff decision is appealed. Presently, the fee to appeal an administrative approval is $500. Through the conditional use process, there is a public hearing before the Hearing Examiner. The proposed amendment would result in a public hearing process that is presently absent without the need for an appeal. In addition to SEPA review and a public hearing before the Hearing Examiner, the Hearing Examiner has the authority to condition permits in order to minimize or avoid significant impacts to neighboring lands, health and safety, and natural resources.

26. Policy 8N-2: Allow rock crushing, washing and sorting in the forest zones when appropriate as long as conflicts with other land uses can be mitigated.

Rock crushing, washing and sorting are presently, and will continue to be, allowed uses within the forest zones, when within a MRL. Proposed amendments to Policy 8Q-4 alter the permitting process from administrative approval to conditional use. Through the administrative approval use and conditional use processes, State Environmental Policy Act (SEPA) review (and associated public comment period) is only required if certain thresholds are met (which in the case of commercial mineral extraction they would be). Through the conditional use process, there is a public hearing before the Hearing Examiner. In addition to SEPA review and a public hearing before the Hearing Examiner, the Hearing Examiner has the authority to condition permits in order to minimize or avoid significant impacts to neighboring lands, health and safety, and natural resources.

27. Policy 8N-3: Allow commercial surface mining operations in the forest zones when appropriate as long as conflicts with other land use zones can be mitigated.

Commercial surface mining operations are presently, and will continue to be, allowed uses within the forest zones, when within a MRL. Proposed amendments to Policy 8Q-4 alter the permitting process from administrative approval to conditional use. Through the administrative approval use and conditional use processes, State Environmental Policy Act (SEPA) review (and associated public comment period) is only required if certain thresholds are met (which in the case of commercial mineral extraction they would be). Through the conditional use process, there is a public hearing before the Hearing Examiner. In addition to SEPA review and a public hearing before the Hearing Examiner, the Hearing Examiner has the authority to condition permits in order to minimize or avoid significant impacts to neighboring lands, health and safety, and natural resources.
28. Goal 10J: Minimize conflicts between different land uses.

The proposed amendments to Policy 8Q-4 alter the permitting process from administrative approval to conditional use. Through the administrative approval use and conditional use processes, State Environmental Policy Act (SEPA) review (and associated public comment period) is only required if certain thresholds are met (which in the case of commercial mineral extraction they would be). The administrative approval use process does not include a public hearing unless a Planning and Development Services (PDS) staff decision is appealed. Presently, the fee to appeal an administrative approval is $500. Through the conditional use process, there is a public hearing before the Hearing Examiner. The proposed amendment would result in a public hearing process that is presently absent without the need for an appeal. In addition to SEPA review and a public hearing before the Hearing Examiner, the Hearing Examiner has the authority to condition permits in order to minimize or avoid significant impacts to neighboring lands, health and safety, and natural resources.

29. Policy 11B-5: Process the environmental review of building and development applications within an established time-frame that is predictable and expeditious.

The proposed amendments to Policy 8Q-4 alter the permitting process from administrative approval to conditional use. Through the administrative approval use and conditional use processes, State Environmental Policy Act (SEPA) review (and associated public comment period) is only required if certain thresholds are met (which in the case of commercial mineral extraction they would be). Whatcom County Code (WCC) 2.33 – Permit Review Procedures states that unless otherwise exempted in WCC 2.33.020 or 2.33.090(C), the county shall issue a notice of final decision on an administrative approval use or conditional use within 90 days of the date of completeness if the project is exempt from SEPA review. If the project is subject to SEPA review, the county shall issue a notice of final decision within 120 days.

30. The Washington State Department of Natural Resources completed a study entitled Reconnaissance Investigation of Sand, Gravel, and Quarried Bedrock Resources in the Bellingham 1:100,000 Quadrangle, Washington (Jan. 2001). This study indicates that the working lifetime of most of the significant pits in the county is 10 to 20 years (p. 5).

31. The Whatcom County Surface Mining Advisory Committee Final Report and Recommendations (October 20, 2004) states:

... Theoretically, there is enough total supply in existing MRLs to satisfy demand over the first 20 years of the planning period. However, there is an imbalance in the demand and supply of sand and gravel. There is a greater need for gravel resources than sand and, as we approach the end of the 20-year planning period, we can anticipate
a shortage of gravel. Additionally, shortly after the 20-year planning period, we will run out of sand and gravel resources if existing MRLs are not expanded. . . (p. 7).

**V. PROPOSED CONCLUSION**

The subject Comprehensive Plan amendments are consistent with the approval criteria of WCC 2.160.080. The subject zoning text amendments were processed in accordance with WCC 20.90.050.

**VI. RECOMMENDATION**

Based upon the above findings and conclusions, the Whatcom County Planning Commission recommends approval of the proposed amendments as shown in Exhibit B. The Whatcom County Planning Commission also strongly recommends that Whatcom County take a lead role in designating mineral resource lands of long-term commercial significance in order to protect the resource from incompatible uses, as opposed to the present process of landowner initiated amendments.

**WHATCOM COUNTY PLANNING COMMISSION**

Mary Beth Teigrob, Vice - Chair

Becky Boxx, Secretary

Date 10/29/14

Commissioners present at the October 23, 2014 meeting when the vote was taken: Gary Honcoop, Ben Elenbaas, Mary Beth Teigrob, Natalie McClendon, Ken Bell.

**Vote:** Ayes: 5, Nays: 0, Abstain: 0, Absent: 0. Motion carried to recommend approval of Exhibit B.
Regular Meeting

**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, Gary Honcoop, David Onkels, Mary Beth Teigrob, Ken Bell, Natalie McClendon, David Hunter
Absent: Walter Haugen

**Staff Present:** Sam Ryan, Erin Osborn, Joshua Fleischmann, Becky Boxx

**Department Update**
Sam updated the on the following:
- Upcoming commission schedule.
- PDS updates.

**Open Session for Public Comment**
Clayton Petree, Whatcom County: Stated he was at the Growth Management Coordinating Council meeting earlier in the week. The presentation given addressed the new white paper that is going to be released soon by PDS. Part of the paper addresses growth management tools. He felt the commission would be interested in the rural protection measures. The paper discusses decreased rural densities, rural lot consolidation, a Transfer of Development Rights (TDR) update, Purchase of Development Rights (PDR), rezone of the rural study areas, require agriculture (ag) as a primary use on ag land, ag mitigation, clustering, lot reconfiguration changes, potential permit metering, moratoriums and well limitations. The council mentioned rezoning of 6,000 acres to rural zoning, adding 900 acres to ag and subtracted 3,000 potential units. The rezone rural study areas to ag is a big deal because if you look at the study done there was a lot of acreage involved. A lot of farmers are farming on rural land rather than ag because it is more affordable and easier to finance. Requiring ag as a primary use in the ag zone changes whether or not a farmer can live on his own farm. It seems weird that a farmer can’t live on his farm. There was discussion of ag mitigation which is nebulous now but should be watched at it evolves.

**Commissioner Comments**
Commissioner Elenbaas stated he spent some time in Okanogan and Douglas Counties last week and met an Okanogan County Planning Commissioner. They recently reviewed their wedding and special events ordinances.

Commissioner Bell let Sam Ryan know what a great staff she has.

**Approval of Minutes**
July 24, 2014: Commissioner Teigrob moved to approve as written. The motion failed for lack of a second. Commissioner Bell stated he wanted the minutes, regarding attendance at the meetings, to be rewritten to better reflect the discussion.
August 14, 2014: Commissioner Honcoop changed page 7, lines 13-14 to read: Vote on the motion to table the proposal until it addresses the 10 percent worst offenders, not the 90 percent best. The motion carried 8-0-1. Commissioner Bell moved to approve as amended. Commissioner McClendon seconded. The motion carried.

File #PLN2014-00016: An amendment to the Official Whatcom County Zoning Ordinance (Title 20), to add new specific provisions for permanent and temporary commercial "event type" uses on private property, such as weddings, receptions, recitals, business or social retreats, fund raisers, wine/food tasting, art exhibits, and festivals. New language is added to WCC 20.80 - Supplemental Requirements to provide for temporary event or permanent event facility parking requirements; new definitions associated with "Temporary Event Facility" and "Permanent Event Facility" are proposed in WCC 20.97 - Definitions. Minor changes to Chapter 20.36 - Rural District and Chapter 20.42 - Rural Forestry District are proposed to clarify intent in regards to occupancy of a recreational vehicle during a "temporary special event or occasion"; and amendments to WCC 20.84.235 to update new procedures, and establish provisions for administrative approval use permit extensions, renewal, and expiration.

Erin Osborn gave an overview of the process to date. The proposal is to amend the text of the zoning code to create new provisions to provide a permit path to obtain approval for commercial event and assembly type uses on private property in the Residential/Rural, Rural/Residential Island, Rural, Agricultural and Rural Forestry districts. These types of uses have typically been permitted as a cottage industry or part of a bed and breakfast operation under the conditional use permit path. The uses typically approved are weddings, receptions, fund raisers, social/business retreats, wine/food tasting, art exhibits, farm/forestry festivals, etc. People don't think of the cottage industry path when they want to have an event. The process is not very transparent.

Staff has presented two versions. Exhibit C is the more streamlined version. Exhibit F is the more prescriptive version. Exhibit D is the definitions. Exhibit E outlines Rural Forestry and Rural district code. Staff is recommending amendments to provide clarity; amend the administrative approval procedures and add provisions to renew a permit, extend a permit and permit expiration.

Staff stated that zoning text amendments process requires environmental review under the State Environmental Policy Act (SEPA) which has been done. It, and also requires a review and analysis for consistency with the Whatcom County Comprehensive Plan goals and policies. This has also been done and addressed in the staff report. The goals support this type of permit path and uses.

There are two uses being proposed. One is a temporary event facility. The other is a permanent event facility. The differences are the temporary one is renewable on an annual basis, subject to review, public comment, public review and conditions. The permanent facility is permitted through the conditional use permit process which is heard and approved by the Hearing Examiner. Regarding the permanent facility there is a requirement that the owner of the property live on site. The streamlined version of the proposal states the applicant must outline the type of use they want and number of events. The more prescriptive version states the applicant must submit a proposal that
Regular Meeting

outlines the traffic, buildings, sanitation, etc. Exhibit F limits the temporary events-event facility events to 250 people and 5 times per year and when camping is proposed requires it be established-on a minimum parcel size of 10 gross acres. Camping would then be allowed with 7 campsites allowed per acre. Both processes require a pre-application meeting. This is very important because there are so many things the applicant may not think of. The noise provisions have been removed from the current versions. This Provisions for noise are addressed in other areas of the zoning code and the state code.

Regarding exemptions, through conversations and input from the public, staff found exemption Exhibit C and Exhibit F, exemptions, which stated: Private gatherings held at federal, state, or county parks, or on the grounds of legally established commercial or civic facilities did not address-things such as garage sales which do not apply to the proposed code. Needed further clarification. Staff handed out a draft Exhibit C-1 and draft Exhibit F-2 with modifications to the exemption language to clarify when private or public gatherings would be exempt.

The hearing was opened to the public.

Clayton Petree, Whatcom County: Read from the rural lands findings: “The legislature finds that to retain and enhance the job base in rural areas, rural counties must have flexibility to create opportunities for business development. Further, the legislature finds that rural counties must have the flexibility to retain existing businesses and allow them to expand. The legislature recognizes that not all business development in rural areas are within the definition of rural character.” This is part of how you identify your rural character and what type of businesses you can have. The proposals are pretty restrictive. Unless the county is able to fund some sort of enforcement there will be problems. The county is not able to enforce the rules they have now so it does not make sense to add more rules. One of the most restrictive requirements is the provisions of owner/operator living on the site. It will be very harmful to eco-tourism and lower the well-being of Whatcom County citizens. For example, a growing eco-tourism industry is the farm to table events. It is often done on a farm setting and if successful would likely be in a permanent facility. These events are a good thing. Why would the county restrict this kind of event? Nothing should be adopted that requires the owner/operator to live on the parcel. For larger events, with an unpredictable number of attendees on parking space per three attendees is not only difficult to predict but it is difficult to accommodate. Some events have people stay the entire time while other events have people coming and going. A suggestion would be to exempt any single day events from all of this. Vacation rental units should also be looked at separately. Much more work needs to be done on the proposals. Talk with the Chamber of Commerce, Tourism Bureau, realtors, etc. and form a group of stakeholders.

Mike McKenzie, Whatcom County: He has participated in various fundraising efforts on Lummi Island which were in the form of events on private property. On August 9, 2014 he and a group of stakeholders staged the Lummi Island Reef Net Festival. This has been held for numerous years and is one of the largest events on the island. They spend over $30,000 and meet people from all over the country. The island supports this event 100%. The group met with the County Sheriff, fire department, Coast Guard, etc. Two weeks before the event occurred the group received a phone call from the county stating the
event could not be held because the zoning did not allow it. The concern was the building
the event was to take place in was not permitted and over 1,000 people were expected.
He clarified the event was not taking place in the building but outside and they only
expected 600-700 people. They did get 900 people. In his conversations with the county
he could not understand what was going on. What had happened was there had been a
phone call, from a citizen on the island, complaining about the event. This was not a
formal complaint. He asked who it was but was told that information could not be given
out. A few days before the event a neighbor complained about the amount of people
expected. The issues were mitigated and the event was held but he is concerned about
being able to have the event in the future.

Eric Sundstrom, Whatcom County: He is a farmer who owns land next to Bellewood Acres.
They obtained a conditional use permit in 2011 to operate a farm store. It has morphed
into a lot of other things that has nothing to do with the farm. His main concern is the
noise.

Dick Bosch, Whatcom County: He and his wife operate Glen Echo Gardens on the Y Road.
Eight years ago they developed a seven acre botanical garden which is now considered
the most beautiful tourist attraction north of Seattle and known as Whatcom County’s
hidden secret. It was planned for the purpose of tours, family gatherings, music concerts
and church functions. All of the permits were obtained. A kitchen and restrooms were
built. There is potable water. Four years ago they decided to make the site a wedding
venue as well. They were told they needed a conditional use permit so they applied for it
and started the process. Part of the process was letting the neighbors know the intent of
the business. A good number of the neighbors wrote letters of support. A lot of the
neighbors were very unreasonable and started to complain about everything they were
doing, in particular the amplified music. The neighbor is approximately 1,000 feet away
with a solid buffer of trees to soften the sound. They also complained about the light
coming from their greenhouse. They have grown begonias in their greenhouse for the last
20 years. Every year, for about six or seven weeks they need additional light in order to
get them to bloom. One of the staff in the Planning Department really sided with that
neighbor and wrote the most negative staff report to the Hearing Examiner. As a result
they were slaughtered. First of all the amplified sound was completely banned. They chose
to appeal that restriction and got it back for one hour of amplified music per wedding.
That has cost them $10,000. They have lost a considerable amount of business for
weddings. Three or four years ago they had six or seven weddings per summer. This year
they had only one. They were categorized into three different parts of business. Tours,
small events and weddings. For small events they are only allowed 20 people in the
garden at a time. Therefore they can’t have a bus come for a tour and luncheon. They
were cut back on the hours of business. They have always been open 10 to 6 Monday
through Saturday. The Hearing Examiner cut that back to 10 to 5. This is blatant
discrimination. There is not a single botanical garden, public park or ball field in the United
States with such restrictions. They are also restricted in their religious functions by being
banned from speaking with amplified sound. They have many church functions in the
gardens with elderly people many of who have hearing disabilities. Back to back events
are not allowed. The conditional use permit allows them to expand three more acres of
garden but they are not allowed to employ more than four people. This whole picture is
designed to destroy a most beautiful endeavor. He invited the commission to a free tour of his property.

Pat Hammell, Whatcom County: Both of the proposals sound terribly restrictive. Do these add rules because a few people violated the rules that are already in place? She asked if she had a garage sale, with up to 400 people, on her 20 acre property, does she have to get a permit? (Ms. Osborn asked Ms. Hammell a number of questions including, how often does she have these garage sales, and after considering Ms. Hammell’s response she stated no. That that garage sales would be considered an Accessory use, as it is a use customarily incidental to the residence/residential use of the property.)

Jeremy Spidle, Whatcom County: He has been involved in promoting outdoor music events in the county for 10 years. In the past those uses have been allowed. In the last couple of years the tolerance for these events has really diminished. Do we want to stifle the growth of tourism here? There are too many restrictions. We need to look in the other direction of how to expand outdoor gatherings and attract tourism.

Ms. Osborn clarified that there are other specific provisions in the zoning code that provide an approval process for outdoor music festivals, and she pointed to a large map on the wall, prepared by PDS GIS staff, to show where such uses could be permitted in the Rural District on 10 acre parcels in the R10A zone as a conditional use permit. She passed around a map and the specific code and conditional use permit approval criteria that would apply to gain approval of outdoor music festivals. Staff noted that these uses may also need to be revisited along with WCC 5.40, because WCC 5.40 also has provisions that apply to music festivals, but is silent on the authority of Title 20 as it applies to land use, and so project proponents often don’t understand that if the use is not allowed per zoning, then WCC 5.40 is not going to apply.

Simi Jain, Whatcom County: Representing Triple L, LLC and Linda Haines. They own property at 5129 and 5165 Sand Road. Her client would like to hold medieval pursuit events on their property. They have had these events the last several years but were contacted by the county and told they could no longer have them. Her clients were specifically informed that her client’s medieval pursuit events would not qualify under the cottage industry criteria. There are no-provisions currently in the code that would allow these events. The county should specifically allow for these events in the zoning code. It is not necessary to create an entirely new regime to do this. There does not seem to be a lot of difference between the two proposals. Is it necessary to have a permanent and temporary use? Regarding temporary camping her client would like to commission to consider it being exempt, under the Critical Areas Ordinance, as a passive recreational use that is allowed. There is a provision that allows the county to deny almost any application if the applicant continues to create any adverse effects. The criteria is pretty vague. Any event will have noise, traffic, glare, etc. Perhaps qualify it as significant adverse effects.

Gradon Barstad, Whatcom County: Owns Good Times for Good People Productions. He has hosted a music festival titled Worthyfest for the six years. Before this year’s festival they got a call regarding a permit which they knew nothing about. They have never needed a permit before. They were then shut down. They had already spent money and time on the
event which is now wasted. He wants to work with the county but they need to have their
voices heard. They plan to rally all those who may be affected by this issue.

Derek Gavette, Whatcom County: One of the owners of Stoney Ridge Farm. He stated he
was very confused by the rules. Do they apply to him? They sell apples and pumpkins on
their farm about one month out of the year. They never know how many people they will
get. The fees for the permitting process seem to be pretty astounding. Is the county going
to help him get the permit at their expense or does he have to hire an attorney to try to
get through the process?

Tim Herron, Whatcom County: There are times the events he organizes have music
involved. What has not been discussed is the art vendors, the miscellaneous inventors,
food vendors, educational setups, demonstrations, etc. What draws the line between what
is a music festival and what is not? The goal of their events are to get exposure for the
artists. Limiting the number of attendees to 250 is very restrictive. The events aren’t
about making money, it’s about the exposure. One way to find venues is to simply drive
through the rural areas to find good spots and do an impact analysis to make sure it’s
possible. This proposal discourages bringing arts to the community.

Anitra Acceturo, Whatcom County: Noted the staff is trying to balance the county
comprehensive plan goals, rural and agricultural land protection, private property rights,
business opportunities and public safety. That is getting lost in the discussion. It is not
about wanting to restrict business opportunities or expression. The restrictive elements
can be both a blessing and a curse. She is wanting to start some sort of events center and
the rules give her some security knowing that the investment she is making is not going
to be shut down. The tricky part is not making it too restrictive. She questioned where the
proposal of 7 campsites per acre came from and why the requirement for the property
owner/operator. She understands neighbors concern regarding noise, etc. and it should be
clear they receive notification of what is going on.

Elizabeth Gavette, Whatcom County: She was interested in the long term effects of the
proposal. She and her family operate Stoney Ridge Farm. It seems the way the proposal
is currently written it is not clear if the use permit will be transferred when she takes
ownership. There is no stability. She does not see the financial aspect of the proposal
working out for her.

Mike Boxx, Whatcom County: Has a berry farm in the area. The special events on the
farms have evolved over time. They try to do what makes them some money. In the last
three years he has worked with staff to get a conditional use permit for his farm to hold
weddings. They already have a u-pick business so they have a lot of traffic going in and
out of their farm all summer. They are set up for parking, dust, signage, etc. The largest
issue he faced was the requirement that he could not have amplified music. He has 100
acres with 16 adjacent property owners. At the weddings held on the property there have
usually been about 200 people and they all want to have a band. He is allowed 12 events
per summer and only 3 per month. However, he does not have that many because with
no amplified music no one wants to have an event there. Farm noise during the day time
no one pays attention to but music at night travels far and annoys people. Regarding the
farming businesses, such as Bellewood Acres, he understands the neighbors’ concerns
Regular Meeting

regarding noise. He understands the parking concerns because of emergency/aid issues that may arise.

Staff clarification: Mr. Boxx’s conditional use permit application narrative (CUP2011-00007) contains a specific request for approval to hold 12 wedding events per year. Conditions of approval allow amplified music, voice, and instrumentation for a period of one hour during the wedding ceremony.

The hearing was closed to the public.

Commissioner Honcoop stated he was surprised this issue was back on the agenda because he thought it was made clear at the previous meeting that the commission wanted this tabled until the proposal addressed the 10 percent worst offenders, not the 90 percent best. It was stated at the meeting the focus should be on the bigger events. What they got back was two more proposals with only the sound issue removed. There is no clarity of the impact this will have to the public. Regarding parking it makes no sense. What is classified as an event? What about farm to market sales? When does that become an event? There is no clarity. Does someone selling Christmas trees need to get a permit?

Ms. Osborn clarified that farm to market and Christmas tree sales are allowed as an accessory use to the property and have nothing to do with the proposal.

Commissioner Honcoop stated there is no clear division.

Ms. Osborn pointed out provisions in the code that address the issue.

Commissioner Honcoop asked what is driving this issue. Is it because the county has been receiving more complaints? The proposal gives people a perfect opportunity to complain and get events shut down. It is amazing that one or two people can shut down an event. There is no balance. They don’t have to prove their case. Who would possibly consider investing in a temporary facility when there is zero predictability that the following year they would get to do it again? Every year the county can review the permit and can say no or set different conditions. It says the county can apply reasonable conditions but what does that mean? It makes no sense to not allow music at weddings. The motion made at the previous meeting should be respected.

Commissioner Bell found it very concerning that events that were already planned were shut down. Because the county did not have its act together they stopped others acts. That is troubling. If we don’t have regulations why are we stopping these things? We need to develop rules before stopping them. Especially those events that have taken place over the last several years and have not affected anyone. He does not see the distinction between commercial and non-commercial events. An impact is an impact. Also it makes no difference who owns or is living on the property. It does not have an impact. What matters is what happens on the day of the event, not who owns it or is making money on it. None of that is relevant yet it is still in the proposal, which is troubling. Acreage size has no relevance to the impact of the event. What is relevant is noise. He is troubled that the Hearing Examiner can tell private business what the hours of operation will be. He thinks they are starting to see a backlash of the restrictions by the Hearing Examiner and
the county. Why the limitation on the number of events? If there is no impact there should not be a limit. Let’s address what the problems really are.

Commissioner Hunter is troubled by the Planning Commission knee-jerk reaction. What the commission was told was the same rules are going to apply that already apply. The function of the proposal is to try and create some clarity. Whether or not that has been successful is a different question. What happened to the people in the county is not because of the current regulations. It happened in a system which seems to have too much whimsy and the ability to react to one complainer. It seems a system of regulations could be set up to prevent that from happening again. One of the possible benefits of the proposal is predictability. Once they have gone through the process no one can complain when the event takes place. He stated it is not clear why some events, which have taken place in the past, were shut down this time. Maybe people raised questions that hadn’t been raised before and the Planning Department wasn’t ready to deal with it. This won’t happen if the regulations are clear. He gets the sense that members of the public would like that clarity. He has some concern about this creating more problems in enforcement but there still needs to be clarity. He is curious why the permits don’t go with the land rather that with the person, so if the land remains unchanged the permit continues. He would like to know the reasoning for this. He does see a benefit to the regulations even though they need more clarity. He is inclined to approval of Exhibit F with some changes.

Commissioner Elenbaas stated that to a lawyer or planner the regulations may make sense but they don’t to him. He was taught that in America there is private property. He is realizing that isn’t really true. He is baffled by the proposal. All of the different proposals seem like false choices with a pre-determined middle ground. He does hear people asking for a clear pathway but this does not seem clear. Anything to do with agriculture should be taken out. Accessory uses to agriculture are stated as any use on the farm which are ancillary to the normal primary permitted uses. It seems like it is already covered under the code. He has a hard time planning away what his neighbor should have a right to do on their private property.

Commissioner McClendon asked staff some clarifying questions. Were the people shut down because they did not get the needed permits?

Ms. Osborn stated the event that got shut down on Sand Road, the medieval event, was because they were about to do a music festival with camping. All land use in the county is regulated. If it is not a permitted use or an accessory use or cannot be inferred to be an accessory use, and it is not provided for as an administrative approval use or a conditional use to the property then all other uses are prohibited. That is why the proposal specifically includes the rural, agricultural, etc. zones so they aren’t left with uncertainty to what the rules are. The proposal might not be the best one because all fix all and other jurisdictions have created an agricultural overlay district where they allow in specific areas agricultural value added uses but it is this would certainly be one step in the right direction forward, but again, zoning can change, zoning regulations have the means for amendment built right into it. Uses such as U-pick and pumpkin patches and road side stands are a different kind of use than uses that are public gatherings where the public congregates, celebrates, educates, in typically large numbers, and where there is live music.
Commissioner McClendon asked on the issue of amplified sound, the reason she brought it up is because the state law is very restrictive, and she asked if the sound issue is in the state law?

Ms. Osborn said "yes" stated amplified noise has been allowed, but usually only for an hour in most cases. The state law is very restrictive and the Hearing Examiner has to follow that law. It's a tough law to comply with.

Commissioner McClendon stated she had the idea to create thresholds that would trigger needing a permit. They included amplified sound within a certain number of feet of a neighbor's residence; having an event more than three times a year, except for farm value added sales; more than 100 cars in a three hour period and past complaints. This looks at the impacts.

Ms. Osborn stated she drafted an Exhibit "XYZ" to outline Commissioner McClendon's suggestions, and she discussed the options with management Long Range Planning Manager, Mark Personius. He-Ms. Osborn noted she didn't want to speak for Mark because he wasn't in the meeting, that Mark had raised the question of where do the numbers or limits come from? What are the thresholds or triggers?

Ms. Osborn stated, "This is not a one size fits all thing. Applications are reviewed through a process, and public input is considered. And Exhibit C allows a process for this application proposal to be reviewed. Going through the administrative review or to the Hearing Examiner may not be transparent enough. Exhibit C puts the use reviews all the various impacts and applies conditions for approval. Management In short I was told told her to stick with the proposal as modified in Exhibit C and Exhibit F and to only modify it so the exemptions were clearer.

Commissioner McClendon stated what she is looking for is a reason that doesn't include "because "I said so" or "we have never done it before" or that's how we've always done it".

Commissioner Onkels stated it doesn't seem like they have successfully escaped the one complaining neighbor problem. He doesn't know how to do that. The threshold should be higher.

Sam Ryan stated it's usually not just one person calling. Lummi Island is one of the worst examples of a lot of somebody calling, then somebody else people calling. Often times one county agency says the event can be held and another county agency says no. People start complaining, the Sheriff gets involved. The fear mongering can grow until it gets out of control. And then by the time PDS gets it we are looking at the regulations, there is a realization that we don't have a means to deal with this. So, that's really what we are here about, is trying to find some means to provide a clear path way. Looking at the regulations there is no way to deal with what is going on which is why staff is here.

Commissioner Onkels asked Mr. Boxx how expensive the permitting process was for him.
Mr. Boxx stated he hired a consultant. The process took about three years and cost about $15,000. After a revision, and an extension, he clarified that parking was allowed on grass in his field.

Commissioner Onkels asked where the provision of three events per month came from.

Mr. Boxx stated he did not know.

Commissioner Onkels asked if that amount seemed arbitrary.

Mr. Boxx stated it did not seem to make sense. There were several people at his hearing that complained about the noise issue. Those people would have no idea if they were holding weddings or doing u-pick because they have cars coming and going all day long. The extra impact from a wedding they would never know about. He does understand the noise concerns.

Commissioner Onkels stated perhaps large events should not be held in rural areas.

Mr. Boxx stated maybe if the neighbors knew it was going to be only an occasional event they would be more accepting.

Commissioner Onkels asked Mr. Boxx if he had considered a building to reduce the noise impact.

Mr. Boxx stated he is prohibited by the Hearing Examiner from doing that now. He may be able to at some point in the future but he can’t justify it. Also when doing a commercial building there are fire flow issues which can be very expensive.

Staff clarification of the record: Mr. Boxx has approval under CUP2011-00007 to construct a Phase 2 permanent structure as part of his cottage industry.

- Commissioner Bell stated he was floored by the revelation that that the code states a use is prohibited if it is not specifically specified. This means that any new idea that someone comes up with is automatically prohibited. He has a problem with the reasons for shutting something down. He understands it’s not always just one complaint. With the windmill and slaughterhouse ordinances they have been regulated to the point where there will be none of those applied for. We can shut down whatever industry we are trying to help. Our goal is to allow these things because they are a benefit to the county. He keeps hearing these regulations are overkill. Part of the commission’s job is to let staff know they are in a bubble. They keep getting the same thing from staff. He does not support the proposal. The public wants predictability. He likes Commissioner McClendon’s ideas of setting thresholds. 3 years and 15K should never happen if you want to do business in this county, and I think that is one of the biggest complaints I have about the process.

Commissioner Hunter stated setting thresholds is the whole problem. Where do they come from? If you don’t like arbitrariness then you can’t set thresholds. He stated he is tired of hearing about American exceptionalism. There are rules regarding what he can say and
how he manages his property which may impact other people. We can’t imagine that we get to do whatever we want no matter how it affects other people. So that’s why we have rules. The rules of the proposal might not be as easy to understand as they might be but with some changes the public will feel safe. The only significance about the complaints are that a system was set up and the rules weren’t followed. There is no reason for the system to be complaint driven. Complaints should be thrown out the window, and should not be part of the permitting process. Have they followed the rules? That is what is important. Complaints are valid when the event is approved for 500 but the permi ttee holds an event that serves 5000. There is no reason for our regulatory system to be complaint driven. Commissioner Hunter indicated support for Exhibit “C” with some changes. We need to figure out a way in “C” so that there is a way to figure which events get to be approved. Why is the commission even discussing amplified music? That is a state law that staff has been taken out of the proposal. He sees a reason for attaching the permission to the property, being inclusive about the types of programs that can be run under this system so that people aren’t arbitrarily left out of it and complaints need be taken out of the system entirely. With that done he would be comfortable voting for Exhibit C, and would be happy to talk to the County Council about it.

Commissioner Vekved stated what a commercial enterprise is is not well defined. Perhaps a code definition would be helpful. Regarding stating the number of events a person can have, how enforceable is that? Who is out there to check other than the neighbors? When limiting the number of cars, camp sites, etc. the site needs to be taken into consideration and how it would affect others. In Exhibit F reasonable conditions are not defined. There is a lot of risk with that.

Commissioner Onkels stated that in Exhibit C adverse impacts is not well defined. The problem with these events is that they have the potential to become nuisances. The problem is that the Hearing Examiner is sort of incentivized to impose such onerous conditions that the business evaporates. He does not know a way around that.

Ms. Ryan suggested the commission form a subcommittee or appoint a member to work with staff to work through the issues. She asked what the statement “Table the proposal until it addresses the 10 percent worst offenders, not the 90 percent best.” meant.

Commissioner Elenbaas stated it means the commission is not comfortable making a proposal that will make their neighbors criminals. What they have asked for, at all three meetings, were stakeholders to be involved in the decision making in order to come up with something that will work. None of them have all the answers. It is not something that should be rushed through.

Commissioner Honcoop stated the priorities need to be identified instead of throwing everything together. Start with the definitions. The 10 percent means the biggest offenders. Deal with them. Maybe the commissioners can bring their thoughts and ideas back to a future work session. Going through the conditional use process is expensive and extremely unpredictable and in the end most likely won’t be financially viable.

Commissioner Teigrob moved to send the proposal back to staff for another proposal. Commissioner Bell seconded.
Commissioner Honcoop proposed an amendment to the motion to compile staff recommendations and commission recommendations and hold a work session at a later date. The vote on the amendment carried.

The vote on the main motion, as amended, carried 8-0-1.

File #PLN2013-00008: A proposed amendment to the Official Whatcom County Zoning Ordinance (Title 20) and the Whatcom County Comprehensive Plan regarding surface mining permitting processes and mineral resource land (MRL) designation criteria and processes.

Joshua Fleischmann presented the staff report and exhibits. Exhibit A is the proposal as submitted by councilmembers Barbara Brenner and Carl Weimer. Exhibit B is the Surface Mining Advisory Committee (SMAC) recommendation.

Commissioner Bell asked if Exhibit A was written by Brenner and Weimer.

Mr. Fleischmann stated yes and no. The language was drafted by them then staff corrected any inconsistencies.

Commissioner Honcoop asked why this issue is being brought forward to the commission.

Mr. Fleischmann stated the council members did not state what prompted it, but his assumption is that recent MRL projects and proposals prompted the application.

Mr. Fleischmann continued the presentation by stating the proposal addresses three major topics. One is surface mining permitting, one is the designation process and the other is the designation criteria. When it comes to surface mining permitting both Exhibits A and B propose changing the permitting process from administrative approval to a conditional use permit. Exhibit A proposes expanding the distance from rural or residential districts, where a proposed conditional use permit would be required, from 1,000 feet to 2,000 feet when it exists within a Rural or Commercial Forestry zone and is subject to the Forest Practices Act. Exhibit B includes an additional conditional use approval criteria requirement that if the proposed surface mining activity is phased and within one of the forestry zones that prior to moving into the next phase of mineral extraction any reclamation criteria is identified by the Department of Natural Resources reclamation permit.

Commissioner Honcoop asked if that requires them to completely quit mining in an area and reclaim it before they move onto the next area.

Mr. Fleischmann stated the reason the language was crafted this way is so that reclamation does not need to be complete but it has to be shown to be consistent with the reclamation plan.

Commissioner Honcoop stated the most obvious thing to him is in Exhibit A there is a proposed change in distance from rural or residential districts for the rock crushing activities that would require a conditional use permit from 1,000 feet to 2,000 feet. It also
proposes the notification requirements for surface mining be expanded to 2,000 from 8
external boundaries of the subject property. Not from where the activity is, but from the 9
external boundaries and requires a conditional use permit for mining and processing 10
activities within forest resource zones when within 2,000 feet of a rural or residential 11
district. An example would be the Pole Road area which has active and reclaimed pits. If, 12
for example, the pit is 1,280 and you add 2,000 feet to each side that is an impact of one 13
mile. Nobody would be able to mine. Is it correct that the conditional use permit is at the 14
county level and the mining permits are at the state level?

Mr. Fleischmann referred to a letter that the County Prosecutor sent to him. All surface 16
mining, that is subject to the Surface Mining Act, or in this case, the Forest Practices Act 17
is proposed in both Exhibits to go from administrative approval to a conditional use. 18
When you get into within 2,000 feet of a rural or residential district that is within the 19
forestry zone. In the Pole Road area it would not be applicable. There are no forestry 20
zones nearby.

Commissioner Bell moved to only review Exhibit B and only bring in relevant 21
issues from Exhibit A. Commissioner Teigrob seconded.

Commissioner Vekved stated he was not in favor of the motion.

Commissioner Elenbaas stated he was in favor of the motion.

Commissioner Honcoop stated he would like to look at both exhibits.

The motion failed.

Mr. Fleischmann stated the MRL designation is a comprehensive plan designation the 28
purpose of which is to designate areas of long term commercial significance with the 29
concept that it would protect from incompatible uses. An example, commonly cited is if a 30
development went on top of a valuable resource then the resource would not be 31
accessible. Unlike agriculture or forestry it is not a renewable resource. The process for 32
designating MRLs involves certain criteria the land must meet. In 1993 there was a draft 33
comprehensive plan with the idea of meeting the requirements of the Growth 34
Management Act. In 1997 the plan was officially adopted with approximately 4,000 acres 35
identified as mineral resource lands. That number has not significantly changed in the last 36
17 years. In order to commercially mine it must be located within one of the designated 37
MRLs. Presently that requires an administrative approval permit. This proposal changes 38
that to a conditional use permit.

Commissioner Bell asked what needs fixed. Why is this being done?

Mr. Fleischmann stated his assumption was because of a previous proposal to expand a 41
MRL designation in the South Fork Valley area. The proposal met the required criteria and 42
approval was recommended by staff. The Planning Commission recommended approval. 43
The County Council did not approve the proposal. There were a number of people opposed 44
to it for fear of how it would impact their drinking water, quality of life, etc. People want to 45
know the impacts prior to designation.
Commissioner Hunter stated those were the concerns of the public which was probably a misunderstanding. Is it staff’s impression that the council members were expressing some unease about the process?

Mr. Fleischmann stated he thought so. They understand that there are two steps, designation then mining. The proposal is their attempt to address the concerns of the public.

Commissioner Honcoop asked if the difference between Exhibit A and B is related to the designation, not permitting.

Mr. Fleischmann stated yes. There are other differences but the main difference is requiring the environmental analysis at the time of designation.

Commissioner Bell asked if that would be at the company’s expense.

Mr. Fleischmann stated yes.

Commissioner Honcoop stated there is no guarantee they would be able to mine.

Commissioner Bell asked why you would do that. It will shut down the industry.

Mr. Fleischmann stated that concern is expressed in the staff report.

Lesa Starkenburg-Kroonjte stated the commission is speaking as if it’s industry’s responsibility to designate MRLs. That is Whatcom County’s responsibility. In Whatcom County it hasn’t been that way. In the last 17 years very few acres have been added. Those few additions have been because of private applications. If the county is going to make an applicant go through all this work just for a designation it should essentially be a contract permit.

Commissioner McClendon asked for clarification on MRLs. Why is the mineral protection needed? Anyone who owns mineral land won’t be putting a house on it.

Mr. Fleischmann stated that is discussions that will be held with the SMAC. Skagit County has 160,000 designated MRL. Snohomish County has 80,000 designated. Whatcom County has 4,000.

Commissioner Vekved asked when an applicant applies for a MRL designation does it only apply to their land or does it overlap surrounding land.

Mr. Fleischmann stated it would only apply to the applicants’ property.

Commissioner Bell stated is it not the county’s job to protect minerals so there is resources to draw on for future generations? This proposal solidifies that it will be on a case by case basis when a company comes in and proves to the county that they can do it
without an environmental impact and allow them to do what the county should be doing. They are deeming where it’s appropriate rather than the county.

Mr. Fleischmann stated the county came up with their acreage in 1997. Snohomish County just finished theirs. It was a 12 year process. When they county designated theirs they looked at where the DNR permits were in 1993. Other counties have looked at where the resources are. We haven’t started that process yet.

Commissioner Elenbaas asked why this is not deemed spot zoning when it is happening on a parcel by parcel basis.

Mr. Fleischmann said it does not fit the definition of spot zoning.

Commissioner Honcoop stated the GMA requires the county to designate land. Doesn’t that need to be taken into consideration regarding the impacts it could have?

Mr. Fleischmann stated the GMA policy states the county’s will “seek” to designate.

Ms. Starkenburg-Kroonjte stated the GMA states county’s shall classify, designate and protect commercially significant resources. It doesn’t say anything about how much it should be. County’s should aim for a minimum of 20 years and at least 50 years. Whatcom County then placed 50 years as a goal in the Comprehensive Plan. After a study was done and it was determined there is a shortage the county then changed the goal to state “seek to designate a 50 year supply”. Nowhere in state law does it say 50 years.

Commissioner Teigrob stated she would not be surprised if the county was sued over this issue because the county is abdicating their role to protect and designate mineral lands.

Commissioner McClendon asked staff for designation criteria in adjoining counties.

Mr. Fleischmann addressed GMA planning goal #7 which states: “Applications for both state and local government permits should be processed in a timely and fair manner to ensure predictability”. He questioned whether requiring a large, expensive study to show how a site might be mined without any guarantee of designation or ability to mine would meet requirement #7 of predictability.

Commissioner Bell asked the advantage of increasing the distance to 2,000 feet, as proposed, for rural and residential districts.

Mr. Fleischmann stated the public process gets bigger, which is one of the goals to encourage public process. This could be a good or bad thing. More people usually means more people that are opposed.

Commissioner Elenbaas stated that GMA also calls for consistency in the code and 1,000 is usually what is stated.

Mr. Fleischmann stated this would be the only activity that has 2,000 feet. 1,000 would be consistent with most other permits.
Commissioner Honcoop asked what is meant by the proposal to make an "initial determination". Where in the process does that happen? Does there then have to be a final determination? Why the proposal to go from an administrative to conditional use?

Mr. Fleischmann stated that administrative approvals sometimes get appealed.

Ms. Starkenburg-Kroonjte stated the administrative approval process has worked well in the past. What was good about that process is that people had to submit their comments in writing. That is proposed to be changed. The concerns could be addressed rather than going straight to the Hearing Examiner. Because staff has changed there may be a loss of constancy so the Hearing Examiner may be a more constant process. She has nothing bad to say about the administrative approval process. Before GMA it was a conditional use permit. In one instance it failed because there was no previous contact with the concerned citizens.

The commission asked for previous mining studies. Staff will provide the 2003 Geo-Engineer study, the SMAC final report and recommendations from 2004, the Mineral Resource background document from 1994 and examples of how other counties designate MRLs. One of the things the documents show is there is no shortage of resource. The problem is there are competing uses, buffers, critical areas, agriculture, etc. that prevent MRL designation.

Commissioner Honcoop asked for an estimate of current supply.

Mr. Fleischmann stated the county is going through that process right now. A contract, with Element Solutions, should be approved next week.

Commissioner Bell stated he is not a fan of the industry going through the environmental process and the permit at the same time. It is not only redundant but expensive with no guarantee that they will get to mine.

Mr. Fleischmann noted that Exhibit B states if that process is gone through then there is a land disturbance permit on the back side. You can spend the money, do the report, show how you can mine but it will still be a political decision, there is no guarantee.

Commissioner Vekved asked when forecasting estimated quantities is that as designated or as permitted?

Mr. Fleischmann stated the SMAC Final Report and Recommendations, the DNR background information and the Geo-Engineers 2003 study examined sand and gravel, versus bedrock, so it's not one number. The highest number he has seen is a 35 year supply in designated areas. That report is 11 years old.

Commissioner Hunter asked if there has been a study which provides information about the amount of actual mineable resource. Is there a map as well?
Mr. Fleischmann stated there is. It looks at what is in the ground, not whether it is available or not. It amounts to about one billion cubic yards. Yes. Staff will provide to the commission.

Commissioner Bell moved to table the issue until the public hearing on October 23, 2014. Commissioner Teigrob seconded. The motion carried.

Other Business

Business Rules - Attendance

Commissioner Bell stated the way the business rules are currently written are fine. The commission is smart enough and there are enough reasonable people on it to determine whether someone is abusing the system. They are a volunteer body and further defining them does no service.

Commissioner Vekved stated business can occur remotely. There are resources available for video conferencing which may work for his issue which has him missing every other meeting. He would like to participate if possible.

Commissioner Bell doesn’t think that is necessary. There are three commissioners from each district so they are well represented.

Commissioner McClendon would like to see Commissioner Vekved participate in that way. This may not be allowed in the by-laws.

Commissioner Hunter stated he had concerns regarding Commissioner Vekved’s absences. It is their duty to come to the meetings, informed, participate in the discussion and vote. He was impressed by Commissioner Vekved’s willingness to participate in the stated fashion. He does not think it’s overkill. The by-laws can be changed to make it possible for him to participate.

Commissioner Vekved stated his situation should be the exception, not the rule which may happen if it’s codified.

Staff will look into the technical and legal aspects of the suggestion.

Commissioner Bell went back to the main issue by stating the attendance rules worked as they should have, the issue was brought to their attention, regarding the absences, they decided as a body is was not an issue.

Commissioner Bell moved to leave the rules as they are. Commissioner McClendon seconded. The motion carried.

The meeting was adjourned at 11:17 p.m.

Minutes prepared by B. Boxx.
Regular Meeting

WHATCOM COUNTY PLANNING COMMISSION ATTEST:

David Onkels, Chair

Becky Boxx, Secretary
Regular Meeting

Call To Order: The meeting was called to order, by Whatcom County Planning Commission Vice-Chair, Mary Beth Teigrob, in the Northwest Annex Conference Room at 6:35 p.m.

Roll Call
Present: Ben Elenbaas, Gary Honcoop, Mary Beth Teigrob, Ken Bell, Natalie McClendon
Absent: David Hunter, Gerald Vekved, David Onkels

Staff Present: Mark Personius, Joshua Fleischmann, Becky Boxx

Department Update
Mark updated the commission on the following:
- Upcoming commission schedule.
- Items before the County Council.
- PDS staff updates.
- Conversations between staff and the commission regarding weddings, special events and music events.

Open Session for Public Comment
There was no public comment.

Commissioner Comments
There were no commissioner comments.

Approval of Minutes
July 24, 2014: Commissioner Bell moved to approve as written. Commissioner McClendon seconded. The motion carried.

September 11, 2014: Commissioner Bell moved to approve as written. Commissioner McClendon seconded. The motion carried.

September 25, 2014: Commissioner Elenbaas moved to approve as written. Commissioner McClendon seconded. The motion carried.

File #PLN2013-00008: A proposed amendment to the Official Whatcom County Zoning Ordinance (Title 20) and the Whatcom County Comprehensive Plan regarding surface mining permitting processes and mineral resource land designation criteria and processes.

Joshua Fleischmann presented the staff report. The amendments address three topics. Surface mining permitting, the designation process and designation criteria. Both Exhibits A and B propose changing the permitting process from administrative approval to a conditional use. Exhibit A proposes extending the distance of notification to 2,000 feet.
Exhibit B proposes keeping it at 1,000 feet. Exhibit A proposes the SEPA project specific action be reviewed as part of the designation process. Exhibit B does not propose any changes to the present designation process. Regarding the designation criteria both Exhibit A and B propose that expansion of an existing MRL designation will require that existing mines are in full compliance with permits and regulations. Exhibit B clarifies that an expansion area and the existing mine must be in contiguous and common ownership so that one mining operation will not prevent another mining operation from expanding. Exhibit A proposes that site-specific designations shall be only be approved after mineral extraction impacts are anticipated and it also proposes that designations in the forestry zones are limited to 20 acres. Additional areas can be added once previously mined areas are returned to sustainable productive forestry and that the total designated area remains no more than 20 acres.

The hearing was opened to the public.

Meredith Moench, Whatcom County: She supports Exhibit A. She has had experience with the MRL designation applications, the administrative approval permitting applications and hearings before the Hearing Examiner. She owns property on Lummi Island. She has lived there for 11 years and she lives approximately 1,850 feet north of the Lummi Island quarry. Regarding Exhibit A designation criterion #10 for site-specific MRL designations to anticipate and evaluate impacts prior to approval the current process for MRL designations has been fraught with conflict and has been difficult. In her opinion that is because of the use of the phased SEPA process. According to that process, with a so-called non-project application, the SEPA is required but not taken seriously. The only information required at that point is the environmental checklist that the applicant submits. This checklist is filled out by the applicant to the best of their knowledge. This checklist tends to be very incomplete and may include inaccurate information. It is used for a decision on potential impacts for the site. This checklist is entered into the process and a decision is made based on it. Typically a SEPA is a determination of non-significance so based on little or no information it is declared to not have any significant impacts however maybe it does. Her experience with the Lummi Island quarry shows there were significant impacts that were very obvious on the ground and yet they still received the determination of non-significance. There needs to be environmental review upfront that is substantial. This then gets passed down through the process. She supports the conditional use permitting. This is used by Skagit and Snohomish counties. It increases public participation. With the 1,000 feet notification she lives just beyond that so she has not been notified regarding the Lummi Island quarry mining process. There is only a 15 day comment period associated with the process. Legal errors have to be pointed out in the appeal process so it is intimidating to the average citizen and the process is expensive. During the 2007 permitting process she and others did not appeal because of this. Participating in front of the Hearing Examiner provides an opportunity for citizen input and it clearly impartial. The Hearing Examiner has the opportunity to keep the record open to get additional information. This is a much better and fairer process. At her property she hears noise from crushing, excavating, loading, backup alarms, and trucks going by her house. She has dust come onto her property. There is heavy metal residue in this dust. There are also groundwater and visual impacts that extend more than 1,000 feet so extending it to 2,000
feet seems reasonable. It would also help citizens feel more included. Snohomish County
has a 2,000 feet notice requirement.

Leslie Dempsey, Whatcom County: She is a member of the Surface Mining Advisory
Committee (SMAC). She is available for any questions the commissioners may have
regarding the proposal.

The hearing was closed to the public.

Commissioner Honcoop asked Ms. Moench about the 15 day comment period. Is that
related to the MRL designation or the permit to mine?

Ms. Moench stated she was referring to the permitting to mine.

Commissioner Honcoop asked Ms. Moench what process she was referring to regarding
Skagit and Snohomish counties.

Ms. Moench stated she was referring to the use permit process. In 2010 the quarry
applied to expand an additional 27 acres. She does not know anyone who was notified.
They almost missed the comment period.

Commissioner Honcoop stated there seems to be a lot of confusion regarding the
designation and mining. They are two separate issues. What is important to know is that
aggregate is the foundation of every manmade structure. In 2004 Whatcom County
commissioned a study on what the current reserves were at that time. The conclusion was
that there was approximately a 19 year supply of resources in the existing MRLs. It also
stated Whatcom County has 10 years or less of measured permit gravel resources in the
MRLs. We are already starting to feel the shortage of aggregate products. For the
commission it is important when evaluating the two proposals and what is currently in
place that they carefully separate the discussion of designation versus permitting. It is
very clear that since the report written in 2004 very little additional ground has been
designated MRL. His opinion is that the MRL designation is to protect future resources, it’s
not for immediate use. The sooner it gets protected the less conflict there will be. What
the commission needs to encourage is the designation of the MRL lands not discourage it.
The current designations occurred a long time ago. The Comprehensive Plan used to state
there was to be a 50 year supply of aggregate. That is important to be stated. In some
other counties the counties themselves have taken the role of doing the designation. In
Whatcom County the designation occurs when private owners come to the county for a
MRL designation. This is the opposite of what should be happening. He feels that the
designation of MRLs need to be encouraged in any way possible in order to protect the
resource. He has a hard time with some of the requirements in Exhibit A. It seems staff
has some of the same concerns he has. For example on page 9, item 2 of the staff report
some of the items stated have already happened and the environmental impact of
trucking material from Skagit County has a very significant impact and is very inefficient.
Regarding the study done in 2004 some of the sands that were designated in that study
are unavailable. If a proponent has to go through the process outlined in Exhibit A they
are going to mine immediately. There is no other way to recover the money they have put
out. This will raise the price of aggregate. You can’t move the resource but you can have
things put on top of it. That is a critical fault in Exhibit A which fails to protect the
resource.

Commissioner Bell asked if the county does have a 50 year supply.

Mr. Fleischmann stated no.

Commissioner Bell asked what is broken in the process that has to be fixed.

Carl Weimer (one of the applicants) stated there were concerns from citizens. They find
out too late what is going on. In many cases designating land MRL is almost the same as
permitting it. Companies don’t go for the designation if they don’t plan on mining. Citizens
don’t know this upfront. There is no environmental analysis. Often times these mineral
lands are on top of other protected natural resource lands. How can you protect both if
the intent is to mine there? The intent is to move some of that impact analysis to earlier
in the process so the impacts would be known at the time of designation.

Commissioner Bell asked why the county waits for an applicant to designate MRLs rather
than the county protecting the resources.

Mr. Personius showed a map of the MRL resources in the county. Most of those areas are
in the agricultural zone. Part of the designation criteria for MRLs is that they cannot be in
the agricultural zones. The county made that choice between the competing resources.
There is also a strong desire to maintain forest lands and not convert them to mining.
What is left is the rural area. People are living out there so that creates the conflicts. What
the other counties did was designate ahead of time, but a lot of what they designated was
hard rock which is in the mountainous areas. They went through the same process in the
sand and gravel process in the lower lands and they too favored agriculture over mining.

Commissioner Bell stated what that does is tell the current mining operations they have a
cash cow because of the limited resources.

Mr. Personius stated that the SMAC, as part of the Comprehensive Plan update, are
looking at the designation criteria. There was discussion and preliminary
recommendations to state that the 50 year supply is not only not required by GMA it's
only supposed to look 20 years out. The county does have a consultant doing a study on
what the supply is.

Commissioner Bell stated the Hearing Examiner is an adversarial environment. What is
basically being said is the applicant’s attorney has to be present to fight against the
citizen. That is a very unhealthy dynamic. He likes the idea of having an arbitrator of
some kind. It makes sense that it would be a planning commission so issues can be
worked out.
Commissioner McClendon stated it seems to her there is a problem with failure to
designate MRLs. Was there any attempt to designate MRLs after the other resource lands
were taken out?

Mr. Fleischmann stated that as part of the original designation process the county looked
at sites that had existing Department of Natural Resources (DNR) mines. Staff did not
know of any other designation attempts.
Commissioner McClendon asked if the study currently being done is to help identify new
lands to designate.

Mr. Personius stated the consultants work is to identify the supply not new areas.

Commissioner McClendon stated there needs to be a tradeoff. Lands in other resource
status need to be designated MRLs. She asked if the process for permitting was changed
from an administrative to conditional use how is a decision made by the Hearing Examiner
appealed?

Mr. Fleischmann stated it is appealed to the County Council within 10 days of the decision.

Commissioner Bell asked the appeal process for administrative approval.

Mr. Fleischmann stated it is appealed to the Hearing Examiner then further on if
necessary.

Commissioner Honcoop commented on the appeal process history outlined in the staff
report. It seems the method used is very good. All administrative approvals that have
gone through the appeal process have been upheld. If it isn’t broke don’t fix it. Regarding
the white paper put out by the SMAC when you go through the process of a conditional
use, as outlined in the rationale, the exact opposite happens of what is being encouraged
in the recommendation. With the administrative approval format all of the parties can
communicate. When it’s quasi-judicial that can’t happen. Conflicts can be dealt with
before the hearing. Before the Hearing Examiner the public can speak but they are limited
in time. They can’t have a dialog. The proponent may also bring along professionals that
the average citizen doesn’t have access to. This does not encourage participation. He
supports the current process of administrative approval.

Mr. Personius added that a third option was discussed with the SMAC. Staff suggested the
EIS be done at the time of designation which would then run with subsequent permits.
The committee did not recommend this because this is money the applicant has to put out
up front with no guarantee of approval of the designation.

Commissioner Teigrob stated that doing it that way seems to be a way to shut down
mining. The financial risk is not worth it.

Commissioner Honcoop stated that what is missing in that scenario is that the permit to
mine is not just from Whatcom County. There are also permits from the state that are
required. If the EIS is done at the time of designation and the rules change by the time
they apply for the permit they will have to go back and readdress those issues. There
would be very little flexibility to meet the current requirements.

Commissioner Elenbaas stated requiring an EIS before a land is even designated seems
like putting the cart before the horse. For that reason he does not support Exhibit A. It will
stop all mining in the county. Designating the area is done through the council which is a
political thing. Politics don’t care much about what science says. Designation of MRLs is
going to happen based on the political environment. The EIS should be done at the time
of permitting.

Commissioner Bell stated that upfront environmental work entrenches the people that are
already in the business. They have the ability and the money to spend. It decreases the
amount of competition. This is creating monopolies for the gravel industrial for the people
that already have it. Huge corporations, which may have different influences, will be the
only ones to benefit from that.

**Commissioner Bell moved to recommend approval of Exhibit B. Commissioner Honcoop seconded.**

Commissioner Elenbaas stated he does not like the size limitation, of 20 acres, in Exhibit
A. He asked if Exhibit B has any size limitations.

Mr. Fleischmann stated it does not.

Commissioner Elenbaas stated that mining in the agricultural district isn’t always a bad
thing for the farmer. Farming flat land is easier, safer and more productive.

Commissioner Honcoop commented on 20.73.153(7). Is a revision to the permit required
before moving on to the next mining phase?

Mr. Fleischmann stated he did not know.

Commissioner Honcoop asked if reclamation of a site needs to be complete before moving
on to the next phase.

Ms. Dempsey stated it is up to DNR and the specifics of the mine. The initial reclamation
permit is approved before mining starts.

Mr. Fleischmann stated reclamation before moving on to the next phase may not always
make sense. They just have to be consistent with the reclamation plan. The SMAC
approved the language suggested in 20.73.153(7).

Commissioner Elenbaas asked if the comprehensive plan amendments, in Exhibit B, will
be reviewed again in the 2016 update.

Mr. Fleischmann stated they will be reviewed in the 2016 update.
Commissioner Honcoop asked if the verbiage to have a 50 supply of aggregate is still in the comprehensive plan.

Mr. Fleischmann stated it is in the plan but it now states "seek to designate" a 50 year supply.

Roll call vote on the motion to recommend approval of Exhibit B: Ayes – Bell, Honcoop, Elenbaas, Teigrob; Nays – McClendon; Abstain – 0; Absent – Hunter, Vekved, Onkels. The motion failed.

Commissioner Honcoop moved to table the issue until the next meeting. The motion failed for lack of a second.

Commissioner Bell asked Commissioner McClendon the reason for her vote.

Commissioner McClendon stated she wished to propose something different.

Commissioner McClendon moved to recommend approval of Exhibit A with the addition of 20.73.153(7) from Exhibit B; and a statement that the requirement for the SEPA project specific action requiring an EIS is a stop gap and that the county needs to move directly on directly more MRL land and pays for any environmental assessments upfront. The motion failed for lack of a second.

Commissioner Teigrob agrees that the county has really fallen down on their responsibility to designate MRLs. However, that is not an issue the commission can address at this time. Perhaps a suggestion the council needs to designate MRLs could be part of the findings.

Commissioner Bell stated that the idea of the SEPA and EIS being paid for by the proponent is not abhorrent to him at the time of permit application. He agrees that at some point the county needs to designate MRLs and at that time the county needs to do some type of environmental review. Is it unheard of for the county to do a SEPA on its own project?

Mr. Personius stated that in this instance it would become the county’s action so they would be obligated to do SEPA. It would be a non-project action so the review may not be at the level that the applicants are asking for. However, a lot of the issues may be dealt with up front so the proponent can then rely on that analysis.

Commissioner Bell stated he liked the idea of recommending Exhibit B with the recommendation to the council to designate MRLs and do the environmental studies.

Commissioner Elenbaas doesn’t have a problem with corporate America paying for their own EIS. He has a hard time asking the county to spend tax dollars on it. An MRL designation is basically changing a color on a map. He doesn’t see that an EIS is necessary when changing a map.
Commissioner McClendon stated the concern she sees is that they want public notice and involvement closer to the front which is why proposal in Exhibit A is to do SEPA at the beginning when the resource land is designated. It is the county’s responsibility to designate and pay for the cost of the EIS up front.

Commissioner Elenbaas agreed but it doesn’t take an EIS to designate the land because no action is taking place on the ground.

Commissioner McClendon stated there should be community input up front when the designation is being made.

Commissioner Bell stated the market will decide things. Gravel will get to be so expensive they will eat up the farm land to mine gravel at some point.

Commissioner Honcoop cited RCW 36.70A.06. It states lands next to MRL shall not interfere with the continued use of the designated MRLs. He does not see that it is practical to do an EIS at the time of designation. There are other requirements that concurrently need to be met related to the DNS and the state agencies. The county is not the entity that is going to mine the gravel so they won’t be in the position to be able to put all the pieces together. He supports the statement that the county needs to designate MRLs.

Mr. Fleischmann reminded the commission that SEPAs don’t expire. If one is done at the designation process and mining doesn’t take place for 75 years, for example, that SEPA is still valid.

Commissioner McClendon responded by saying no mine owner is going to apply for the designation if they don’t intend to mine in the near future. They won’t sit on it for 75 years. That would be a waste of their money.

Commissioner Elenbaas stated that if doing the EIS up front particular elements may be missed that should be addressed.

Commissioner Honcoop stated the most important thing is the GMA requires protection of this resource which is being missed. The longer it takes for that to happen the more loss of the resource is going to happen. He disagreed with the statement that when a SEPA is done it’s good for a long time. When you apply for the SEPA you then have to confirm to it, but things change dramatically. Things may not fall under the original SEPA that was done.

Commissioner McClendon stated no new designations have occurred because of public opposition at the end of the process. She doesn’t see doing the SEPA at the beginning of the process as a road block. It’s putting the public on notice at the beginning.

Commissioner Bell stated he would like to see the county go through the MRL designation and making it a public process but not a full blown SEPA. He would like this recommendation sent to the council.
Regular Meeting

Commissioner Bell moved to recommend approval of Exhibit B and make a recommendation to the council to designate MRLs for a 50 year supply through a public process. Commissioner Honcoop seconded.

Commissioner Elenbaas asked if an EIS is done when the county designates resource lands.

Mr. Personius stated the process would go through a non-project SEPA and if necessary an EIS.

Roll Call Vote on motion to recommend approval of Exhibit B and make a recommendation to the council to designate MRLs for a 50 year supply through a public process. Ayes – Honcoop, McClendon, Elenbaas, Teigrob, Bell; Nays – 0; Abstain – 0; Absent – Onkels, Hunter, Vekved. The motion carried.

Other Business

Commissioner McClendon asked to have Old Business on the agenda so items don’t get forgotten about. The commission agreed to this.

The meeting was adjourned at 9:00 p.m.

Minutes prepared by B. Boxx.

WHATCOM COUNTY PLANNING COMMISSION ATTEST:

Mary Beth Teigrob, Vice-Chair

Becky Boxx, Secretary
**TITLE OF DOCUMENT:**
Discussion re: sending PSNERP letter to Army Corp of Engineers

**ATTACHMENTS:**

<table>
<thead>
<tr>
<th>SEPA review required?</th>
<th>( ) Yes ( ) NO</th>
<th>Should Clerk schedule a hearing?</th>
<th>( ) Yes ( ) NO</th>
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</thead>
<tbody>
<tr>
<td>SEPA review completed?</td>
<td>( ) Yes ( ) NO</td>
<td>Requested Date:</td>
<td></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.)
Discussion of proposal to send a letter to the Army Corp of Engineers regarding the Puget Sound Nearshore Ecosystem Restoration Project (PSNERP)

**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.*
November 18, 2014

Nancy C. Gleason
U.S. Army Corps of Engineers
CENWS-EN-ER
P.O. Box 3755
Seattle, WA 98124

RE: Nooksack Delta Puget Sound Nearshore Ecosystem Restoration Project (PSNERP)
Draft Feasibility Report

Dear Ms. Gleason,

Over the past two decades Whatcom County has been engaged in numerous open, transparent, and inclusive processes to identify and protect natural resources that are integral to maintaining and improving our county’s quality of life. We greatly value our farm and forest lands, which provide food, fiber, raw materials, energy, and contribute significantly to our local economy. We also understand that our lands provide critical environmental resources, such as fish and wildlife habitat, and hydrologic functions. As your agency drafts its PSNERP action plan, we urge you to consider all essential aspects of our county to ensure one is not traded for another. It is imperative that we move forward from this point in an open and collaborative manner that allows local community engagement and input.

We believe your proposal can be a win-win for your agency and our county, as well as fish and farms, as long as the local community is involved and we do all we can to retain our agricultural land base. Our Comprehensive Plan, developed under Washington State’s Growth Management Act, calls for no net loss of agricultural land, and we have committed to maintaining a minimum of 100,000 acres of farmland. We trust that any proposal seriously considered by your agency will support our commitment to protecting agriculture.

We have local ideas that can help alleviate concerns and promote a better outcome for both fish and farms. For instance, our county’s Purchase of Development Rights program and committee could help you identify farmland in jeopardy of conversion where development rights could be purchased to help mitigate some of the losses in your proposal. We could also use that program on other lands to offset environmental impacts. Whatcom County is also developing an Environmental Services Market Place that is founded on free market principles. We believe we can assist you in creating proposals for high habitat and/or hydrologic values without sacrificing productive agricultural land.
In summary, we hope and expect any proposals from your agency will ensure that our local Whatcom County community is fully engaged. We also request that any proposals incorporate local priorities and projects, and do all that is possible to find win-win solutions for potentially competing priorities. We believe together we can create workable projects that will ensure both the restoration of important environmental resources while maintaining our valuable agricultural land base.

Sincerely,

Carl Weimer, Chair
Whatcom County Council

C: Dana Brown-Davis, Clerk of the Council
Correspondence File

I:\FORMS\Council\All Councilmembers 2014\Suggested Final - PSMERP
### TITLE OF DOCUMENT:
Resolution auditor include question of annexation Everson into Fire District 1

### 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 requesting that the Whatcom County Auditor include the question of annexation of the City of Everson into fire District #1 on the ballot at the next special election.

### 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).
RESOLUTION NO. __________

REQUESTING THAT THE WHATCOM COUNTY AUDITOR INCLUDE THE QUESTION OF ANNEXATION OF THE CITY OF EVERSON INTO FIRE DISTRICT #1 ON THE BALLOT AT THE NEXT SPECIAL ELECTION

WHEREAS, on September 23, 2014, the City of Everson adopted Ordinance No. 742-14, initiating the process for annexing the City of Everson into Whatcom County Fire Protection District #1; and

WHEREAS, on October 9, 2014, Whatcom County Fire Protection District #1 approved Resolution #220, concurring with the City of Everson’s annexation proposal; and

WHEREAS, both the City of Everson and Whatcom County Fire Protection District #1 believe the proposed annexation will best serve the public’s interest; and

WHEREAS, RCW 52.04 outlines the process for annexation of a city or town into a fire protection district; and

WHEREAS, the City of Everson has fulfilled all the requirements for the proposed annexation and the proposal is now ready to be sent to a vote of the people.

NOW, THEREFORE, BE IT RESOLVED that the Whatcom County Council hereby forwards the annexation proposal to the Whatcom County Auditor for inclusion on the ballot at the next special election.

BE IT FURTHER RESOLVED that the proposition shall be in substantially the following form:

SHALL THE CITY OF EVERSON BE ANNEXED TO AND BE A PART OF WHATCOM COUNTY FIRE PROTECTION DISTRICT #1?

YES ________

NO ________

BE IT FINALLY RESOLVED that if a majority of the voters in this election within the City of Everson vote in favor of the annexation and a majority of the voters in this election within Whatcom County Fire Protection District #1 vote in favor of the annexation, the City of Everson shall be annexed and shall become part of Whatcom County Fire Protection District #1.

APPROVED this ___ day of __________, 2014.

ATTEST:

Dana Brown-Davis, Clerk of the Council

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Carl Weimer, Council Chair

APPROVED AS TO FORM:

__

Civil Deputy Prosecutor
Ballot Measure Cover Sheet

This cover sheet must accompany each ballot measure submitted to the Whatcom County Auditor.

Name of District: Whatcom County Fire District No. 1

District Address: P.O. Box 454

District Contact Person 1: Mel Blankers, Fire Chief

Contact Person 1 Phone: 360-966-5757 Email: mblankers@whatcomes.org

District Contact Person 2: Rollin Harper, Planner

Contact Person 2 Phone: 360-733-6033 Email: rollin@sehome.com

Attorney Information

Attorney for District: Seth A. Woolson

Attorney Phone: 360-671-1796 Email: swoolson@chmelik.com

Election Information

Type of Election: Annexation of City of Everson into Fire District No. 1

State the Pass/Fail Requirement for the Measure as Determined by District’s Legal Counsel:

Simple Majority within District & Simple Majority within City

List Applicable Statutory References: RCW 52.04.071

Have you...

Attached the Resolution with Original Signatures - or - the Resolution as a Certified Copy of the Original? □ Yes

Fully Completed this Cover Sheet? □ Yes

Attached the Explanatory Statement for the Local Voters’ Pamphlet Prepared by your Attorney with the Resolution? (Applicable only for Primary or General Election) □ Yes

This form is available in a fillable form on the Auditor’s Website: www.whatcomcounty.us/auditor/pdf/measurecover.pdf

Note: The County Auditor will not accept a resolution without the completed cover sheet. If it is for a primary or general election, the explanatory statement must also be attached. It is the submitter’s responsibility to ensure that requested documentation is presented no later than the resolution deadline date.
Resolution # 220

A RESOLUTION OF THE BOARD OF FIRE COMMISSIONERS OF WHATCOM COUNTY
FIRE PROTECTION DISTRICT NO. 1 CONCURRING WITH THE CITY COUNCIL OF THE
CITY OF EVERSON, ORDINANCE NO. 742-14 APPROVING INITIATION OF THE
ANNEXATION OF THE CITY OF EVERSON INTO WHATCOM COUNTY FIRE PROTECTION
DISTRICT NO. 1.

WHEREAS, the City Council of the City of Everson (the "City") passed Ordinance No.
742-14 on September 23, 2014 (the "Ordinance") pursuant to RCW 52.04.061, which ordinance
expressed the City's interest in seeking to join and annex into Whatcom County Fire Protection
District NO. 1 (the "District") and found that the public interest would be best served by the
annexation of the City into the District; and

WHEREAS, the District was officially presented with the Ordinance seeking annexation
by the City at the regular Board of Fire Commissioners meeting on October 9, 2014; and

WHEREAS, pursuant to RCW 52.04.061, and after holding a public hearing at 2:00 pm
on October 9, 2014 for the expressed issue of the City’s request for annexation into the District
where members of the general public and department members were welcome to attend and
give testimony regarding the annexation request from the City; and

WHEREAS, the Board of Fire Commissioners of the District considered and discussed
the annexation request, staff recommendations, the public’s testimony and debate that followed
in the October 9, 2014 regular monthly meeting of the Board of Fire Commissioners; and

WHEREAS, at the October 9, 2014 regular monthly meeting the District’s Board of Fire
Commissioners determined that the annexation of the City into the District was in the public
interest and authorized, by motion, the District’s staff to prepare a resolution concurring with the
City’s Ordinance seeking annexation into the District.

NOW THEREFORE, BE IT RESOLVED, that pursuant to RCW 52.04.061 the Board of
Fire Commissioners of Whatcom County Fire Protection District No. 1, hereby concurs with the
City of Everson’s Ordinance No. 742-14 seeking annexation into Whatcom County Fire
Protection District No. 1, which has been determined to be in the public best interest, and be it
further resolved that notification of such concurrence shall be transmitted to the legislative
authority of Whatcom County by Whatcom County Fire Protection District No. 1 and be it further
resolved that the District’s Fire Chief is authorized to coordinate with the City to file a Notice of
Intention with the Whatcom County Boundary Review Board regarding the proposed annexation
of the City into the District.

Approved at the regular board meeting of the Board of Fire Commissioners, Whatcom County
Fire Protection District No. 1, this 9th day of October 2014.

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Attested by:

Jodi DeBeeld, Board Secretary

Chairman Orran Dodson

Commissioner Gary Almy

Commissioner Tim Wells

State of Washington
County of Whatcom

I certify that this is a true and correct copy of a document in the possession of Jodi DeBeeld as of this date.

Dated: October 21, 2014

Jennifer L. Bell
Notary Public
My appointment expires 10/17/2017
Ordinance No. 742-14

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EVERSON, WASHINGTON, STATING AN INTENT, PURSUANT TO RCW 52.04.061 ET SEQ., TO ANNEX TO AND JOIN WHATCOM COUNTY FIRE DISTRICT NO. 1, AND MAKING A FINDING THAT THE PUBLIC INTEREST WILL BE SERVED THEREBY, AUTHORIZING THE MAYOR TO COORDINATE WITH THE FIRE DISTRICT ON THE FILING OF A NOTICE OF INTENTION WITH THE BOUNDARY REVIEW BOARD, AND NOTIFYING THE WHATCOM COUNTY COUNCIL OF THE INTENT TO ANNEX PENDING FAVORABLE DECISION BY THE BOUNDARY REVIEW BOARD.

WHEREAS, the City of Everson (the “City”) and Whatcom County Fire District No. 1 (the “District”) have engaged in discussion concerning the potential annexation of the City to the District; and

WHEREAS, the City Council of the City desires to initiate the process described in RCW 52.04.061 et seq. for annexation of the City into the District;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EVERSON, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Intent to Annex / Finding of Public Interest. The City Council hereby states its intent to have the City annex into and join the District, subject to approval by the Whatcom County Boundary Review Board and subject to approval by the voters of the City and the District. The City Council finds that annexation of the City into the District will serve the public interest of the citizens of the City and the greater Everson area. The City Council hereby requests that the Board of Commissioners of Whatcom County Fire District No. 1 concur in the annexation and to notify the Whatcom County Council so that an election may be called on the question, pending a favorable decision by the Whatcom County Boundary Review Board.

Section 2. Notice of Intention. The Mayor or his designee is hereby authorized to coordinate with the District to file a Notice of Intention with the Whatcom County Boundary Review Board seeking annexation of the City into the District. The Mayor is further authorized to take all necessary steps to pursue approval of the annexation by the Whatcom County Boundary Review Board in coordination with the District.

Section 3. Construction.

(1) If a section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

(2) If provisions of this ordinance are found to be inconsistent with other provisions of the Everson Municipal Code, then this ordinance and the provisions herein are deemed to control.

Section 4. This Ordinance shall take effect five days following the date of its publication.
PASSED by the City Council and approved by the Mayor of the City of Everson, Washington, this 23rd day of September, 2014.

CITY OF EVERSON, WASHINGTON

[Signature]
John R. Perry, Mayor

Attested/Authenticated

[Signature]
Jennifer Bell, Clerk/Treasurer

Approved as to Form:

[Signature]
Jonathan Sitkin, City Attorney
October 20, 2014

VIA EMAIL & REGULAR U.S. MAIL

Whatcom County FD #1
Attn: Chief Mel Blankers
PO Box 454
Everson, WA 98247

RE: Ballot Measure

Dear Chief Blankers,

Per the requirements of the Whatcom County Auditor's office, here is the ballot language for the two proposed annexations in conformance with RCW 52.04.071:

Shall the City of Everson be annexed to and be a part of Whatcom County Fire District No. 1?

YES
NO

Shall the City of Nooksack be annexed to and be a part of Whatcom County Fire District No. 1?

YES
NO

Sincerely,

CHMELIK SITKIN & DAVIS P.S.

[Signature]

Seth A. Woolson
MEMORANDUM

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: October 27, 2014

SUBJECT: Recommendations on Boundary Review Board Notice of Intention RE:
Fire District No. 1 Annexation of City of Nooksack [NOI: BRB 2014-02] and Annexation of City of Everson [NOI: BRB 2014-03]

Planning & Development Services Annexation Coordinator has reviewed the above referenced annexation proposals, and has the following comments:

Statutory Authority: Action as it relates to a Fire District annexing territory of a city is regulated under RCW 52.04.061(1) & 52.04.071. Whatcom County has established a Boundary Review Board, and when annexation is subject to review by a boundary review board (BRB), notice of the proposed action is filed with the BRB pursuant to RCW 36.93.090. The BRB reviews 'factors and objectives' of the proposal pursuant to RCW 36.93.170 & 180. Requirements regarding special elections (also required in this case) are provided in RCW 29A.04.321.

Procedure: As it applies to the type of annexation being proposed:

1. The legislative authority of the city must adopt an ordinance that declares that to be annexed by the fire district "will serve the public interest thereby".
2. The ordinance must declare the city’s intent to coordinate with the fire district to initiate review of the annexation by the boundary review board (BRB).
3. The fire district must also approve a resolution declaring that it concurs with the city as to its intent, and approve initiation of the annexation of the city into the fire district.
4. The city & fire district will coordinate with the county legislative authority and request that an election be held in the city to be annexed, pending approval by the BRB.
Background Information: Whatcom County Fire District No. 1 (District) provides fire protection and emergency services to the City of Everson and to the City of Nooksack on a contractual basis. Fire District No. 1’s existing boundaries surround the two cities but do not include them. The District and the cities have undergone initial steps in establishing intent to allow this boundary change to occur. Specifically, the two cities have both adopted ordinances stating intent to be annexed into Fire District No. 1’s boundaries. Public hearings have been held, and the Fire District has approved resolutions concurring with each respective City, thereby approving initiation of the annexation process.

Interlocal Agreements: Existing interlocal agreements between Whatcom County and City of Everson and between Whatcom County and City of Nooksack that address annexations have been reviewed by PDS staff. These agreements are focused on the type of annexation that a city would initiate when it seeks to annex territory from the unincorporated urban growth area. The above referenced interlocal agreements do not contain provisions that apply to the type of annexation being proposed here.

PDS Recommendation: PDS Annexation Coordinator has reviewed the two proposed subject annexations, and finds that the process established by state law in regards to this type of annexation has been followed. PDS staff finds no apparent conflict, and therefore finds no reason to recommend that the County request that the Boundary Review Board ‘invoke its jurisdiction’, to extend its review period, and has no objections to the subject annexations being approved as proposed.

Next Steps: Should the County Executive and Council concur with PDS staff recommendations, no further notification or correspondence to the Boundary Review Board is required.

After the 45 Day time period established for review by the BRB has lapsed or is otherwise extended (should the BRB find that the proposal warrants further review, and invoke its jurisdiction to resolve issues or conflicts), and the County Council has received notification from the respective Cities and Fire District to call for an election, pursuant to RCW 52.04.071, the County Council shall by resolution call for a special election in accordance with RCW 29A.04.321 RCW that must be presented to the County Auditor at least forty-six days prior to the election date. Prescribed schedule for election dates are contained within RCW 29A.04.321. Notice requirements in regard to the election are provided in RCW 29A.52.355.

Please contact me if you have any questions.

Thank you.
MEMORANDUM

Summary

The cities of Everson and Nooksack have been working in cooperation with Whatcom County Fire District No. 1 over the past year regarding the possibility of getting the cities annexed into the Fire District. Both cities and the Fire District have taken steps to initiate this process, which will culminate (we hope) with affirmative votes both in the cities and in the District in support of such annexations. The final step in the process prior to the election is for the County Council to adopt resolutions (one for each city) placing ballot measures regarding the question of annexation on the ballot for the February 2015 special election. On behalf of both cities, I respectfully request that the County Council adopt such resolutions at your final council meeting of the year to be held on December 9, 2014.

Background

Both Everson and Nooksack currently receive fire protection and emergency medical services from Fire District No. 1 on a contract basis. Per the terms of these contracts with the District, the cities pay the same levy rate as is paid by property owners within the District. Essentially, the cities act like middlemen, collecting city property taxes and then passing through a portion of these taxes to the Fire District to secure the services needed by city residents and businesses. RCW 52.04 provides a clear process that allows a city to pursue annexation into the adjacent fire district. That process begins with an ordinance passed by the city council expressing the council’s intent to pursue annexation into the fire district. The city council action must then receive concurrence from the fire district commissioners (typically in the form of a resolution), after which the fire district forwards a request to the county legislative body to place a statutorily specified ballot measure on the ballot for an upcoming election. To be successful, the ballot measure, which simply asks if the city should be annexed into the fire district, must receive simple majority support from voters the city AND simple majority support from voters in the fire district.

Actions Already Taken

Both cities passed ordinances in August and September of this year expressing their city councils’ intents to pursue annexation into Fire District No. 1. Also in September, the District Commissioners from Fire District No. 1 passed resolutions concurring with the city ordinances and directing the Fire Chief to submit requests to the County Council to place the annexation questions on the ballot for the upcoming election. These documents were included in your council packets along with other documentation requested by the County Auditor to ensure clarity throughout the ballot measure and election process.
Boundary Review Board Action

In mid-September, the Fire District submitted Notices of Intention to the Whatcom County Boundary Review Board with respect to the proposed annexations. A required 45-day review period was commenced, and the review period was completed as of November 30, 2014 with no party having filed a request for review. Therefore, the Boundary Review Board did not need to invoke jurisdiction, and the annexations were deemed approved.

Benefits of Annexation

Annexation of the cities into the fire district has a number of benefits. First, the cities will no longer need to function as pass-through agencies with respect to property taxes used to fund services provided by the Fire District. Once the annexations take effect, property owners in the cities will pay the same levy rate to the Fire District as paid by those that were in the District prior to the annexation. Second, the cities and the District will no longer need to execute and renew service contracts, and the District can be assured that its tax base has been reliably expanded. Third, residents in the cities will be able to run for and be elected to serve as Fire District Commissioners; and voters in the cities will be able to vote in District elections and on levy increases, if proposed. Finally, as a result of these annexations, property owners in the cities will not see an increase in their overall property taxes because both cities intend to reduce their overall tax levy rates to offset the Fire District levies (which will be paid directly by property owners).

Conclusion

The cities of Everson and Nooksack and the Commissioners from Fire District No. 1 have asked that you place the question before the voters as to whether each city should be annexed into the Fire District. These requests are the result of extended coordination and cooperation between the cities and the Fire District. Action is needed on your part; therefore, we respectfully request that you adopt the resolutions placing these ballot measures on the ballot for the February 2015 special election. Your support in this regard is greatly appreciated.
### Whatcom County Council Agenda Bill

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<th>CLEARANCES</th>
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<th>Date</th>
<th>Date Received in Council Office</th>
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#### TITLE OF DOCUMENT:
Resolution auditor include question of annexation Nooksack into Fire District 1

#### ATTACHMENTS:

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<th>SEPA review required?</th>
<th>Yes</th>
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<th>Should Clerk schedule a hearing?</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 requesting that the Whatcom County Auditor include the question of annexation of the city of Nooksack into Fire District #1 on the ballot at the next special election.

#### 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.
RESOLUTION NO. __________

REQUESTING THAT THE WHATCOM COUNTY AUDITOR INCLUDE THE QUESTION OF ANNEXATION OF THE CITY OF NOOKSACK INTO FIRE DISTRICT #1 ON THE BALLOT AT THE NEXT SPECIAL ELECTION

WHEREAS, on October 6, 2014, the City of Nooksack adopted Ordinance No. 674, initiating the process for annexing the City of Nooksack into Whatcom County Fire Protection District #1; and

WHEREAS, on October 9, 2014, Whatcom County Fire Protection District #1 approved Resolution #221, concurring with the City of Nooksack’s annexation proposal; and

WHEREAS, both the City of Nooksack and Whatcom County Fire Protection District #1 believe the proposed annexation will best serve the public’s interest; and

WHEREAS, RCW 52.04 outlines the process for annexation of a city or town into a fire protection district; and

WHEREAS, the City of Nooksack has fulfilled all the requirements for the proposed annexation and the proposal is now ready to be sent to a vote of the people.

NOW, THEREFORE, BE IT RESOLVED that the Whatcom County Council hereby forwards the annexation proposal to the Whatcom County Auditor for inclusion on the ballot at the next special election.

BE IT FURTHER RESOLVED that the proposition shall be in substantially the following form:

SHALL THE CITY OF NOOKSACK BE ANNEXED TO AND BE A PART OF WHATCOM COUNTY FIRE PROTECTION DISTRICT #1?

YES _______

NO _______

BE IT FINALLY RESOLVED that if a majority of the voters in this election within the City of Nooksack vote in favor of the annexation and a majority of the voters in this election within Whatcom County Fire Protection District #1 vote in favor of the annexation, the City of Nooksack shall be annexed and shall become part of Whatcom County Fire Protection District #1.

APPROVED this ___ day of __________, 2014.

ATTEST:

Dana Brown-Davis, Clerk of the Council

CIVIL DEPUTY PROSECUTOR

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Carl Weimer, Council Chair

APPROVED AS TO FORM:

____________________________

[Signature]

Civil Deputy Prosecutor
Ballot Measure Cover Sheet

This cover sheet **must** accompany each ballot measure submitted to the Whatcom County Auditor.

**Name of District:** Whatcom County Fire District No. 1

**District Address:** P.O. Box 454

**District Contact Person 1:** Mel Blankers, Fire Chief

**Contact Person 1 Phone:** 360-966-5757  
**Email:** mblankers@whatcomes.org

**District Contact Person 2:** Rollin Harper, Planner

**Contact Person 2 Phone:** 360-733-6033  
**Email:** rollinh@sehome.com

**Attorney Information**

**Attorney for District:** Seth A. Woolson

**Attorney Phone:** 360-671-1796  
**Email:** swoolson@chmelik.com

**Election Information**

**Type of Election:** Annexation of City of Nooksack into Fire District No. 1

(e.g., Levy, Bond, Levy Lid Lift, etc.)

State the Pass/Fail Requirement for the Measure as Determined by District’s Legal Counsel:

**Simple Majority within District & Simple Majority within City**

(e.g., Simple Majority, 60%, Minimum Turnout, etc.)

**List Applicable Statutory References:** RCW 52.04.071

**Have you...**

- Attached the Resolution with Original Signatures - or - the Resolution as a Certified Copy of the Original?  
  □ Yes

- Fully Completed this Cover Sheet?  
  □ Yes

- Attached the Explanatory Statement for the Local Voters’ Pamphlet Prepared by your Attorney with the Resolution? (Applicable only for Primary or General Election)  
  □ Yes

**Note:** The County Auditor will not accept a resolution without the completed cover sheet. If it is for a primary or general election, the explanatory statement must also be attached. It is the submitter’s responsibility to ensure that requested documentation is presented no later than the resolution deadline date.
Resolution # 221


WHEREAS, the City Council of the City of Nooksack (the "City") passed Ordinance No. 742-14 on October 6, 2014 (the "Ordinance") pursuant to RCW 52.04.061, which ordinance expressed the City's interest in seeking to join and annex into Whatcom County Fire Protection District NO. 1 (the "District") and found that the public interest would be best served by the annexation of the City into the District; and

WHEREAS, the District was officially presented with the Ordinance seeking annexation by the City at the regular Board of Fire Commissioners meeting on October 9, 2014; and

WHEREAS, pursuant to RCW 52.04.061, and after holding a public hearing at 2:00 pm on October 9, 2014 for the expressed issue of the City's request for annexation into the District where members of the general public and department members were welcome to attend and give testimony regarding the annexation request from the City; and

WHEREAS, the Board of Fire Commissioners of the District considered and discussed the annexation request, staff recommendations, the public's testimony and debate that followed in the October 9, 2014 regular monthly meeting of the Board of Fire Commissioners; and

WHEREAS, at the October 9, 2014 regular monthly meeting the District's Board of Fire Commissioners determined that the annexation of the City into the District was in the public interest and authorized, by motion, the District's staff to prepare a resolution concurring with the City's Ordinance seeking annexation into the District.

NOW THEREFORE, BE IT RESOLVED, that pursuant to RCW 52.04.061 the Board of Fire Commissioners of Whatcom County Fire Protection District No. 1, hereby concurs with the City of Nooksack's Ordinance No. 674 seeking annexation into Whatcom County Fire Protection District No. 1, which has been determined to be in the public best interest, and be it further resolved that notification of such concurrence shall be transmitted to the legislative authority of Whatcom County by Whatcom County Fire Protection District No. 1 and be it further resolved that the District's Fire Chief is authorized to coordinate with the City to file a Notice of Intention with the Whatcom County Boundary Review Board regarding the proposed annexation of the City into the District.

Approved at the regular board meeting of the Board of Fire Commissioners, Whatcom County Fire Protection District No. 1, this 9th day of October 2014.

[Remainder of Page Intentionally Blank]
Attested by:

Jodi DeBeeld, Board Secretary

Chairman Orran Dodson

Commissioner Gary Almy

Commissioner Tim Wells

State of Washington
County of Whatcom

I certify that this is a true and correct copy of a document in the possession of Jodi DeBeeld as of this date.

Dated: October 21, 2014

JENNIFER L. BELL
Notary Public
My appointment expires 10/17/2017
ORDINANCE NO. 674

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NOOKSACK, WASHINGTON, STATING AN INTENT, PURSUANT TO RCW 52.04.061 ET SEQ., TO ANNEX TO AND JOIN WHATCOM COUNTY FIRE DISTRICT NO. 1, AND MAKING A FINDING THAT THE PUBLIC INTEREST WILL BE SERVED THEREBY, AUTHORIZING THE MAYOR TO COORDINATE WITH THE FIRE DISTRICT ON THE FILING OF A NOTICE OF INTENTION WITH THE BOUNDARY REVIEW BOARD, AND NOTIFYING THE WHATCOM COUNTY COUNCIL OF THE INTENT TO ANNEX PENDING FAVORABLE DECISION BY THE BOUNDARY REVIEW BOARD.

WHEREAS, the geographic area of the City of Nooksack lies outside the boundaries of Whatcom County Fire District No. 1; and

WHEREAS, the City of Nooksack currently contracts with Whatcom County Fire District No. 1 to provide fire protection and emergency medical services to the citizens of Nooksack; and

WHEREAS, the City of Nooksack and Whatcom County Fire District No. 1 have engaged in discussion concerning the potential annexation of the City to the Fire District; and

WHEREAS, the City Council desires to initiate the process described in RCW 52.04.061 et seq. for annexation of the City to the Fire District; now, therefore,

IT IS HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF NOOKSACK, WASHINGTON, as follows:

SECTION 1: Intent to Annex / Finding of Public Interest. The City Council hereby states its intent to have the City annex to and join Whatcom County Fire District No. 1, subject to approval by the Whatcom County Boundary Review Board and the voters of the City and the District. The City Council finds that annexation of the City to the District will serve the public interest of the citizens of Nooksack and the greater Nooksack area. The Board of Commissioners of Whatcom County Fire District No. 1 is hereby requested to concur in the annexation and to notify the Whatcom County Council so that an election may be called on the question, pending a favorable decision by the Whatcom County Boundary Review Board.

SECTION 2: Notice of Intention. The Mayor or his designee is hereby authorized to coordinate with Whatcom County Fire District No. 1 to file a Notice of Intention with the Whatcom County
Boundary Review Board seeking annexation of the City to the Fire District. The Mayor is further authorized to take all necessary steps to pursue approval of the annexation by the Boundary Review Board in coordination with the Fire District.

**SECTION 3:** Severability. If any section, subsection, clause or phrase of this ordinance is for any reason held to be invalid, or unconstitutional, such decision shall not effect the validity of the remaining portions of the Ordinance, and each section, subsection, sentence, clause or phrase thereof, separately and independently and, in the event that any one or more sections, subsections, sentences, clauses or phrases may later be declared invalid or unconstitutional, then any ordinance or ordinances, or parts thereof, amended or repealed by such portion of this Ordinance shall remain in full force and effect.

**SECTION 4:** This Ordinance shall take effect and be in force from after five (5) days after passage, approval, signing, and publication/posting, as provided by law.

PASSED by a majority of the whole membership of the City Council of the City of Nooksack, Washington, and there signed and approved by its Mayor, at a regular meeting of said Council held this 6th day of October, 2014.

CITY OF NOOKSACK, WASHINGTON

JAMES S. ACKERMAN, Mayor

ATTEST: 

VIRGINIA ARNASON, City Clerk

APPROVED AS TO FORM:

THOMAS H. FRYER, City Attorney
October 20, 2014

VIA EMAIL & REGULAR U.S. MAIL

Whatcom County FD #1
Attn: Chief Mei Blankers
PO Box 454
Everson, WA 98247

RE: Ballot Measure

Dear Chief Blankers,

Per the requirements of the Whatcom County Auditor’s office, here is the ballot language for the two proposed annexations in conformance with RCW 52.04.071:

Shall the City of Everson be annexed to and be a part of Whatcom County Fire District No. 1?
YES
NO

Shall the City of Nooksack be annexed to and be a part of Whatcom County Fire District No. 1?
YES
NO

Sincerely,

CHMELIK SITKIN & DAVIS P.S.

Seth A. Woolson

SAW/hn
MEMORANDUM

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: October 27, 2014


Planning & Development Services Annexation Coordinator has reviewed the above referenced annexation proposals, and has the following comments:

Statutory Authority: Action as it relates to a Fire District annexing territory of a city is regulated under RCW 52.04.061(1) & 52.04.071. Whatcom County has established a Boundary Review Board, and when annexation is subject to review by a boundary review board (BRB), notice of the proposed action is filed with the BRB pursuant to RCW 36.93.090. The BRB reviews ‘factors and objectives’ of the proposal pursuant to RCW 36.93.170 & 180. Requirements regarding special elections (also required in this case) are provided in RCW 29A.04.321.

Procedure: As it applies to the type of annexation being proposed:

1. The legislative authority of the city must adopt an ordinance that declares that to be annexed by the fire district “will serve the public interest thereby”.
2. The ordinance must declare the city’s intent to coordinate with the fire district to initiate review of the annexation by the boundary review board (BRB).
3. The fire district must also approve a resolution declaring that it concurs with the city as to its intent, and approve initiation of the annexation of the city into the fire district.
4. The city & fire district will coordinate with the county legislative authority and request that an election be held in the city to be annexed, pending approval by the BRB.
Background Information: Whatcom County Fire District No. 1 (District) provides fire protection and emergency services to the City of Everson and to the City of Nooksack on a contractual basis. Fire District No. 1’s existing boundaries surround the two cities but do not include them. The District and the cities have undergone initial steps in establishing intent to allow this boundary change to occur. Specifically, the two cities have both adopted ordinances stating intent to be annexed into Fire District No. 1’s boundaries. Public hearings have been held, and the Fire District has approved resolutions concurring with each respective City, thereby approving initiation of the annexation process.

Interlocal Agreements: Existing interlocal agreements between Whatcom County and City of Everson and between Whatcom County and City of Nooksack that address annexations have been reviewed by PDS staff. These agreements are focused on the type of annexation that a city would initiate when it seeks to annex territory from the unincorporated urban growth area. The above referenced interlocal agreements do not contain provisions that apply to the type of annexation being proposed here.

PDS Recommendation: PDS Annexation Coordinator has reviewed the two proposed subject annexations, and finds that the process established by state law in regards to this type of annexation has been followed. PDS staff finds no apparent conflict, and therefore finds no reason to recommend that the County request that the Boundary Review Board ‘invoke its jurisdiction’, to extend its review period, and has no objections to the subject annexations being approved as proposed.

Next Steps: Should the County Executive and Council concur with PDS staff recommendations, no further notification or correspondence to the Boundary Review Board is required.

After the 45 Day time period established for review by the BRB has lapsed or is otherwise extended (should the BRB find that the proposal warrants further review, and invoke its jurisdiction to resolve issues or conflicts), and the County Council has received notification from the respective Cities and Fire District to call for an election, pursuant to RCW 52.04.071, the County Council shall by resolution call for a special election in accordance with RCW 29A.04.321 RCW that must be presented to the County Auditor at least forty-six days prior to the election date. Prescribed schedule for election dates are contained within RCW 29A.04.321. Notice requirements in regard to the election are provided in RCW 29A.52.355.

Please contact me if you have any questions.

Thank you.
MEMORANDUM

Summary

The cities of Everson and Nooksack have been working in cooperation with Whatcom County Fire District No. 1 over the past year regarding the possibility of getting the cities annexed into the Fire District. Both cities and the Fire District have taken steps to initiate this process, which will culminate (we hope) with affirmative votes both in the cities and in the District in support of such annexations. The final step in the process prior to the election is for the County Council to adopt resolutions (one for each city) placing ballot measures regarding the question of annexation on the ballot for the February 2015 special election. On behalf of both cities, I respectfully request that the County Council adopt such resolutions at your final council meeting of the year to be held on December 9, 2014.

Background

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Boundary Review Board Action

In mid-September, the Fire District submitted Notices of Intention to the Whatcom County Boundary Review Board with respect to the proposed annexations. A required 45-day review period was commenced, and the review period was completed as of November 30, 2014 with no party having filed a request for review. Therefore, the Boundary Review Board did not need to invoke jurisdiction, and the annexations were deemed approved.

Benefits of Annexation

Annexation of the cities into the fire district has a number of benefits. First, the cities will no longer need to function as pass-through agencies with respect to property taxes used to fund services provided by the Fire District. Once the annexations take effect, property owners in the cities will pay the same levy rate to the Fire District as paid by those that were in the District prior to the annexation. Second, the cities and the District will no longer need to execute and renew service contracts, and the District can be assured that its tax base has been reliably expanded. Third, residents in the cities will be able to run for and be elected to serve as Fire District Commissioners; and voters in the cities will be able to vote in District elections and on levy increases, if proposed. Finally, as a result of these annexations, property owners in the cities will not see an increase in their overall property taxes because both cities intend to reduce their overall tax levy rates to offset the Fire District levies (which will be paid directly by property owners).

Conclusion

The cities of Everson and Nooksack and the Commissioners from Fire District No. 1 have asked that you place the question before the voters as to whether each city should be annexed into the Fire District. These requests are the result of extended coordination and cooperation between the cities and the Fire District. Action is needed on your part; therefore, we respectfully request that you adopt the resolutions placing these ballot measures on the ballot for the February 2015 special election. Your support in this regard is greatly appreciated.
Resolution requesting Auditor city of Ferndale into Fire District #7 on ballot

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 requesting that the Whatcom County Auditor include the question of annexation of the city of Ferndale into Fire District #7 on the ballot at the next special election.

COUNCIL ACTION:
RESOLUTION NO. __________

REQUESTING THAT THE WHATCOM COUNTY AUDITOR INCLUDE THE QUESTION OF ANNEXATION OF THE CITY OF FERNADE INTO FIRE DISTRICT #7 ON THE BALLOT AT THE NEXT SPECIAL ELECTION

WHEREAS, on July 21, 2014, the City of Ferndale adopted Ordinance No. 1848 initiating the process for annexing the City of Ferndale into Whatcom County Fire Protection District #7; and

WHEREAS, on October 9, 2014, Whatcom County Fire Protection District #7 approved Resolution 2014-1009-01, concurring with the City of Ferndale’s annexation proposal; and

WHEREAS, both the City of Ferndale and Whatcom County Fire Protection District #7 believe the proposed annexation will best serve the public’s interest; and

WHEREAS, RCW 52.04 outlines the process for annexation of a city or town into a fire protection district; and

WHEREAS, the City of Ferndale has fulfilled all the requirements for the proposed annexation and the proposal will be ready to send to a vote of the people once it is approved by the Boundary Review Board.

NOW, THEREFORE, BE IT RESOLVED that the Whatcom County Council hereby forwards the annexation proposal to the Whatcom County Auditor for inclusion on the ballot at the next special election, pending approval by the Boundary Review Board.

BE IT FURTHER RESOLVED that the proposition shall be in substantially the following form:

SHALL THE CITY OF FERNADE BE ANNEXED TO AND BE A PART OF WHATCOM COUNTY FIRE PROTECTION DISTRICT #7?

   YES __________

   NO __________

BE IT FINALLY RESOLVED that if a majority of the voters in this election within the City of Ferndale vote in favor of the annexation and a majority of the voters in this election within Whatcom County Fire Protection District #7 vote in favor of the annexation, the City of Ferndale shall be annexed and shall become part of Whatcom County Fire Protection District #7.

APPROVED this ____ day of __________, 2014.

ATTEST: WHATCOM COUNTY COUNCIL

Dana Brown-Davis, Clerk of the Council WHATCOM COUNTY, WASHINGTON

Carl Weimer, Council Chair

APPROVED AS TO FORM:

__________________________________________

Civil Deputy Prosecutor

WHEREAS, the City Council of the CITY OF FERNDALE (the "City") passed Ordinance 1848 on July 21, 2014 (the "Ordinance") pursuant to RCW 52.04.061, which ordinance expressed the City's interest in seeking to join and annex into WHATCOM COUNTY FIRE PROTECTION DISTRICT NO. 7 (the "District") and found that the public interest would be best served by the annexation of the City into the District; and

WHEREAS, the District was officially presented with the Ordinance seeking annexation by the City at the regular Board of Fire Commissioners meeting on August 14, 2014, after which the Board of Fire Commissioners acknowledged and transmitted a letter of receipt of such Ordinance to the City; and

WHEREAS, pursuant to RCW 52.04.061, and after holding a public hearing at 7:00 pm on September 8, 2014 for the expressed issue of the City's request for annexation into the District where members of the general public and department members were welcome to attend and give testimony regarding the annexation request from the City; and

WHEREAS, the Board of Fire Commissioners of the District considered and discussed the annexation request, staff recommendations, the public's testimony and debate that followed in the September 11, 2014 regular monthly meeting of the Board of Fire Commissioners; and

WHEREAS, at the September 11, 2014 regular monthly meeting the District's Board of Fire Commissioners determined that the annexation of the City into the District was in the public interest and authorized, by motion, the District's staff to prepare a resolution concurring with the City's Ordinance seeking annexation into the District.

NOW THEREFORE, BE IT RESOLVED, that pursuant to RCW 52.04.061 the Board of Fire Commissioners of Whatcom County Fire Protection District No. 7, hereby concurs with the City of Ferndale's Ordinance 1848 seeking annexation into Whatcom County Fire Protection District No. 7, which has been determined to be in the public best interest, and be it further resolved that notification of such concurrence shall be transmitted to the legislative authority of Whatcom County by Whatcom County Fire Protection District No. 7.
Approved at the regular board meeting of the Board of Fire Commissioners, Whatcom County Fire Protection District No. 7, this 9th day of October 2014.

Attested by:

Patty R. Markel, Board Secretary

Chairman Al Saab

Commissioner Michael Murphy

Commissioner Gerald Metzger
ORDINANCE NO. 1848

AN ORDINANCE OF THE FERNDALE CITY COUNCIL STATING AN INTENT, PURSUANT TO RCW 52.04.061 ET SEQ., TO ANNEX TO AND JOIN WHATCOM COUNTY FIRE DISTRICT NO. 7, AND MAKING A FINDING THAT THE PUBLIC INTEREST WILL BE SERVED THEREBY, AUTHORIZING THE FILING OF A NOTICE OF INTENTION WITH THE WHATCOM COUNTY REVIEW BOARD, NOTIFYING THE WHATCOM COUNTY COUNCIL OF THE INTENT TO ANNEX PENDING FAVORABLE DECISION BY THE BOUNDARY REVIEW BOARD, PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City of Ferndale and Whatcom County Fire District No. 7 have engaged in discussions concerning the potential annexation of the City to the District; and

WHEREAS, the City Council desires to initiate the process described in RCW 52.04.061 et seq. for annexation of the City to the District;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF FERNDALE DO ORDAIN AS FOLLOWS:

Section 1: Intent to Annex/Finding of Public Interest. The City Council hereby states its intent to have the City annex to and join Whatcom County Fire District No. 7, subject to approval by the Whatcom County Boundary Review Board and the voters of the City and the District. The City Council finds that annexation of the City to Whatcom County Fire District No. 7 will serve the public interest of the citizens of Ferndale and the greater Ferndale area. The Board of Commissioners of Whatcom County Fire District No. 7 is hereby requested to concur in the annexation and to notify the Whatcom County Council so that an election may be called on the question, pending a favorable decision by Whatcom County Boundary Review Board.

Section 2: Notice of Intent. The Mayor or his designee is hereby authorized to coordinate with Whatcom Fire District No. 7 to file a notice of intent with the Whatcom County Boundary Review Board seeking approval for annexation of the City to Whatcom County Fire District No. 7. The Mayor is further authorized to take all necessary steps to pursue approval of the
annexation by the Boundary Review Board in coordination with Whatcom County Fire District No. 7.

**Section 3: Severability.** If any section, subsection, sentence, clause, phrase or word of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, phrase or word of this ordinance.

**PASSED by the Council of the City of Ferndale, Washington, on this 21st day of July, 2014.**

**ATTEST:**

[Signature]
Gary S. Jensen, MAYOR

[Signature]
Sam Taylor, CITY CLERK

Date: 7-23-2014
### CLEARANCES

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<th>Originator:</th>
<th>Initial</th>
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<td></td>
<td>MDC</td>
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**TITLE OF DOCUMENT:** 2014 Supplemental Budget Request #19

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

<table>
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<th>SEPA review required?</th>
<th>( ) Yes ( X ) NO</th>
<th>Should Clerk schedule a hearing?</th>
<th>( ) Yes ( X ) NO</th>
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<tr>
<td>SEPA review completed?</td>
<td>( ) Yes ( X ) NO</td>
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**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:** (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)

Supplemental #19 requests funding from the General Fund:

1. To appropriate $15,987 in the Sheriff’s Office to fund reimbursable overtime increase.

From the Trial Court Improvement Fund:

2. To appropriate $125,236 to fund new courtroom recording systems.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

11/25/2014: Substitute introduced 7-0

**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:**
ORDINANCE NO.
AMENDMENT NO. 19 OF THE 2014 BUDGET

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

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that the 2013-
2014 Whatcom County Budget Ordinance #2012-048 is hereby amended by adding the
following additional amounts to the 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 - Sheriff</td>
<td>15,987</td>
<td>(15,987)</td>
<td>-</td>
</tr>
<tr>
<td>Trial Court Improvement Fund</td>
<td>125,236</td>
<td></td>
<td>125,236</td>
</tr>
<tr>
<td><strong>Total Supplemental</strong></td>
<td><strong>141,223</strong></td>
<td>(15,987)</td>
<td><strong>125,236</strong></td>
</tr>
</tbody>
</table>

ADOPTED this ___ day of ___________________ , 2014.

ATTEST:

Dana Brown-Davis, Council Clerk

CARL WEIMER, CHAIR OF THE COUNCIL

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

APPROVED AS TO FORM:

______________________________
Civil Deputy Prosecutor

( ) Approved          ( ) Denied

______________________________
Jack Louws, County Executive

Date: __________________________

I:\BUDGET\SUPPLS\2014_Suppl\Supplemental #19-2014.doc
<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>
</tr>
</thead>
<tbody>
<tr>
<td>General Fund - Sheriff</td>
<td>To fund reimbursable overtime increase.</td>
<td>15,987</td>
<td>(15,987)</td>
<td>-</td>
</tr>
<tr>
<td>Trial Court Improvement Fund</td>
<td>To fund new courtroom recording systems.</td>
<td>125,236</td>
<td>-</td>
<td>125,236</td>
</tr>
<tr>
<td><strong>Total Supplemental</strong></td>
<td></td>
<td>141,223</td>
<td>(15,987)</td>
<td>125,236</td>
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Supplemental Budget Request

Non-Departmental

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<th>Suppl ID #</th>
<th>1920</th>
<th>Fund</th>
<th>135</th>
<th>Cost Center</th>
<th>135100</th>
<th>Originator: Mike Russell</th>
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<tbody>
<tr>
<td>Expenditure Type:</td>
<td>One-Time</td>
<td>Year: 2014</td>
<td>Add'l FTE</td>
<td>Add'l Space</td>
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Name of Request: New Courtroom Recording Systems

<table>
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<th>Object</th>
<th>Object Description</th>
<th>Amount Requested</th>
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<tr>
<td></td>
<td>7420</td>
<td>Computer-Capital Outlays</td>
<td>$125,236</td>
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<tr>
<td>Request Total</td>
<td></td>
<td></td>
<td>$125,236</td>
</tr>
</tbody>
</table>

1a. Description of request:

This Budget Supplemental request is to fund the JAV's (Jefferson Audio-Visual) system for the New Commissioners Courtroom on the 5th floor and to modify the JAV's system for the new Superior Courtroom on the 2nd floor. This request also ties both systems into a Kiosk that will be in the Main Jail Courtroom. The three systems will allow remote appearances to be handled in the New Commissioners Courtroom on the 5th floor and to modify the JAV's system for the new Superior Courtroom on the 2nd floor.

1b. Primary customers:

Whatcom County judicial system, Public Defender, Prosecuting Attorney's Office and the Citizens of Whatcom County and all of the Cities we serve.

2. Problem to be solved:

The Courthouse Project is exceeding the contingencies that DLR projected for this project by roughly $100,000.00. By funding the JAV's system from the Trial Court Improvement Fund instead of the project fund, this will allow the project budget to handle the cost overruns.

3a. Options / Advantages:

Because this is a Law and Justice project other funds are not available to assist with the cost overruns. The Trial Court Improvement Fund is well suited for this type of expenditure and because this is a Law and Justice project other funds are not available to assist with the cost overruns.

3b. Cost savings:

This adjustment in the funding will allow this project to be completed on time for the new Judge and to relieve the stress of the overcrowded courtrooms.

4a. Outcomes:

By the end of this year this project will be completed on time for the new Judge and to relieve the stress of the overcrowded courtrooms.

4b. Measures:

By the end of this year the new courtrooms will be complete and ready for the 2015 year.

5a. Other Departments/Agencies:

IT will be working with Facilities to complete this JAV's system. Superior Court will need these new courtrooms to meet the new loads being placed on the courts.

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

Perry Rice from IT will be working with Facilities to complete this JAV's system. Michael Russell will be working with DLR and Faber Construction to complete the construction project.

6. Funding Source:

Wednesday, November 19, 2014

Rpt: Rpt Suppl Regular
<table>
<thead>
<tr>
<th>Suppl ID #</th>
<th>Fund</th>
<th>Cost Center</th>
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<tbody>
<tr>
<td>1920</td>
<td>135</td>
<td>135100</td>
<td>Mike Russell</td>
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Trial Court Improvement Fund
# WHATCOM COUNTY COUNCIL AGENDA BILL

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<th>Date</th>
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<td>Nan Kallunki</td>
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<td>Dept. Head:</td>
<td>Karen Goens</td>
<td></td>
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<td>Executive:</td>
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**TITLE OF DOCUMENT:**

2015 - 2016 Unrepresented Resolution

**ATTACHMENTS:**

2015 – 2016 Unrepresented Resolution

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<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>
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<td></td>
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</table>

**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:** (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)

Unrepresented Resolution for 2015 and 2016.

**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).
MEMO TO: Council Chair Carl Weimer  
Council Members Barry Buchanan, Rud Browne, Barbara Brenner, Ken Mann,  
Pete Kremen, and Sam Crawford  
FROM: Jack Louws, County Executive  
DATE: November 26, 2014  
SUBJECT: 2015-2016 UNREPRESENTED RESOLUTION

Before you for consideration are my recommendations for the Unrepresented Resolution. The most significant element of this proposal is that it be effective for two years. This is reflective of the strength of the recently adopted biennial budget that supports modest wage increases and the stability of the self-insured medical program.

The new resolution carries forward most of the previous policy provisions. Proposed changes are summarized below.

Term of Resolution
The resolution will be effective January 1, 2015 through December 31, 2016.

Across the Board Wage Increases
Each step in all ranges of the salary matrices will increase by 1.7% in 2015 and by 1.7% in 2016.

Binding Arbitration Adjustment
The salary matrix, Exhibit E, will increase an additional 1.2% in each range and step for approximate wage parity with employees represented by the collective bargaining agreement for Patrol Deputies and Sergeants. The salary matrix, Exhibit F, will increase an additional 1% in each range and step for approximate parity with employees represented by the collective bargaining agreement for Corrections Deputies and Sergeants.

Superior Court Commissioner
Following approval of ASR # 2015-5159, the Superior Court Commissioner salaries will increase from 85% to 90% of the salary of Superior Court Judges as set forth by the State of Washington Citizens' Commission on Salaries for Elected Officials. Because these salaries are not set by the County, the minor annual increases added to the matrix for retention have been removed.

Paternity Leave
This allows employees to use up to 40 hours of sick leave for the delivery of a child by their legal spouse and is consistent with state law and new language in the Master Collective Bargaining Agreement.

Other Language Changes
- Clarification of language for Interim Assignment pay.
- Added the provision that sick leave can be used to care for "dependent child as defined by law."
- The previous disability plan covering both the Sheriff's Deputies and the Sheriff's Office unrepresented employees is no longer available to the unrepresented employees. Language changed to provide for a "substantially equivalent" plan.

Should you have any questions on the details of the above changes, please contact Nan Kallunki via email or at extension 50549.

cc: Karen Goens, Human Resources Manager
RESOLUTION NO. 2014 – _____________

A RESOLUTION IN THE MATTER OF ADOPTING A SALARY SCHEDULE AND POLICIES FOR UNREPRESENTED WHATCOM COUNTY EMPLOYEES
EFFECTIVE JANUARY 1, 2015 through DECEMBER 31, 2016

WHEREAS, it is necessary to establish policies and salaries for the unrepresented employees; and,

WHEREAS, the Whatcom County Council hereby adopts the following policies for administration of personnel issues affecting unrepresented employees; and,

WHEREAS, it is nonetheless understood that state law may override certain stipulations set forth herein; and,

WHEREAS, the Whatcom County Council hereby adopts the concept of a salary matrix as the basis of establishing salaries for a majority of the non-represented positions;

NOW, THEREFORE, BE IT RESOLVED, that the Council intends that the Administration should follow the policies set forth below and should place non-represented employees within the proper range and step according to the FTEs contained in the adopted budget;

AND FURTHER, THEREFORE, BE IT RESOLVED,

1. DEFINITIONS

1.1 "Unrepresented employee" is defined as either elected officials or non-represented employees.

1.2 "Elected official" is defined as only those officials elected pursuant to the provisions of the Whatcom County Charter and Washington State Law (except Superior Court Judges).

1.3 "Non-represented employee" is defined as all other unrepresented employees who are appointed to a budgeted full-time equivalent position.

1.4 "Full-time equivalent" and "FTE" are both defined as the currently assigned percentage, not to exceed currently budgeted full-time equivalency of a position, as authorized by budget ordinance.
2. NON-REPRESENTED SALARY MATRICES – EXHIBITS A THROUGH F

Effective the full first pay period in 2015, each wage step in all ranges of the 2014 salary matrices shall increase by 1.7%. Effective the first full pay period in 2016, each wage step in all ranges of the 2015 salary matrices shall increase by 1.7%.

The monthly salaries of non-represented positions shall be established within the ranges and steps provided in Exhibits A through F. Exhibits A through F shall be effective on the date listed on the applicable Exhibit and shall remain in place until changed. Should a range not be available, a new range will be created which is either a partial range at 2.15% above the previous range or 4.3% above the previous range depending on circumstances. Monthly salary amounts indicated are for one (1.00) FTE. These amounts will be pro-rated for fractional FTEs. Monthly amounts may be converted to an hourly rate by dividing the monthly amount by 173.33.

2.1 Sub-Ranges. Certain sub-ranges (as designated on the appropriate matrix) were created to address supplemental compensation replacement for employees who were receiving compensation under Executive Order 2004-03. These sub-ranges are not applicable to other individuals. The sub-range is in recognition of previously negotiated compensation based on multiple assignments, varied duties, working far beyond the hours required in a regular work week, evening meetings, and responding to emergencies in order to minimize the cost of administration and provide the greatest flexibility for the County. Employees in sub-ranges 500.1, 510.1, 510.2, 520.1, 520.2 and 525.1 are not eligible for Interim Assignment Pay (section 4.6), Emergency Response Pay (section 4.10) or Paid Administrative Leave (section 4.5).

3. OTHER NON-REPRESENTED POSITIONS – EXHIBITS G AND H

Other non-represented positions covered by Exhibits G & H shall be paid a monthly salary effective on the date listed per the appropriate Exhibit, pro-rated for fractional FTEs, unless otherwise noted.

3.1 Court Commissioners. Court Commissioners are to be paid at a rate equivalent to a percentage of the comparable state Court Judge salary level. Any changes in these Judges’ salaries will be reflected in the comparable Court Commissioners’ salaries.

<table>
<thead>
<tr>
<th></th>
<th>% of Comp. Judge</th>
<th>Range</th>
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</thead>
<tbody>
<tr>
<td>Superior Court Commissioner</td>
<td>90%</td>
<td>903</td>
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<tr>
<td>District Court Commissioner</td>
<td>80%</td>
<td>904</td>
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3.2 Flat Rate Positions. Amounts listed in Exhibit G are already pro-rated for FTE listed.

<table>
<thead>
<tr>
<th></th>
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<th>Range</th>
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<td>Court Reporter</td>
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<tr>
<td>Health Officer</td>
<td>.60</td>
<td>802</td>
</tr>
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</table>
4. COMPENSATION & EMPLOYMENT

4.1 Step Movement. Within the salary matrices contained in Exhibit A through H, all steps shall be awarded on the basis of successful job performance. A performance evaluation must have been completed for employees in Exhibits A through D, G and H within the last year and the most recent evaluation must be "3.38" or better overall to advance on the step date to the next step per the time period indicated on the appropriate Exhibit on the first day of the appropriate month.

4.2 Reclassification or Promotion. If funding is available within the authorized budget, Department Heads can request a promotion or reclassification so long as it is in compliance with County policy on reclassifications (AD140000Z) and it receives written approval of the County Executive. Individuals who are reclassified (because of the addition of significantly higher-level duties) or promoted into a higher position shall move to the step in the new range as follows. The ‘top wage step’ is defined as the highest step in a given range which includes an increase in the wage component (as opposed to an increase in just the Recognition & Retention component) over the preceding step.

- For employees in Exhibits A, B, C, or D, if a 5% increase would place the employee below the top wage step in the new range, the employee is placed in the new range in the step providing at least a 5% increase. The reclassification or promotion date becomes the next step date.

- For employees currently below the top wage step in Exhibits A, B, C, or D, if a 5% increase would place the employee at or above the top wage step in the new range, the employee is placed in the top wage step. The reclassification or promotion date becomes the next step date.

- For employees currently at or above the top wage step in Exhibits A, B, C, or D, if a 5% increase would place the employee at or above the top wage step in the new range, the employee is placed in the new range at their current step and maintains their current next step date.

- For Exhibits E, and F, employees are placed in the step in the new range that provides at least a 5% increase in base salary, not to exceed the top step of the new range. The reclassification or promotion date becomes the next step date.

- For movement outside the employee’s current Exhibit, if a 5% increase would place the employee below the top wage step in the new range, the employee is placed in the new range in the step providing at least a 5% increase. The reclassification or promotion date becomes the next step date. If a 5% increase would place the employee at or above the top wage step in the new range, the employee is placed in the new range at their current step and maintains their current next step date.

4.3 Realignment. If funding is available within the authorized budget, Department Heads can request consideration during the budget process, on the appropriate form, realignment of positions the following January, which are paid at least three percent (3.00%) below the average of at least four (4) of the six (6) comparable counties (all comparable counties where matches exist must be used). Individuals moving...
to a new range because of realignment of non-represented positions or ranges shall be placed in their current step (but no higher than the top step) one range above their current range. The effective date of the realignment shall become the step increase date. Positions which are experiencing recruitment and/or retention difficulties may be looked at during the year if funding is available within the current year’s budget for the department.

4.3.1 Additional Considerations. In the administration of section 4.3 – Realignment, in the event the County identifies a position as one with documented local recruitment and/or retention difficulties then secondary comparables based on close geographical location and sociological issues may be considered.

4.4 Position Movement. Individuals moving to a position in a lower range may have a salary adjustment up or down depending upon individual qualifications for the position, the nature of the work performed, and internal equity with no change to the next step increase date.

4.5 Overtime & Compensatory Time Pay. The provisions for overtime payments and compensatory time (for working over 40 hours in a week) apply only to non-represented employees who are covered as non-exempt by the Federal Fair Labor Standards Act (FLSA). Employees requesting compensatory time in lieu of overtime pay shall have such request granted up to a maximum of twenty-four (24) hours per calendar year. Additional compensatory time may be mutually agreed to, but an employee may accrue no more than a maximum of 80 hours of compensatory time at any time. By mutual agreement, and per written approval of the department head, an employee may cash out accrued compensatory time at the end of each calendar year.

In recognition of the contributions non-represented employees sometimes make in working far beyond the hours required in a regular work week, and the fact that FLSA-exempt employees do not get overtime or compensatory time, the Executive’s Office has authority to award deserving non-represented FLSA exempt employees up to five (5) days of paid administrative leave per year. These days must be used in the year awarded unless County business prevents this occurring, in which case they can be carried over one year. Administrative leave may only be cashed out upon separation.

The Executive is empowered to authorize extra pay for non-represented employees during a period of extraordinary circumstances (such as emergency conditions, a strike, etc.).

4.6 Interim Assignment Pay. From time to time, non-represented employees may be asked to cover all or part of the duties of a higher-level position during periods of extended absence, vacancy, or for special assignments. In these instances, interim assignment pay may be awarded. Department heads shall discuss appropriate rate of interim pay with Human Resources prior to making the assignment. [AD146100Z]

4.7 Employment Opportunities. Non-represented employees who wish to apply for a union position may do so by the posted closing date for union members. Non-represented applications will be reviewed only if there are no current eligible and qualified represented employees from the applicable bargaining unit who apply or who are selected for the opening. The County, at its sole discretion, may or may not at that time select non-
represented employees for any type of opening, or may proceed with a public posting and include the non-represented employees in the employment process.

4.7.1 **Provisional Appointments.** The County may make provisional appointments for employees not fully meeting all requirements and qualifications. Such employees will be placed in a range lower than the posted position, receiving at least a 5% promotional increase (in compliance with section 4.2) and will not receive another promotional increase upon fully meeting posted requirements. They will maintain their step increase date when moved to the range of the posted position and be placed in the step closest to but not less than the provisional appointment rate of pay.

4.8 **Disciplinary Suspensions.** FLSA-exempt employees are not subject to unpaid disciplinary suspensions except in increments of full work-weeks, unless the infraction leading to the suspension is for a violation of a safety rule of major significance.

4.9 **Employment at Will.** Employment for non-represented employees is at will, which means either the employee or the County can end the employment relationship without being legally required to give notice or a reason except as stipulated herein, by County policy, or by law.

4.10 **Emergency Response.** Non-represented employees authorized in advance and required to respond in person to extraordinary emergencies, and works anytime between the hours of 9:00 p.m. and 6:00 a.m., Monday through Friday and any time on Saturday or Sunday, shall receive a $100 stipend per incident. If an employee is not on a pre-approved absence, and response to an incident is during normal hours but extends to hours or days noted above, no stipend is awarded. If the incident extends beyond 24 hours from the first response by employee and additional responses are required during times or days noted above, depending upon circumstances, an additional stipend may be awarded. Pre-authorization for extraordinary emergencies eligibility is provided by an employee’s supervisor in advance with written approval of the department head for a specific incident requested after the incident occurs. Final approval of a specific incident is provided by the Executive’s Office or designee. In the case of department heads, pre-authorization and final written approval of a specific incident is provided by the Executive or designee.

4.11 **Recognition and Retention Premium.** Recognition and Retention Premium ceased to exist as a separate compensation item for all but Exhibit E as it was rolled into applicable matrices.

4.12 **Probable Cause Compensation.** Any attorney in the Prosecuting Attorney’s Office required to appear on a Saturday or Sunday at a scheduled Probable Cause hearing shall receive $175 for his/her appearance.

4.13 **Nomination for Merit Step.**

4.13.1 **Merit Step.** Non-represented employees who are not at the top wage step of their assigned range may be nominated by the department head to the Executive’s Office for a one-step adjustment in recognition of documented exemplary performance. A step adjustment for merit does not impact the step date.
4.13.2 **Documentation.** Documented exemplary performance for a merit step shall include a performance evaluation within the last year with an overall rating of at least “4.00” with no individual elements or sub-elements at or below the “needs improvement” level. Additional documentation must be in writing and shall include specific information as to the employee’s contribution:

- to achievement of some element or elements of the strategic plan;
- that has organization- or community-wide impact;
- to the completion of a specific, significant department project; or
- to a similar type of accomplishment.

4.13.3 **Timing.** Nomination requests will normally be submitted during the budget process, but may be submitted any time during the year. Submission requires funding to be available within the authorized budget for the department.

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

- Pay increases (non-represented employees only).
- The same basis for calculating Recognition and Retention Premium (Longevity). Performance evaluation within last year must be 3.38 or better overall in order to be eligible for the Premium (non-represented employees only).
- The same annual clothing allowance if they must maintain a dress uniform.
- Medical coverage.

4.15 **Ability to Cross Border.** Employees must maintain the ability to cross the Canadian border if they are assigned to a position which may at any time require crossing the Canadian Border.

5. **SCHEDULING**

5.1 **Work Schedule.** The hours of operation may vary between departments and divisions in order to better serve the public.

5.2 **Alternative Schedule.** Alternative scheduling allows the hours and the basic workday or workweek of an employee to be modified from the department standard to attend to County business or to accommodate a different schedule. Approval of alternative scheduling for FLSA non-exempt employees shall not allow for greater than forty (40) hours of compensation in any one work week, shall provide for no reduction in service to the public, and must not increase the County’s compensation costs. Alternative scheduling requires the mutual agreement of the employee and the department head and approval of the Executive’s Office or designee. FLSA non-exempt employees may not accumulate or not take lunch and/or rest breaks in order to shorten the workday or work week.
5.3 **Flex Time.** Periodic flex time may be used for personal employee matters, to make up doctor, vision or dental appointments, to attend meetings or to perform work on behalf of the County. Approval of flex time for FLSA non-exempt employees shall not allow for greater than forty (40) hours of compensation in any one work week, shall provide for no reduction in service to the public, and must not increase the County’s compensation costs. Flex time requires the mutual agreement of the employee and the department head or designee. FLSA non-exempt employees may not accumulate or not take lunch and/or rest breaks in order to shorten the workday or work week.

6. **LEAVES**

6.1 **Sick Leave.** For the purpose of sick leave benefits, sick leave shall accrue to each 1.0 FTE non-represented employee in Exhibits C through H from their date of hire in the amount of eight (8) hours for each month of employment, if benefits eligibility criteria are met, to a maximum of nine hundred and sixty (960) hours except as outlined below.

6.1.1 **Part-Time Employees’ Sick Leave Accrual Rate.** Part-time employees’ sick leave accrual rate will be pro-rated per currently assigned, but not more than their budgeted FTE.

6.1.2 **Additional Accrual.** A non-LEOFF II employee who has accrued nine hundred and sixty (960) hours at the end of the last pay period of any year shall be allowed to accrue up to one thousand and fifty-six (1,056) hours (960 hours + up to 96 hours annual accrual) of sick leave during the year immediately subsequent. These additional hours of accrual may not be cashed out. The employee’s total accrual reverts back to no more than nine hundred and sixty (960) hours at the end of the last pay period of the year.

6.1.3 **Sick Leave Usage.** Eligible employees may request sick leave as accrued and it may be used in increments of less than one scheduled workday, but not less than one hour for FLSA exempt employees.

6.1.4 **Proof of Illness.** Upon request, an employee shall provide the County with proof of incapacitating illness or injury for themselves and all persons covered by section 6.1.6.

6.1.5 **Excess Sick Leave Contributions.** Employees under Exhibits C through H who have at least 960 hours in their sick leave bank the first and last pay period of the year (or at the beginning of a calendar year and upon termination in that same year) will receive a contribution into their Health Savings Account (HSA), if they have one, or if they do not have an HSA, into a Retirement Health Savings (RHS) plan, based upon a portion of the hours accrued but not used during the year. Sick leave hours accrued to a maximum of forty-eight (48) hours will apply to a partial contribution to a Health Savings Account or Retirement Health Savings Plan if less than forty-eight (48) hours of sick leave are used that year. Calculation is based on 25% of eligible hours, paid at the rate in effect at year end.

6.1.6 **Sick Leave for Family Care.** Sick leave can be used to care for the child, or dependent child as defined by law, of an employee with a health condition that requires treatment or supervision, or for the care of an employee’s spouse, domestic
partner, registered spousal equivalent (up to forty (40) hours per year), parent, parent-in-law or grandparent with a serious health condition or an emergency condition. Domestic partners must be registered with the Washington State Office of the Secretary of State and spousal equivalents must be registered with AS-Human Resources prior to requesting sick leave usage.

6.1.7 Sick Leave Cashout. A non-represented employee with three (3) or more years of current, continuous employment with the County shall be entitled to sick leave cashout upon voluntary separation, layoff or death in the amount of twenty five (25%) percent, or fifty (50%) percent if hired before May 15, 1984, of accrued hours up to a maximum of 960 hours. Employees must give at least two (2) weeks’ notice prior to separation to be eligible for sick leave cashout.

6.1.8 Sick Leave Sharing. Sick leave sharing is available to non-represented employees per the County’s Sick Leave Sharing Program. Each employee may donate up to a maximum of twenty-four (24) hours per calendar year.

6.1.9 LEOFF II Accrual Maximum. LEOFF II non-represented employees may accrue sick leave up to a maximum of one thousand, four hundred and forty (1,440) hours. No more than nine hundred and sixty (960) hours shall be used as a base for calculating sick leave cashout. If any hours are used per section 6.1.5 for partial contribution to a Health Savings Account, if they have one, or if they do not have an HSA, into a Retirement Health Savings Plan, any hours used in that calculation will no longer be available to the employee and will be deducted from the accrual bank.

6.1.10 Sheriff’s Office. Non-represented employees in the Sheriff’s Office (including Emergency Management and the Jail) who have employees directly reporting to them who receive an additional five (5) days of vacation if they have seventy-five (75) days of sick leave on December 31 of any year shall receive the same consideration.

6.2 Vacation. Non-represented employees under Exhibits C through H (except court reporters and superior court commissioners) shall be entitled to vacation accrual benefits if benefits eligibility criteria are met. Accruals for 1.0 FTE’s will be in accordance with the following schedule with the first employment year being the year hired and subsequent employment years being the first of the year. Prior regular County employment may be considered when determining employment year.

<table>
<thead>
<tr>
<th>Period</th>
<th>Accrual</th>
</tr>
</thead>
<tbody>
<tr>
<td>During 1st through 4th employment year</td>
<td>10.00 hours per month</td>
</tr>
<tr>
<td>During 5th through 9th employment year</td>
<td>13.34 hours per month</td>
</tr>
<tr>
<td>During 10th and subsequent years</td>
<td>16.67 hours per month</td>
</tr>
</tbody>
</table>

Vacation leave may be requested as accrued and approved and may be used in increments of less than one scheduled workday, but not less than one hour for FLSA exempt employees. No more than two hundred and forty (240) vacation hours may be carried forward from one year to the next, otherwise unused vacation in excess of two hundred and forty (240) hours at the end of the last pay period in any year shall be forfeited. The express purpose of vacation leave is to allow employees to take time away from work to relax, recreate and otherwise attend to personal matters. It is the policy of Whatcom County that non-represented employees shall take the regular vacation time
allocated each year for the good of the employee and the County. If funds exist in the department’s current budget, by mutual written agreement between the non-represented employee, the department head and the Executive’s Office, vacation anticipated to be above the 240 hours carryover maximum can be cashed out each calendar year in the amount of 50% of accrued hours up to a maximum of eighty (80) hours. Upon separation, accrued vacation hours will be cashed out at 100%.

6.2.1 **Part-Time Employees’ Vacation.** Part-time employees’ vacation accrual rate will be pro-rated per currently assigned, but not more than their budgeted FTE. FLSA non-exempt employees will receive extra vacation pay, on a quarterly basis, based on extra hours worked above the assigned FTE (not to exceed equivalent of 1.00 FTE).

6.2.2 **Compassionate Leave.** Employees may donate accrued vacation leave or paid time off to employees for the serious health condition (as defined by FMLA) of an employee or as otherwise provided by County policy.

6.3 **Holidays.** Paid holidays will be available as posted on an annual basis for non-represented employees (except superior court commissioners) who are in paid status, or on approved voluntary unpaid furlough, the entire scheduled work day before and after the holiday.

6.3.1 **Personal Holiday.** Each non-represented employee under Exhibits C through G (except court reporters and superior court commissioners) shall receive one (1) Personal Holiday each calendar year equivalent to their FTE on January 1 or upon hire, not to exceed eight (8) hours. The Personal Holiday must be used in the year it is earned, in increments of at least one hour for FLSA exempt employees. Personal Holidays are not cashed out upon separation.

6.3.2 **Working a Holiday.** Employees who are required to work, because state law requires an office to remain open on the December 24th County holiday observance, shall receive two days off with pay.

Employees, who are required by their department head to work a paid County holiday because of an emergency, a project that can only be completed when County offices are closed, or special directive from the Executive’s Office, shall receive two (2) days off with pay at a mutually agreeable time.

6.3.3 **Part-Time Employees’ Holiday Pay.** Part-time employees will receive holiday pay based on their currently assigned, but not more than their budgeted FTE. FLSA non-exempt employees will receive extra holiday pay, on a quarterly basis, based on extra hours worked above the assigned FTE (not to exceed equivalent of 1.00 FTE).

6.4 **Paid Time Off (PTO) Bank.** Each non-represented employee on Exhibits A & B will, in lieu of accruing vacation, sick and personal holiday, accrue time into a Paid Time Off (PTO) bank.
6.4.1 **Accrual.** Accrual for 1.0 FTE’s will be in accordance with the following schedule with the first employment year being the year hired and subsequent employment years being the first of the year. Employees appointed to an eligible unrepresented PTO position will have their accrued and available vacation and personal holiday hours placed in a PTO bank. Prior regular County employment may be considered when determining employment year. Part-time employee’s monthly PTO bank accrual rates will be pro-rated based on FTE.

<table>
<thead>
<tr>
<th><strong>Exhibit B</strong></th>
<th><strong>Accrual Rate/month</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>During 1st through 4th employment year</td>
<td>21.33 hours</td>
</tr>
<tr>
<td>During 5th and subsequent years</td>
<td>24.67 hours</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Exhibit A</strong></th>
<th><strong>Accrual Rate/month</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Upon hire and subsequent years</td>
<td>26.00 hours</td>
</tr>
</tbody>
</table>

6.4.2 **Short-Term Disability (STD) Bank.** Each newly eligible employee will receive a “one-time” deposit of 480 hours into a short-term disability (STD) bank. Part-time employee’s short-term disability bank deposits will be pro-rated based on FTE. The STD bank can be accessed only after an employee has been absent and used PTO bank hours to cover three consecutive work days for an illness or injury, for an approved Family/Medical Leave, or to provide care for a family member under Family Care or Family Leave. For each separate intermittent FMLA situation, only one period of three consecutive work days charged to PTO needs to be met each applicable 12-month period before gaining access to the STD bank. Access to the STD bank may require a physician’s certification. Deductions from the STD bank must be for one hour or more. The STD bank is not eligible for cashout at any time.

6.4.3 **Sick Leave Bank.** Employees appointed to an eligible unrepresented PTO position will maintain their accrued and available sick leave hours in a bank, which can be accessed only if the one-time STD bank is depleted. Employees may be required to provide proof of illness or periodic health care progress reports per sections 6.1.4, 6.8.1, 6.10 and 8.1.1. Upon voluntary separation, layoff or death, the sick leave bank cashout will be cashed out per section 6.1.7.

6.4.4 **Paid Time Off Usage.** PTO bank hours may only be requested as accrued and used as approved. In the event an employee needs PTO for an illness or to care for a family member, the employee should give his or her supervisor as much notice as possible. Deductions from the PTO bank must be for one hour or more.

6.4.5 **Paid Time Off Bank Carryover/Cashout.** No more than 330 PTO hours at the end of the last pay period in any year can be carried over to the following calendar year with additional hours forfeited. If funds exist in the department’s current budget, by mutual agreement among the impacted employee, the department head (if applicable) and the Executive’s Office, PTO anticipated to be above the 330 hours carryover maximum can be cashed out each calendar year in the amount of 50% of accrued hours up to a maximum of eighty (80) hours. Upon separation, hours in the PTO bank will be cashed out at 100%.
6.4.5.1 Paid Time Off Bank Cashout – PERS I. No PERS I employee will be adversely affected by the PTO program relative to excess compensation impacting retirement income compared to the currently allowed sick and vacation cashout previously allowed upon separation.

6.5 Jury Duty & Military Leave. Non-represented employees considered exempt under the Federal Fair Labor Standards Act (FLSA) shall have no deduction in salary for absences caused by jury duty or annual military leave. Jury duty and military leave will be provided as described in County Policy, USERRA or state law.

6.6 Bereavement Leave. Bereavement leave shall be provided to non-represented employees, who suffer a death in the immediate family, of up to five (5) days off (maximum of forty hours) without loss in pay. Immediate family members include a spouse or domestic partner, registered spousal equivalent, child or parent (including step) of either the employee or the employee’s spouse. Domestic partners must be registered with the Washington State Office of the Secretary of State and spousal equivalents must be registered with AS-Human Resources prior to requesting bereavement leave. Up to three (3) days off without loss of pay is available for other close family members (including step): brother, sister, grandchildren or grandparents of either the employee or the employee’s spouse. In the event of a Funeral or other memorial occurring as a result of the death of a current, lawful brother or sister-in-law, the affected employee may have up to eight (8) hours off without loss in pay to attend the funeral or memorial, if not covered above. Additional days off without pay or using accrued leave may also be available upon written approval of the department head. Requests for greater than five (5) days of leave without pay in a calendar year requires Executive Office approval.

6.7 Civil Leave. Civil leave with pay shall be allowed to permit a non-represented employee to testify in any federal, state or municipal court when a subpoena compels such testimony and such testimony is on behalf of Whatcom County or is in connection with a matter in which Whatcom County is a party.

6.8 Family Leave. The County provides unpaid leave to any eligible non-represented employee covered by this Resolution, consistent with the Washington State Family Leave Act, Washington State Family Care Act, Washington State Military Family Leave Law, and the Federal Family and Medical Leave Act (FMLA). Employees are not required to use accrued vacation time, sick leave, STD bank, or PTO bank before commencing unpaid family leave, except an employee who has previously used twelve (12) weeks of unpaid FMLA will, for the following four years, use all but a total of forty (40) accrued hours (including compensatory time) of allowable vacation, sick, PTO bank, STD bank, and personal holiday time before beginning unpaid leave during any subsequent twelve-month FMLA period. If leave pursuant to FMLA stipulations would also qualify as leave under any other County benefit, policy or type of leave, the period of the FMLA leave will run concurrently as permitted by law and will apply toward an employee’s entitlement for each type of leave that may be applicable.

6.8.1 Physician Certifications. The County may require physician certifications in accordance with state and federal guidelines.
6.9 Maternity Leave. Accrued sick leave or STD bank time may be utilized for maternity/disability leave. In the event sick leave and/or the STD bank is exhausted before the employee returns to work, any vacation, PTO bank, or other paid leave which has accrued must be utilized before approval of any leave without pay is considered by the County, except for leaves falling under the federal Family and Medical Leave Act or County policy. If leave pursuant to this provision would also qualify as leave under any federal or state laws, the period of leave will apply toward the employee’s entitlement to leave under any applicable laws consistent with section 6.8. Unless the birth mother chooses to invoke FMLA, a birth mother’s period of temporary pregnancy-related disability shall not be deducted from the FMLA leave entitlement.

6.10 Maternity Leave. Sick leave to a maximum of forty (40) hours shall be available to use by an employee at the time of delivery of a child by their legal spouse.

6.11 Leave for Illness or Injury. Non-represented employees may request in writing, with appropriate health care provider verification, leave for major illness or injury utilizing Family/Medical Leave, accrued leaves, and unpaid leaves, as appropriate and as approved. Total time for the leave, which will include all time away from work, may be extended up to a maximum of twelve (12) months with the mutual consent of the department head and the Executive’s Office. An employee who returns to work will be credited for length of return time within the twelve (12) month limit if the employee must go back on disability for the same illness/injury. Periodic health care progress reports may be required.

6.12 Domestic Violence Leave. The County provides leave to employees who are victims of, or who are family members of victims of domestic violence, sexual assault, or stalking, consistent with the requirements of the Washington Domestic Leave Law.

6.13 Absence Due to Adverse Weather. FLSA non-exempt employee’s absence due to severe inclement weather or other unusual emergency conditions will be charged to one of the following in sequential order: compensatory time, vacation leave, paid time off, personal holiday, or leave without pay, unless an employee who wishes to take leave without pay notifies his/her payroll preparer before the department’s payroll cut-off time.

6.14 Unpaid Furlough. Whatcom County certifies that non-represented employees taking voluntary unpaid furlough are doing so as an integral part of the employer’s expenditures reduction efforts.

7. ELECTED OFFICIALS

7.1 Wage Adjustments for Elected Officials. Council Members and Executive Branch Elected Officials shall be compensated per the appropriate Resolution.

7.2 District Court Judges. District Court Judges shall accrue sick leave at the same rate as non-represented employees per section 6.1. Additionally, pursuant to RCW 3.34.130, District Court Judges will receive thirty (30) days’ annual leave each January 1. Annual leave cannot be carried forward to the next year. When a District Court Judge vacates office, the total remuneration for annual leave and sick leave shall be granted as
allowed by RCW 3.34.100, and shall not exceed the equivalent of thirty (30) days' monetary compensation.

8. **BENEFITS**

8.1 **Benefits Eligibility.** Non-represented employees must be compensated at least eighty (80) hours per calendar month and be in at least a .5 FTE position to be eligible for certain benefits (including, but not limited to, sick leave, holiday, vacation, PTO bank, STD bank, and health and welfare). Compensation is defined as payment of wages for work performed, vacation, accrued sick leave, PTO, STD, other paid leave, or income for industrial injury not to exceed twelve months. County payments of health and welfare premiums for benefits of non-represented employees are made on behalf of employees. Compensation earned in one (1) calendar month provides health and welfare benefit coverage in the following month unless stipulated otherwise in plan documents. Any elected official or newly hired non-represented employee will be initially eligible for health and welfare benefits the calendar month following at least 80 hours of compensation in one (1) calendar month. Waiting period requirements on individual plans must be met for benefit reimbursement. Due to the nature of elected official positions, they will be eligible for health & welfare benefits on the same basis as a 1.0 FTE.

8.1.1 **Benefits Coverage In Case of Documented Extended Illness or Injury.** If an employee has a health care provider documented extended illness, injury, or disability, and is unable to work or be compensated at least eighty (80) hours per calendar month, medical contributions will continue to be paid by the County for full employee and family coverage for up to twelve (12) months from the date the employee is first ineligible on account of such illness or injury unless employment is terminated or as adjusted per section 6.10. This twelve-month period will apply towards the COBRA continuation coverage period. Dental, vision and life premiums will be paid by the County for the first three months of ineligibility only. Periodic health care provider reports may be required.

8.1.2 **Part-Time Employee’s Benefits Coverage.** Part-time employees who fail to receive 80 hours of compensation in a calendar month shall be considered eligible for all applicable benefits during the month in question when the failure to meet eligibility requirements is due to a quirk in scheduling and through no fault of the employee.

8.2 **Health & Welfare Benefits.** All elected officials and eligible non-represented employees shall be granted the following health and welfare benefits, and the benefits shall include full premium contribution by the County for the employee, spouse, and dependent children of the employee, except as noted below.

A) **Medical**
   - Including premium contribution for coverage for domestic partner, when registered with the Washington State Office of the Secretary of State.
   - Excluding required employee premium contribution for Contributory Plan

B) **Dental**

C) **Vision**

D) **Long-Term Disability – employee only**
E) Life insurance – employee only - in the face amount of each elected official or non-represented employee's annual salary to a maximum of $50,000.

8.2.1 Medical Contribution Cap. For 2015, the County will contribute for each employee $1,089.50 per month for medical coverage under either the Cap 2000 Plan, the Contributory Cap Plan, or the Qualified High Deductible Health Plan (QHDHP). Employees will elect their next year's plan choice during an open enrollment period in November.

For 2016, it is anticipated the County will contribute for each employee $1,089.50 per month for medical coverage under the current plans. Administration reserves the right to reconsider or modify the plan benefits and contribution amounts.

8.2.1.1 Cap 2000 Plan. Employees can elect to participate in the Cap 2000 Plan with no payroll deductions.

8.2.1.2 Contributory Cap Plan. Employees can elect to participate in the Contributory Cap Plan via authorized monthly payroll deduction, of $84.90.

8.2.1.3 Cap Plan (QHDHP) and Health Savings Account. Employees electing to participate in the Cap Plan (QHDHP) will be eligible to establish a Health Savings Account (HSA) if they are otherwise qualified to have such account.

8.2.1.1.1 First Time Enrollees. For first time enrollees, the County will contribute to the HSA a total of $1,250 per employee if signing up as an employee only OR $2,500 per employee as seed money if signing up as an employee plus dependents. Part-time non-represented employees will receive a pro-rated contribution based on their budgeted FTE. One half the annual HSA contribution amount will be funded in January and the balance will be contributed in 11 equal monthly amounts for the remaining months in 2015 and 2016. Participating employees are also eligible to contribute to the HSA.

8.2.1.1.2 New Hires. Employees who choose the Cap Plan (QHDHP) will be eligible to establish a HSA, if they are otherwise qualified to have such account. The County will contribute to the HSA a total of up to $1,000 for employee only OR up to $2,000 for employee plus dependents as seed money for first time enrollment. Part-time non-represented employees will receive a pro-rated contribution based on their budgeted FTE. Fifty percent (50%) will be contributed the calendar month following eighty (80) hours of compensation in one calendar month and enrolled in the HSA with monthly contributions of either $45.45 (employee only) or $90.91 (employee plus dependents) throughout the remaining months in 2015 or 2016. Participating employees are also eligible to contribute to the HSA.

8.3 Other Benefits

8.3.1 Flex 125. The County will pay set-up costs and ongoing maintenance costs to allow employees to utilize a Dependent & Health Care Reimbursement Plan.
8.3.2 **Retirement Plans.** The County provides payment to retirement plans through the Washington State Department of Retirement Systems (DRS), which also requires contributions from eligible non-represented employees. Elected officials may elect, but are not required, to participate in a DRS plan.

8.3.3 **Deferred Compensation.** The County provides the opportunity for voluntary employee participation in deferred compensation (457 plans) and 401(a) programs. The County matches these contributions fifty cents on the dollar, up to a maximum of 2% of base salary, with County contributions placed in a 401(a) Plan. New employees, within thirty (30) days of hire, may elect to contribute directly to the 401(a) plan.

8.3.4 **Employee Assistance Program.** The County provides confidential counseling assessment services through an Employee Assistance Program for employees and their immediate families.

8.3.5 **Sheriff's Office Disability Plan.** LEOFF II and PERS unrepresented employees in the Sheriff's Office will be provided a substantially equivalent disability plan as that provided to employees directly reporting to them. Such employees are not eligible to participate in the Long-Term Disability Plan offered under section 8.2.D.

8.3.6 **Retirement Health Savings Plan.** The County provides a tax-free Retirement Health Savings Plan (RHS) for tax-free use for qualified medical expenses, in accordance with IRS regulations. The County will administer the RHS plan consistent with the County's RHS plan documents. Contribution types, which are mandatory within identified groupings of employees, may include, but are not limited to: contribution of excess sick leave; contribution of a percentage of base salary; and contribution of sick leave, vacation and/or PTO bank cashouts at voluntary separation from County employment. The County may at its discretion identify additional recognized groupings of unrepresented employees to have one or more of the existing contribution types applied.

8.3.6.1 **Retirement Health Savings.** For those non-represented employees of the Sheriff’s Office subject to the Binding Arbitration Adjustment matrices contained in Exhibits E and F, 3% of base salary provided will be mandatorily paid by the County to his or her Retirement Health Savings account, with the remaining 97% of base salary paid through payroll.

8.3.6.1.1 **Additional Mandatory Contributions.** When any of the employees on Exhibit E or F separate from employment, sick leave cashout, per section 6.1.7 and vacation cashout will be mandatorily contributed to his or her Retirement Health Savings account.

8.3.7 **Clothing Repair & Replacement.** Employees who, in the course of pursuing their assignments, suffer a loss or substantial damage to clothing, excluding normal wear and tear, shall be reimbursed the reasonable cost for the repair or replacement of like items at a rate commensurate with the condition of the claimed item. Personal property shall be repaired or replaced up to $35.00 per item.
8.3.8 **Electronic Funds Transfer.** All newly hired regular employees shall authorize paycheck deposit by electronic funds transfer (EFT) within thirty (30) days of employment. Employees may temporarily stop EFT in emergency situations with at least seven (7) days' notice before a scheduled payday, but must restart EFT within three months.

9. **POLICY OR PROVIDER CHANGES**

From time to time, the County may change provisions in this resolution or select different providers of benefits, which may impact plans offered. Nothing in this document shall limit the County's ability to change any provision in this resolution or to search for the most cost effective benefit packages, nor shall it commit the County to selecting any specific provider or plan.

10. **EFFECTIVE DATE**

All changes in salaries and benefits under this resolution shall become effective on the first full pay period in January, 2015 and January, 2016 and shall remain in effect until rescinded, except where noted otherwise and except that any further changes may be retroactively applied as approved by the County Council.

**AND FURTHER, THEREFORE, BE IT RESOLVED,** that Resolution No. 2013-034 is hereby rescinded effective January 1, 2015, and this Resolution shall become effective that same date.

**APPROVED** this 9th day of December, 2014,

ATTEST: WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Council Clerk

Carl Weimer, Chair

APPROVED as to form:

[Signature]

Chief Civil Deputy Prosecuting Attorney
146


Exhibit "D" Support Salary Matrix - FLSA Non-Exempt - Effective January, 2015 (+1.7%)

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Exhibit "E" Sheriff's Binding Arbitration Adjustment (+1.2%) Salary Matrix (+1.7%)

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Exhibit "F" Corrections Binding Arbitration Adjustment (+1.0%) Salary Matrix (1.7%)

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Exhibit "G" Court Reporters & Health Officer Salary Matrix - Effective January, 2015 (+1.7%)

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Exhibit "H" Commissioners Salary Matrix - Effective September 1, 2015

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### Exhibit "D" Support Salary Matrix - FLSA Non-Exempt - Effective January, 2016 (+1.7%)

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### Exhibit "E" Sheriff's Binding Arbitration Adjustment Salary Matrix - Effective January, 2016 (+1.7%)

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### Exhibit "F" Corrections Binding Arbitration Adjustment Salary Matrix - Effective January, 2016 (+1.7%)

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### Exhibit "G" Court Reporters & Health Officer Salary Matrix - Effective January, 2016 (+1.7%)

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### Exhibit "H" Commissioners Salary Matrix - Effective September 1, 2016

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**TITLE OF DOCUMENT:** Approval of joint letter for the Pollution Identification and Correction (PIC) program

**ATTACHMENTS:**
Draft joint letter

**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:** (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)

Request County Council approve Council Chair jointly sign a letter with the County Executive that will be sent to landowners as part of the pollution identification and correction program (PIC) community outreach introducing the program and explaining resources that are available to assist

---

**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.
Landowner Name
Landowner Address
Blaine, WA _______

Date

Dear Neighbor:

Our county is blessed with the richness of our water resources including rivers, creeks, lakes, and miles of marine shoreline. Along with the economic benefits and recreational opportunities we have come the responsibility of our community to care for these resources for current uses and for future generations. Water quality deterioration is a very real concern now in Whatcom County and we need the help of all landowners to work toward resolution of the issues we face.

We have a fecal coliform bacteria problem in our creeks, river and marine waters. These bacteria live in warm-blooded animals and common sources include livestock, humans, pets, and wildlife. The County routinely collects samples from approximately 90 locations, and only 20% of these sites currently meet water quality standards set to protect human health. In this past year, water quality in the Nooksack River has continued to decline resulting in a voluntary closure of shellfish beds by Lummi Nation. In Drayton Harbor, there is a seasonal closure of the shellfish beds from November through January. In this past year, there were two beach closures in Drayton Harbor and one in Birch Bay due to pollutant discharges to California, Dakota, and Terrell Creeks. These closures impact members of our community who depend upon clean water for their livelihood.

To address these issues, Whatcom County is initiating a Pollution Identification and Correction (PIC) program in your neighborhood. A PIC program uses water quality monitoring to identify areas where the highest bacteria levels are found and then works with landowners to correct these problems.

If you have livestock or a septic system you may have legal responsibilities to ensure that you are not polluting our area waters. You can learn more about small farming best practices at: http://www.whatcomcd.org/small-farm and more about septic system maintenance requirements at: http://www.co.whatcom.wa.us/health/environmental/sewage_systems/pdf/om_flyer_2013.pdf.

If you haven’t already done so, we ask that you review your farming practices if you farm, and ensure your septic system is operating correctly if you are responsible for one. This would be a very beneficial step in working together for a positive outcome for our waterways.

As time and resources allow, the Conservation District will be contacting you to offer a no cost, confidential risk assessment on your property. Concurrently, Whatcom County Health Department will be taking steps to ensure that everyone is following the rules related to septic systems.

We greatly appreciate your attention to this urgent matter. It will take all of us working together to solve this problem. Feel free to contact Erika Douglas at Public Works-Natural Resources at (360) 676-6876 to learn more about water quality in your neighborhood creek and free resources to assist landowners.

Sincerely,

Jack Louws
County Executive

Carl Weimer
County Council Chair

Revised 12/03/14
**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>JL</td>
<td>12/3/14</td>
<td></td>
<td>12/9/14</td>
<td>Finance Committee</td>
</tr>
<tr>
<td>Division Head:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dept. Head:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prosecutor:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Purchasing/Budget:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Executive:</td>
<td>12/2/14</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**TITLE OF DOCUMENT:** Lodging Tax Committee Approved Requests for Funding through Hotel/Motel Tax Funds for 2015

**ATTACHMENTS:**

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

Proposed Lodging Tax funding for 2015, as approved by the Lodging Tax Advisory Committee.

**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:       County Council
FROM:    Jack Louws, County Executive
DATE:   December 3, 2014
SUBJECT: 2015 Lodging Tax Funding Requests

The Whatcom County Lodging Tax Advisory Committee met on November 14, 2014 and considered funding requests for 2015. Requests totaling $808,078 were received. The total budgeted amount for 2015 is $550,000. After careful consideration, the Committee approved the requests outlined on the attached spreadsheet in a total amount of $550,000.

I am requesting Council approval of the Committee recommended awards. Per RCW 67.28, the legislative body does not have to fund the full list as recommended by the Lodging Tax Advisory Committee and can choose to make awards in the recommended amounts to all, some, or none of the candidates on the list.
<table>
<thead>
<tr>
<th>Requesting Agency</th>
<th>2014 Funded</th>
<th>2015 Requested</th>
<th>Committee Recommendation</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bellingham Festival of Music</td>
<td>$12,000.00</td>
<td>$25,000.00</td>
<td>$10,000.00</td>
<td></td>
</tr>
<tr>
<td>Bellingham Whatcom Chamber of Commerce</td>
<td>$0.00</td>
<td>$25,000.00</td>
<td>$10,000.00</td>
<td></td>
</tr>
<tr>
<td>Bellingham/Whatcom County Tourism</td>
<td>$250,000.00</td>
<td>$250,000.00</td>
<td>$250,000.00</td>
<td>Commit to one year contract</td>
</tr>
<tr>
<td>Birch Bay Chamber of Commerce - Visitor Information Center</td>
<td>$32,500.00</td>
<td>$57,535.00</td>
<td>$40,000.00</td>
<td></td>
</tr>
<tr>
<td>Birch Bay Chamber of Commerce - Re-Branding</td>
<td>$0.00</td>
<td>$52,000.00</td>
<td>$0.00</td>
<td></td>
</tr>
<tr>
<td>Cascade Loop Association - Scenic Highway Travel Guide</td>
<td>$4,000.00</td>
<td>$11,220.00</td>
<td>$0.00</td>
<td></td>
</tr>
<tr>
<td>Ferndale Chamber of Commerce - Cross Border Expo 2014</td>
<td>$10,000.00</td>
<td>$10,000.00</td>
<td>$5,000.00</td>
<td></td>
</tr>
<tr>
<td>Ferndale Chamber of Commerce - Visitor’s Information Center</td>
<td>$18,000.00</td>
<td>$18,000.00</td>
<td>$18,000.00</td>
<td></td>
</tr>
<tr>
<td>Ferndale Chamber of Commerce - Relocation</td>
<td>$0.00</td>
<td>$5,000.00</td>
<td>$0.00</td>
<td></td>
</tr>
<tr>
<td>542 Music Festival</td>
<td>$0.00</td>
<td>$25,000.00</td>
<td>$0.00</td>
<td></td>
</tr>
<tr>
<td>Lummi Island Reef Net Festival</td>
<td>$10,000.00</td>
<td>Not Received</td>
<td>$0.00</td>
<td></td>
</tr>
<tr>
<td>Lynden Pioneer Museum</td>
<td>$5,000.00</td>
<td>$7,500.00</td>
<td>$5,000.00</td>
<td></td>
</tr>
<tr>
<td>Mt. Baker Foothills Chamber of Commerce/Visitor Center</td>
<td>$80,000.00</td>
<td>$106,000.00</td>
<td>$61,167.00</td>
<td>combined contribution $119,500</td>
</tr>
<tr>
<td>Mt. Baker Scenic Byway Corridor &amp; Birch Bay Promotion</td>
<td>$58,333.00</td>
<td>$58,333.00</td>
<td>$58,333.00</td>
<td>to Mt. Baker Chamber</td>
</tr>
<tr>
<td>Mt. Baker World Music Festival</td>
<td>$10,000.00</td>
<td>$30,000.00</td>
<td>$0.00</td>
<td></td>
</tr>
<tr>
<td>Northwest Tandem Rally 2015</td>
<td>$0.00</td>
<td>$14,000.00</td>
<td>$5,000.00</td>
<td></td>
</tr>
<tr>
<td>Scottish Highland Games</td>
<td>$10,000.00</td>
<td>$10,000.00</td>
<td>$10,000.00</td>
<td></td>
</tr>
<tr>
<td>Sustainable Connections/Savor Whatcom Food &amp; Farms</td>
<td>$25,000.00</td>
<td>$35,000.00</td>
<td>$25,000.00</td>
<td></td>
</tr>
<tr>
<td>Whatcom Events/Mud to Suds Race</td>
<td>$5,000.00</td>
<td>$10,000.00</td>
<td>$5,000.00</td>
<td>combine w/ski to sea - $35,000 one contract</td>
</tr>
<tr>
<td>Whatcom Events/Ski to Sea</td>
<td>$30,000.00</td>
<td>$30,000.00</td>
<td>$30,000.00</td>
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<tr>
<td>Whatcom Symphony Orchestra</td>
<td>$12,000.00</td>
<td>$18,490.00</td>
<td>$10,000.00</td>
<td></td>
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<tr>
<td>Whatcom County Parks Brochure/Maps</td>
<td>$10,000.00</td>
<td>$10,000.00</td>
<td>$7,500.00</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>$581,833.00</strong></td>
<td><strong>$808,078.00</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Projected Expenditure Budget for 2015                       | $550,000.00  |
Projected Fund Balance - 1/1/2015                           | $1,166,691.00 |
TITLE OF DOCUMENT: Flood Control Zone District and Subzones 2014 Supplemental Budget Request #5

ATTACHMENTS: Resolution, Memoranda and Budget Modification Requests

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 #5 requests funding:
1. To appropriate $70,000 to Sumas/Nooksack/Everson Subzone to fund Swift Creek bank stabilization cost-share.
RESOLUTION NO. ________
(A resolution of the Whatcom County Flood Control Zone District Board of Supervisors)

AMENDMENT NO. 5 OF THE 2014 BUDGET

WHEREAS, the 2014 budget for the Whatcom County Flood Control Zone District and Subzones was adopted November 26, 2013; and,

WHEREAS, changing circumstances require modifications to the approved 2014 budget; and,

WHEREAS, the modifications to the budget have been assembled here for deliberation by the Board of Supervisors,

NOW, THEREFORE, BE IT RESOLVED by the Whatcom County Flood Control Zone District Board of Supervisors that the 2014 budget as approved in Resolution 2013-049 is hereby amended by adding the following additional amounts to the budgets included therein:

<table>
<thead>
<tr>
<th>Subzone</th>
<th>Expenditures</th>
<th>Revenues</th>
<th>Net Effect</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sumas / Nooksack / Everson Subzone</td>
<td>70,000</td>
<td>-</td>
<td>70,000</td>
</tr>
<tr>
<td>Total Supplemental</td>
<td>70,000</td>
<td>-</td>
<td>70,000</td>
</tr>
</tbody>
</table>

ADOPTED this ___ day of ____________________, 2014

ATTEST:

Dana Brown-Davis, Council Clerk

CARL WIEIMER, Chair of the Board of Supervisors

APPROVED AS TO FORM:

Daniel L. Gibson

Civil Deputy Prosecutor

WHATCOM COUNTY FCZD
BOARD OF SUPERVISORS
WHATCOM COUNTY, WASHINGTON
<table>
<thead>
<tr>
<th>Sumas / Nooksack / Everson Subzone</th>
<th>To fund Swift Creek bank stabilization cost-share</th>
<th>Expenditures</th>
<th>Revenues</th>
<th>Fund Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Supplemental</td>
<td></td>
<td>70,000</td>
<td>-</td>
<td>70,000</td>
</tr>
</tbody>
</table>
MEMORANDUM

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

THROUGH: Frank M. Abart, Director

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

RE: 2014 Supplemental Budget Request for SNE Subzone – Swift Creek Bank Stabilization

DATE: November 4, 2014

Requested Action
Enclosed for your review and consideration is a supplemental budget request for 2014 (see attached Supplemental Budget Request #1918).

Background and Purpose
This supplemental budget request authorizes $70,000 of additional expenditures for the Sumas/Nooksack/Everson (SNE) Subzone to cover their 30% cost-share for the 2014 bank stabilization project along Swift Creek. The total project budget is $600,000, of which 30%, or $180,000 will be reimbursed by the SNE Subzone. The current SNE Subzone budget included some funding for emergency/new projects but it was inadequate to cover the cost-share for a project of this scale.

Funding Amount and Source
Funding is from the Sumas/Nooksack/Everson Subzone fund balance.

Please contact Paula Cooper at extension 50625, if you have any questions or concerns regarding this request.
1a. Description of request:

This supplemental budget request provides additional expenditure authority for a 30% cost-share for the 2014 bank stabilization work along Swift Creek. Earlier this year, the creek eroded into the stockpile berms along the creek, causing the FCZD to implement an emergency project to rebuild the prism of the berm this spring. A more permanent project incorporating riprap protection is being implemented this fall to provide for longer-term protection. The Sumas/Nooksack/Everson Subzone is providing a 30% cost-share, consistent with the FCZD Flood Control Construction Cost-Share Program. The total project cost includes both the emergency repair in the spring and the riprap installation this fall.

1b. Primary customers:

Residents along Swift Creek and the travelling public

2. Problem to be solved:

Earlier this year, the creek eroded into the stockpile berms along the creek, reducing the width of the berms to less than half of what was there prior to the erosion. If no action was taken, the creek likely would have eroded through the berm, depositing asbestos-laden material outside of the creek channel. The FCZD implemented an emergency project to widen and rebuild the prism of the berm this spring. A more permanent project incorporating riprap protection is being implemented this fall to provide for longer-term protection.

3a. Options / Advantages:

If no action were taken, the creek could continue to erode the berm, and eventually spill out of its banks impacting County roads and private properties and infrastructure. In addition to flooding these areas, asbestos-laden sediments would be deposited.

3b. Cost savings:

N/A

4a. Outcomes:

The project is being constructed this fall and will be complete in December.

4b. Measures:

The project will be constructed.

5a. Other Departments/Agencies:

Installation of riprap along the banks will reduce the potential for the creek to break out of its channel, thereby reducing the potential for flooding and possible emergency measures or road closures by the Road Division.

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

N/A
Supplemental Budget Request

<table>
<thead>
<tr>
<th>Fund</th>
<th>Cost Center</th>
<th>Originator</th>
</tr>
</thead>
<tbody>
<tr>
<td>2E+0</td>
<td>16922</td>
<td>Paula Cooper</td>
</tr>
</tbody>
</table>

6. **Funding Source:**
The Sumas/Nooksack/Everson Subzone fund balance.
Local Agency Standard Consultant Agreement between Whatcom County with Whatcom County Flood Control Zone District and Larry Steele and Associates, Inc.

**ATTACHMENTS:**
1. Cover Memo
2. Agenda Bill
3. Contract Information Sheet
4. Local Agency Standard Consultant Agreement

**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 Local Agency Standard Consultant Agreement with Larry Steele and Associates will provide on-call professional land surveying services.
MEMORANDUM

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

Through: Frank M. Abart, Director

From: Joseph P. Rutan, P.E., County Engineer/Assistant Director
       James E. Lee, P.E., Engineering Manager

Date: November 24, 2014

Subject: On-Call Professional Land Surveying Services
Local Agency Standard Consultant Agreement with Larry Steele and Associates

Enclosed for your review and signature are two (2) originals of a Local Agency Standard Consultant Agreement between Whatcom County, the Whatcom County Flood Control District, and Larry Steele and Associates, Inc.

Requested Action
Public Works respectfully requests that the County Council authorize the County Executive to enter into a Local Agency Standard Consultant Agreement with Larry Steele and Associates to provide on-call professional land surveying services.

Background and Purpose
Whatcom County Public Works, at times, requires professional land surveying services beyond the capabilities of the current in-house survey staff. This contract will provide for these professional land surveying services.

Eight (8) surveying firms responded to a Request for Qualifications (RFQ #14-59). After review by a selection panel, Larry Steele and Associates was selected as the most qualified consultant for the work.

Funding Amount and Source
The not-to-exceed amount for this contract is $150,000. This is a task order based contract that will likely be utilized by multiple Public Works Departments (Design/Construction, Bridge and Hydraulics, Stormwater, River and Flood, etc.). As such, multiple funding sources will be utilized during work under this contract.

Please contact James Lee at extension 50617 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>Public Works</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract or Grant Administrator:</td>
<td>James E. Lee, Engineering Manager</td>
</tr>
<tr>
<td>Contractor's / Agency Name:</td>
<td>Larry Steele and Associates, Inc.</td>
</tr>
</tbody>
</table>

- **Is this a New Contract?** Yes ☒ No ☐
- If not, is this an Amendment or Renewal to an Existing Contract? Yes ☐ No ☒

### Does contract require Council Approval? Yes ☒ 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 ☒
- If yes, grantor agency contract number(s): _______________ CFDA#: _______________

- **Is this contract grant funded?** Yes ☐ No ☒
- If yes, Whatcom County grant contract number(s): _______________

- **Is this contract the result of a RFP or Bid process?** Yes ☒ No ☐
  - If yes, RFP and Bid number(s): $RFQ$ 14-59
  - Contract Cost Center: _______________

- **Is this agreement excluded from E-Verify?** No ☐ Yes ☒
  - If no, include Attachment D Contractor Declaration form.

If YES, indicate exclusion(s) below:
- ☒ Professional services agreement for certified/licensed professional.
  - ☐ Contract work is for less than $100,000.
  - ☐ Contract work is for less than 120 days.
  - ☐ Interlocal Agreement (between Governments).
  - ☐ Contract for Commercial off the shelf items (COTS).
  - ☐ Work related subcontract less than $25,000.
  - ☐ Public Works - Local Agency/Federally Funded FHWA.

### Contract Amount:
- Sum of original contract amount and any prior amendments: $150,000.00

- This Amendment Amount: $ _______________

- Total Amended Amount: $ _______________

### Summary of Scope:
This Local Agency Standard Consultant Agreement with Larry Steele and Associates will provide on-call professional land surveying services.

### Term of Contract:
- **Not to exceed**
- **Expiration Date:** 12-31-2015

### Contract Routing:
1. Prepared by: AMSS
2. Attorney signoff: Daniel L. Gibson
3. AS Finance reviewed: bbennett
4. IT reviewed (if IT related):
5. Contractor signed:
6. Submitted to Exec.: 
7. Council approved (if necessary):
8. Executive signed:
9. Original to Council:

### Contracts that require Council Approval (incl. agenda bill & memo):
- Professional Services Agreement above $20,000.
- Bid is more than $50,000.
- Amendments that have either an increase greater than 10% or provide a $10,000 increase in amount (whichever is greater)

### RENEWALS: Council approval is not required when exercising an option to renew that is provided in the original contract.

- Date: 11-17-2014
- Date: 11-18-14
- Date: 11-19-14
- Date: 11-25-14
- Last Edited: 060414
Local Agency Standard Consultant Agreement

- Architectural/Engineering Agreement
- Personal Services Agreement

Agreement Number

Federal Aid Number
N/A

Agreement Type (Choose one)
- [ ] Lump Sum
  Lump Sum Amount $ ________________
- [ ] Cost Plus Fixed Fee
  Overhead Progress Payment Rate ______
  Overhead Cost Method
  - [ ] Actual Cost
  - [ ] Actual Cost Not To Exceed ______
  - [ ] Fixed Overhead Rate ______
  Fixed Fee $ ________________
- [ ] Specific Rates Of Pay
  - [ ] Negotiated Hourly Rate
  - [ ] Provisional Hourly Rate
- [ ] Cost Per Unit of Work

Consultant/Address/Telephone
Larry Steele & Associates, Inc.
1334 King Street, Suite 1
Bellingham, WA 98229

(360) 676-9350

Project Title And Work Description
On-Call Professional Land Surveying Services for 2014-2015

DBE Participation
- [ ] Yes
- [x] No

Federal ID Number or Social Security Number

Do you require a 1099 for IRS?
- [ ] Yes
- [x] No

Completion Date
December 31, 2015

Total Amount Authorized $ 150,000.00

Management Reserve Fund $

Maximum Amount Payable $ 150,000.00

Index of Exhibits (Check all that apply):
- [x] Exhibit A-1 Scope of Work
- [x] Exhibit A-2 Task Order Agreement
- [ ] Exhibit B-1 DBE Utilization Certification
- [x] Exhibit C Electronic Exchange of Data
- [ ] Exhibit D-1 Payment - Lump Sum
- [ ] Exhibit D-2 Payment - Cost Plus
- [ ] Exhibit D-3 Payment - Hourly Rate
- [ ] Exhibit D-4 Payment - Provisional
- [ ] Exhibit E-1 Fee - Lump/Fixed/Unit
- [x] Exhibit E-2 Fee - Specific Rates
- [ ] Exhibit F Overhead Cost
- [ ] Exhibit G Subcontracted Work
- [ ] Exhibit G-1 Subconsultant Fee
- [ ] Exhibit G-2 Fee-Sub Specific Rates
- [ ] Exhibit G-3 Sub Overhead Cost
- [ ] Exhibit H Title VI Assurances
- [ ] Exhibit I Payment Upon Termination of Agreement
- [ ] Exhibit J Alleged Consultant Design Error Procedures
- [ ] Exhibit K Consultant Claim Procedures
- [ ] Exhibit L Liability Insurance Increase
- [ ] Exhibit M-1a Consultant Certification
- [ ] Exhibit M-1b Agency Official Certification
- [ ] Exhibit M-2 Certification - Primary
- [ ] Exhibit M-3 Lobbying Certification
- [ ] Exhibit M-4 Pricing Data Certification
- [ ] App. 31.910 Supplemental Signature Page

THIS AGREEMENT, made and entered into this ______ day of _____, 2014, between the Local Agency of Whatcom County and Whatcom County Flood Control Zone District (WCFCZD), Washington, hereinafter called the "AGENCY" and the above organization hereinafter called the "CONSULTANT".

DOT Form 140-088 EF
Revised 09/2013
WITNESSETH THAT:

WHEREAS, the AGENCY desires to accomplish the above referenced project, and

WHEREAS, the AGENCY does not have sufficient staff to meet the required commitment and therefore deems it advisable and desirable to engage the assistance of a CONSULTANT to provide the necessary services for the PROJECT; and

WHEREAS, the CONSULTANT represents that he/she is in compliance with the Washington State Statutes relating to professional registration, if applicable, and has signified a willingness to furnish Consulting services to the AGENCY,

NOW THEREFORE, in consideration of the terms, conditions, covenants and performance contained herein, or attached and incorporated and made a part hereof, the parties hereto agree as follows:

I General Description of Work

The work under this AGREEMENT shall consist of the above described work and services as herein defined and necessary to accomplish the completed work for this PROJECT. The CONSULTANT shall furnish all services, labor, and related equipment necessary to conduct and complete the work as designated elsewhere in this AGREEMENT.

II Scope of Work

The Scope of Work and projected level of effort required for this PROJECT is detailed in Exhibit “A” attached hereto and by this reference made a part of this AGREEMENT.

III General Requirements

All aspects of coordination of the work of this AGREEMENT with outside agencies, groups, or individuals shall receive advance approval by the AGENCY. Necessary contacts and meetings with agencies, groups, and/or individuals shall be coordinated through the AGENCY. The CONSULTANT shall attend coordination, progress and presentation meetings with the AGENCY and/or such Federal, State, Community, City or County officials, groups or individuals as may be requested by the AGENCY. The AGENCY will provide the CONSULTANT sufficient notice prior to meetings requiring CONSULTANT participation. The minimum required hours or days notice shall be agreed to between the AGENCY and the CONSULTANT and shown in Exhibit “A.”

The CONSULTANT shall prepare a monthly progress report, in a form approved by the AGENCY, which will outline in written and graphical form the various phases and the order of performance of the work in sufficient detail so that the progress of the work can easily be evaluated.

The CONSULTANT, and each SUBCONSULTANT, shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The CONSULTANT, and each SUBCONSULTANT, shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of US DOT-assisted contracts. Failure by the CONSULTANT to carry out these requirements is a material breach of this AGREEMENT that may result in the termination of this AGREEMENT.

Participation for Disadvantaged Business Enterprises (DBE), if required, per 49 CFR Part 26, or participation of Minority Business Enterprises (MBE), and Women Business Enterprises (WBE), shall be shown on the heading of this AGREEMENT. If D/M/WBE firms are utilized, the amounts authorized to each firm and their certification number will be shown on Exhibit “B” attached hereto and by this reference made a part of this AGREEMENT. If the Prime CONSULTANT is a DBE firm they must comply with the Commercial Useful Function (CUF) regulation outlined in the AGENCY’S “DBE Program Participation Plan”. The mandatory DBE participation goals of the AGREEMENT are those established by the WSDOT’S Highway and Local Programs Project Development Engineer in consultation with the AGENCY.

All Reports, PS&E materials, and other data furnished to the CONSULTANT by the AGENCY shall be returned. All electronic files, prepared by the CONSULTANT, must meet the requirements as outlined in Exhibit “C.”

All designs, drawings, specifications, documents, and other work products, including all electronic files, prepared by the CONSULTANT prior to completion or termination of this AGREEMENT are instruments of service for this PROJECT, and are the property of the AGENCY. Reuse by the AGENCY or by others, acting through or on behalf of the AGENCY of any such instruments of service, not occurring as a part of this PROJECT, shall be without liability or legal exposure to the CONSULTANT.
IV Time for Beginning and Completion
The CONSULTANT shall not begin any work under the terms of this AGREEMENT until authorized in writing by the AGENCY.

All work under this AGREEMENT shall be completed by the date shown in the heading of this AGREEMENT under completion date.

The established completion time shall not be extended because of any delays attributable to the CONSULTANT, but may be extended by the AGENCY in the event of a delay attributable to the AGENCY, or because of unavoidable delays caused by an act of GOD or governmental actions or other conditions beyond the control of the CONSULTANT. A prior supplemental agreement issued by the AGENCY is required to extend the established completion time.

V Payment Provisions
The CONSULTANT shall be paid by the AGENCY for completed work and services rendered under this AGREEMENT as provided in Exhibit “D” attached hereto, and by reference made part of this AGREEMENT. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work. The CONSULTANT shall conform to all applicable portions of 48 CFR Part 31.

A post audit may be performed on this AGREEMENT. The need for a post audit will be determined by the State Auditor, WSDOT External Audit Office and/or at the request of the AGENCY’S PROJECT Manager.

VI Sub-Contracting
The AGENCY permits sub-contracts for those items of work as shown in Exhibit “G” attached hereto and by this reference made part of this AGREEMENT.

Compensation for this sub-consultant work shall be based on the cost factors shown on Exhibit “G.”

The work of the sub-consultant shall not exceed its maximum amount payable unless a prior written approval has been issued by the AGENCY.

All reimbursable direct labor, overhead, direct non-salary costs and fixed fee costs for the sub-consultant shall be substantiated in the same manner as outlined in Section V. All sub-contracts shall contain all applicable provisions of this AGREEMENT.

With respect to sub-consultant payment, the CONSULTANT shall comply with all applicable sections of the Prompt Payment laws as set forth in RCW 39.04.250 and RCW 39.76.011.

The CONSULTANT shall not sub-contract for the performance of any work under this AGREEMENT without prior written permission of the AGENCY. No permission for sub-contracting shall create, between the AGENCY and sub-contractor, any contract or any other relationship. A DBE certified sub-consultant is required to perform a minimum amount of their sub-contracted agreement that is established by the WSDOT Local Programs Project Development Engineer in consultation with the AGENCY.

VII Employment
The CONSULTANT warrants that they have not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warrant, the AGENCY shall have the right to annul this AGREEMENT without liability or, in its discretion, to deduct from the AGREEMENT price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

Any and all employees of the CONSULTANT or other persons while engaged in the performance of any work or services required of the CONSULTANT under this AGREEMENT, shall be considered employees of the CONSULTANT only and not of the AGENCY, and any and all claims that may arise under any Workmen's Compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by a
third party as a consequence of any act or omission on the part of the CONSULTANT'S employees or other persons while so engaged on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the CONSULTANT.

The CONSULTANT shall not engage, on a full- or part-time basis, or other basis, during the period of the contract, any professional or technical personnel who are, or have been, at any time during the period of the contract, in the employ of the United States Department of Transportation, or the STATE, or the AGENCY, except regularly retired employees, without written consent of the public employer of such person.

VIII Nondiscrimination
During the performance of this contract, the CONSULTANT, for itself, its assignees, and successors in interest agrees to comply with the following laws and regulations:

Title VI of the Civil Rights Act of 1964
(42 USC Chapter 21 Subchapter V Section 2000d through 2000d-4a)

Federal-aid Highway Act of 1973
(23 USC Chapter 3 Section 324)

Rehabilitation Act of 1973
(29 USC Chapter 16 Subchapter V Section 794)

Age Discrimination Act of 1975
(42 USC Chapter 76 Section 6101 et seq.)

Civil Rights Restoration Act of 1987
(Public Law 100-259)

American with Disabilities Act of 1990
(42 USC Chapter 126 Section 12101 et. seq.)

49 CFR Part 21

23 CFR Part 200

RCW 49.60.180

In relation to Title VI of the Civil Rights Act of 1964, the CONSULTANT is bound by the provisions of Exhibit “H” attached hereto and by this reference made part of this AGREEMENT, and shall include the attached Exhibit “H” in every sub-contract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto.

IX Termination of Agreement
The right is reserved by the AGENCY to terminate this AGREEMENT at any time upon ten (10) days written notice to the CONSULTANT.

In the event this AGREEMENT is terminated by the AGENCY other than for default on the part of the CONSULTANT, a final payment shall be made to the CONSULTANT as shown in Exhibit “I” for the type of AGREEMENT used.

No payment shall be made for any work completed after ten (10) days following receipt by the CONSULTANT of the Notice to Terminate. If the accumulated payment made to the CONSULTANT prior to Notice of Termination exceeds the total amount that would be due when computed as set forth herein above, then no final payment shall be due and the CONSULTANT shall immediately reimburse the AGENCY for any excess paid.

If the services of the CONSULTANT are terminated by the AGENCY for default on the part of the CONSULTANT, the above formula for payment shall not apply.
In such an event, the amount to be paid shall be determined by the AGENCY with consideration given to the actual costs incurred by the CONSULTANT in performing the work to the date of termination, the amount of work originally required which was satisfactorily completed to date of termination, whether that work is in a form or a type which is usable to the AGENCY at the time of termination, the cost to the AGENCY of employing another firm to complete the work required and the time which may be required to do so, and other factors which affect the value to the AGENCY of the work performed at the time of termination.

Under no circumstances shall payment made under this subsection exceed the amount, which would have been made using the formula set forth above.

If it is determined for any reason that the CONSULTANT was not in default or that the CONSULTANT’S failure to perform is without the CONSULTANT’S or it’s employee’s default or negligence, the termination shall be deemed to be a termination for the convenience of the AGENCY. In such an event, the CONSULTANT would be reimbursed for actual costs in accordance with the termination for other than default clauses listed previously.

In the event of the death of any member, partner or officer of the CONSULTANT or any of its supervisory personnel assigned to the PROJECT, or dissolution of the partnership, termination of the corporation, or disaffiliation of the principally involved employee, the surviving members of the CONSULTANT hereby agree to complete the work under the terms of this AGREEMENT, if requested to do so by the AGENCY. This subsection shall not be a bar to renegotiation of the AGREEMENT between the surviving members of the CONSULTANT and the AGENCY, if the AGENCY so chooses.

In the event of the death of any of the parties listed in the previous paragraph, should the surviving members of the CONSULTANT, with the AGENCY’S concurrence, desire to terminate this AGREEMENT, payment shall be made as set forth in the second paragraph of this section.

Payment for any part of the work by the AGENCY shall not constitute a waiver by the AGENCY of any remedies of any type it may have against the CONSULTANT for any breach of this AGREEMENT by the CONSULTANT, or for failure of the CONSULTANT to perform work required of it by the AGENCY. Forbearance of any rights under the AGREEMENT will not constitute waiver of entitlement to exercise those rights with respect to any future act or omission by the CONSULTANT.

X Changes of Work
The CONSULTANT shall make such changes and revisions in the complete work of this AGREEMENT as necessary to correct errors appearing therein, when required to do so by the AGENCY, without additional compensation thereof. Should the AGENCY find it desirable for its own purposes to have previously satisfactorily completed work or parts thereof changed or revised, the CONSULTANT shall make such revisions as directed by the AGENCY. This work shall be considered as Extra Work and will be paid for as herein provided under Section XIV.

XI Disputes
Any dispute concerning questions of fact in connection with the work not disposed of by AGREEMENT between the CONSULTANT and the AGENCY shall be referred for determination to the Director of Public Works or AGENCY Engineer, whose decision in the matter shall be final and binding on the parties of this AGREEMENT; provided, however, that if an action is brought challenging the Director of Public Works or AGENCY Engineer’s decision, that decision shall be subject to de novo judicial review. If the parties to this AGREEMENT mutually agree, disputes concerning alleged design errors will be conducted under the procedures found in Exhibit “J”, and disputes concerning claims will be conducted under the procedures found in Exhibit “K”.

XII Venue, Applicable Law, and Personal Jurisdiction
In the event that either party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the parties hereto agree that any such action shall be initiated in the Superior court of the State of Washington, situated in the county in which the AGENCY is located. The parties hereto agree that all questions shall be resolved by application of Washington law and that the parties to such action shall have the right of appeal from such decisions of the Superior court in accordance with the laws of the State of Washington. The CONSULTANT hereby consents to the personal jurisdiction of the Superior court of the State of Washington, situated in the county in which the AGENCY is located.
XIII Legal Relations
The CONSULTANT shall comply with all Federal, State, and local laws and ordinances applicable to the work to be done under this AGREEMENT. This contract shall be interpreted and construed in accordance with the laws of the State of Washington.

The CONSULTANT shall indemnify and hold the AGENCY and the STATE and its officers and employees harmless from and shall protect and defend at its own expense all claims, demands, or suits at law or equity arising in whole or in part from the CONSULTANT'S negligence or breach of any of its obligations under this AGREEMENT; provided that nothing herein shall require a CONSULTANT to indemnify the AGENCY or the STATE against and hold harmless the AGENCY or the STATE from claims, demands or suits based solely upon the conduct of the AGENCY or the STATE, their agents, officers and employees; and provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the CONSULTANT’S agents or employees, and (b) the AGENCY or the STATE, their agents, officers and employees, this indemnity provision with respect to (1) claims or suits based upon such negligence (2) the costs to the AGENCY or the STATE of defending such claims and suits shall be valid and enforceable only to the extent of the CONSULTANT’S negligence or the negligence of the CONSULTANT’S agents or employees.

The CONSULTANT’S relation to the AGENCY shall be at all times as an independent contractor.

The CONSULTANT shall comply with all applicable sections of the applicable Ethics laws, including RCW 42.23, which is the Code of Ethics for regulating contract interest by municipal officers. The CONSULTANT specifically assumes potential liability for actions brought by the CONSULTANT’S own employees against the AGENCY and, solely for the purpose of this indemnification and defense, the CONSULTANT specifically waives any immunity under the state industrial insurance law, Title 51 RCW.

Unless otherwise specified in the AGREEMENT, the AGENCY shall be responsible for administration of construction contracts, if any, on the PROJECT. Subject to the processing of a new sole source, or an acceptable supplemental agreement, the CONSULTANT shall provide On-Call assistance to the AGENCY during contract administration. By providing such assistance, the CONSULTANT shall assume no responsibility for: proper construction techniques, job site safety, or any construction contractor’s failure to perform its work in accordance with the contract documents.

The CONSULTANT shall obtain and keep in force during the terms of the AGREEMENT, or as otherwise required, the following insurance with companies or through sources approved by the State Insurance Commissioner pursuant to Title 48 RCW.

Insurance Coverage

A. Worker’s compensation and employer’s liability insurance as required by the STATE.
B. Commercial general liability written under ISO Form CG 00 01 12 04 or its equivalent with minimum limits of one million dollars ($1,000,000) per occurrences and two million dollars ($2,000,000) in the aggregate for each policy period.
C. Vehicle liability insurance for any automobile used in an amount not less than a one million dollar ($1,000,000) combined single limit.

Excepting the Worker’s Compensation Insurance and any Professional Liability Insurance secured by the CONSULTANT, the AGENCY will be named on all policies as an additional insured. The CONSULTANT shall furnish the AGENCY with verification of insurance and endorsements required by the AGREEMENT. The AGENCY reserves the right to require complete, certified copies of all required insurance policies at any time.

All insurance shall be obtained from an insurance company authorized to do business in the State of Washington. The CONSULTANT shall submit a verification of insurance as outlined above within fourteen (14) days of the execution of this AGREEMENT to the AGENCY.

No cancellation of the foregoing policies shall be effective without thirty (30) days prior notice to the AGENCY.

The CONSULTANT’S professional liability to the AGENCY shall be limited to the amount payable under this AGREEMENT or one million ($1,000,000) dollars, whichever is the greater, unless modified by Exhibit “L”. In no case shall the CONSULTANT’S professional liability to third parties be limited in any way.
The AGENCY will pay no progress payments under Section V until the CONSULTANT has fully complied with this section. This remedy is not exclusive; and the AGENCY and the STATE may take such other action as is available to it under other provisions of this AGREEMENT, or otherwise in law.

XIV Extra Work
A. The AGENCY may at any time, by written order, make changes within the general scope of the AGREEMENT in the services to be performed.

B. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this AGREEMENT, whether or not changed by the order, or otherwise affects any other terms and conditions of the AGREEMENT, the AGENCY shall make an equitable adjustment in the (1) maximum amount payable; (2) delivery or completion schedule, or both; and (3) other affected terms and shall modify the AGREEMENT accordingly.

C. The CONSULTANT must submit any “request for equitable adjustment”, hereafter referred to as “CLAIM”, under this clause within thirty (30) days from the date of receipt of the written order. However, if the AGENCY decides that the facts justify it, the AGENCY may receive and act upon a CLAIM submitted before final payment of the AGREEMENT.

D. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the CONSULTANT from proceeding with the AGREEMENT as changed.

E. Notwithstanding the terms and conditions of paragraphs (A) and (B) above, the maximum amount payable for this AGREEMENT, shall not be increased or considered to be increased except by specific written supplement to this AGREEMENT.

XV Endorsement of Plans
If applicable, the CONSULTANT shall place their endorsement on all plans, estimates, or any other engineering data furnished by them.

XVI Federal and State Review
The Federal Highway Administration and the Washington State Department of Transportation shall have the right to participate in the review or examination of the work in progress.

XVII Certification of the Consultant and the Agency
Attached hereto as Exhibit “M-1(a and b)” are the Certifications of the CONSULTANT and the AGENCY, Exhibit “M-2” Certification Regarding Debarment, Suspension and Other Responsibility Matters - Primary Covered Transactions, Exhibit “M-3” Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying and Exhibit “M-4” Certificate of Current Cost or Pricing Data. Exhibit “M-3” is required only in AGREEMENTS over $100,000 and Exhibit “M-4” is required only in AGREEMENTS over $500,000.

XVIII Complete Agreement
This document and referenced attachments contain all covenants, stipulations, and provisions agreed upon by the parties. No agent, or representative of either party has authority to make, and the parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein. No changes, amendments, or modifications of the terms hereof shall be valid unless reduced to writing and signed by the parties as an amendment to this AGREEMENT.

XIX Execution and Acceptance
This AGREEMENT may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. The CONSULTANT does hereby ratify and adopt all statements, representations, warranties, covenants, and agreements contained in the proposal, and the supporting material submitted by the CONSULTANT, and does hereby accept the AGREEMENT and agrees to all of the terms and conditions thereof.
In witness whereof, the parties hereto have executed this AGREEMENT as of the day and year shown in the "Execution Date" box on page one (1) of this AGREEMENT.

By ___________________________ By ___________________________

Consultant Larry Steele & Associates, Inc. Agency Whatcom County and WCFCZD
WHATCOM COUNTY:
Recommended for Approval:

[Signature]
Department Director Date

Approved as to form:

[Signature]
Chief Civil Deputy Prosecutor Date

Approved:
Accepted for Whatcom County and WCFCZD:

By: __________________________
Jack Louws, Whatcom County Executive

STATE OF WASHINGTON )
COUNTY OF WHATCOM ) ss

On this _______ day of ___________, 20______, before me personally appeared Jack Louws, to me known to be the Executive of Whatcom County, who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

______________________________
NOTARY PUBLIC in and for the State of Washington, residing at ____________________.
My commission expires ____________________.
EXHIBIT A-1
(SCOPE OF WORK)

Surveying Services:

1. The survey crew shall work on an "as Requested" basis only, as determined by the Agency.

2. Prior to mutual acceptance of a task assignment, the Contractor will prepare a written itemized cost estimate for the requested services.

3. The Contractor agrees to furnish the services of a licensed professional land surveyor (P.T.S) and appropriate technical support/survey field personnel to provide on-call survey services for the Agency as defined by the Task Assignment Scope of Services. Such services may entail any of the following tasks:
   a. Performing boundary and cadastral surveys, including historic boundary research and analysis as necessary;
   b. Setting new property corners at new right-of-way (R/W) boundaries between the Agency and private property and generating the corresponding record of survey (ROS) or other approved documentation;
   c. Recovering and/or establishing survey control;
   d. Resetting or recovering lost or destroyed section monuments and generating a corresponding ROS or other approved documentation;
   e. Conducting bathymetric surveys of rivers and streams;
   f. Providing professional opinion on boundary issues involving government lots, encroachments, reservation lands, monumentation, and boundary lines between adjacent private property owners, as it relates to Whatcom County R/W;
   g. Coordination with the Agency staff to facilitate smooth exchange of data and resolve inconsistencies as necessary;
   h. Providing R/W staking support;
   i. Providing construction surveying support;
   j. Writing and/or reviewing legal descriptions;
   k. Preparing basemaps;
   l. Providing deliverables including, but not limited to, the following: Legal descriptions, ASCII files of survey points, diagrams, survey drawings, and elevations.
Administration:

1. Contractor shall utilize a reporting system that will track the contract budget by providing both project amount expended to date and overall contract amount expended to date.

2. Every quarter (3 months), Contractor will provide the Agency with an update on the contract dollar amount expended to date. The update shall summarize each invoice number, date and amount. This information should be emailed to the Agency. Contractor shall reference the Whatcom County Contract No. (WCC#) on all correspondence related to this contract. The Agency may relax this requirement if Contractor's reporting system shows this to be a redundant method.

3. Tasks completed must be listed on invoices using the exact description as they appear on the Contractor's Fee Schedule for the various tasks or tests involved.

4. Invoices shall be segregated by project CRP Number or task description if there is no CRP Number related to the task.

Insurance:

The contractor shall carry, for the duration of this Contract, general liability and property damage insurance. The insurance shall be primary, non-contributory, and shall waive all rights of subrogation. The insurance shall identify the Agency as an additional insured.
Exhibit A-2
Scope of Work
(Task Order Agreement)

Each item of work under this AGREEMENT will be provided by task assignment. Each assignment will be individually negotiated with the CONSULTANT. The amount established for each assignment will be the maximum amount payable for that assignment unless modified in writing by the AGENCY. The AGENCY is not obligated to assign any specific number of tasks to the CONSULTANT, and the AGENCY'S and CONSULTANT'S obligations hereunder are limited to tasks assigned in writing. Task assignments may include but are not limited to, the following types of work:

A. On-call Surveying Services
B. 
C. 
D. 
E. 
F. 

Task assignments made by the AGENCY shall be issued in writing by a Formal Task Assignment Document similar in format to page 2 of this exhibit.

An assignment shall become effective when a formal Task Assignment Document is signed by the CONSULTANT and the AGENCY, except that emergency actions requiring a 24-hour or less response can be handled by an oral authorization. Such oral authorization shall be followed up with a Formal Task Assignment Document within four working days, and any billing rates agreed to orally (for individuals, subconsultants, or organizations whose rates were not previously established in the AGREEMENT) shall be provisional and subject to final negotiation and acceptance by the AGENCY.
Formal Task Assignment Document

Task Number ____________

The general provisions and clauses of Agreement ____________ shall be in full force and effect for this Task Assignment.

Location of Project: __________________________________________________________

Project Title: On-Call Professional Land Surveying Services for 2014-2015

Maximum Amount Payable Per Task Assignment: _______________________________

Completion Date: __________________________________________________________

Description of Work:
(Note attachments and give brief description)

Agency Project Manager Signature: ____________________________ Date: ____________

Oral Authorization Date: ____________________________ See Letter Dated: ____________

Consultant Signature: ______________________________________ Date: ____________

Agency Approving Authority: ____________________________ Date: ____________
Exhibit C
Electronic Exchange of Engineering and Other Data

In this Exhibit the agency, as applicable, is to provide a description of the format and standards the consultant is to use in preparing electronic files for transmission to the agency. The format and standards to be provided may include, but are not limited to, the following:

I. Surveying, Roadway Design & Plans Preparation Section
   A. Survey Data
   ______________________________________________________
   ______________________________________________________

   B. Roadway Design Files
   ______________________________________________________
   ______________________________________________________

   C. Computer Aided Drafting Files
   ______________________________________________________
   ______________________________________________________

   D. Specify the Agency’s Right to Review Product with the Consultant
   ______________________________________________________
   ______________________________________________________

   E. Specify the Electronic Deliverables to Be Provided to the Agency
   ______________________________________________________
   ______________________________________________________

   F. Specify What Agency Furnished Services and Information Is to Be Provided
   ______________________________________________________
   ______________________________________________________

II. Any Other Electronic Files to Be Provided
   ______________________________________________________
   ______________________________________________________
III. Methods to Electronically Exchange Data

A. Agency Software Suite

B. Electronic Messaging System

C. File Transfers Format
Exhibit D-3
Payment (Negotiated Hourly Rate)

The CONSULTANT shall be paid by the AGENCY for completed work and services rendered under this AGREEMENT as provided hereinafter. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work. The CONSULTANT shall conform to all applicable portions of 48 CFR Part 31.

1. Hourly Rates: The CONSULTANT shall be paid by the AGENCY for work done, based upon the negotiated hourly rates shown in Exhibit "E" and "F" attached hereto and by this reference made part of this AGREEMENT. The rates listed shall be applicable for the first twelve (12) month period and shall be subject to negotiation for the following twelve (12) month period upon request of the CONSULTANT or the AGENCY. If negotiations are not conducted for the second or subsequent twelve (12) month periods within ninety (90) days after completion of the previous period, the rates listed in this AGREEMENT, or subsequent written authorization(s) from the AGENCY shall be utilized. The rates are inclusive of direct salaries, payroll additives, overhead, and fee. The CONSULTANT shall maintain support data to verify the hours billed on the AGREEMENT.

2. Direct Non-Salary Costs: Direct Non-Salary Costs will be reimbursed at the Actual Cost to the CONSULTANT. These charges may include, but are not limited to, the following items: travel, printing, long distance telephone, supplies, computer charges and sub-consultant costs.
   a. Air or train travel will be reimbursed only to economy class levels unless otherwise approved by the AGENCY. The CONSULTANT shall comply with the rules and regulations regarding travel costs (excluding air, train, and rental car costs) in accordance with the AGENCY’S Travel Rules and Procedures. However, air, train, and rental car costs shall be reimbursed in accordance with 48 CFR Part 31.205-46 “Travel Costs.”
   b. The billing for Direct Non-Salary Costs shall include an itemized listing of the charges directly identifiable with the PROJECT.
   c. The CONSULTANT shall maintain the original supporting documents in their office. Copies of the original supporting documents shall be supplied to the AGENCY upon request.
   d. All above charges must be necessary for the services provided under this AGREEMENT.

3. Management Reserve Fund: The AGENCY may desire to establish a Management Reserve Fund to provide the Agreement Administrator with the flexibility to authorize additional funds to the AGREEMENT for allowable unforeseen costs, or reimbursing the CONSULTANT for additional work beyond that already defined in this AGREEMENT. Such authorization(s) shall be in writing and shall not exceed the lesser of $100,000 or 10% of the Total Amount Authorized as shown in the heading of this AGREEMENT. The amount included for the Management Reserve Fund is shown in the heading of this AGREEMENT. This fund may not be replenished. Any changes requiring additional costs in excess of the Management Reserve Fund shall be made in accordance with Section XIV, “Extra Work.”
4. Maximum Total Amount Payable: The Maximum Total Amount Payable by the AGENCY to the CONSULTANT under this AGREEMENT shall not exceed the amount shown in the heading of this AGREEMENT. The Maximum Total Amount Payable is comprised of the Total Amount Authorized, and the Management Reserve Fund. The Maximum Total Amount Payable does not include payment for Extra Work as stipulated in Section XIV, “Extra Work.” No minimum amount payable is guaranteed under this AGREEMENT.

5. Monthly Progress Payments: Progress payments may be claimed on a monthly basis for all costs authorized in 1 and 2 above. The monthly billing shall be supported by detailed statements for hours expended at the rates established in Exhibit “E”, including names and classifications of all employees, and billings for all direct non-salary expenses. To provide a means of verifying the billed salary costs for the CONSULTANT’S employees, the AGENCY may conduct employee interviews. These interviews may consist of recording the names, titles, salary rates, and present duties of those employees performing work on the PROJECT at the time of the interview.

6. Final Payment: Final Payment of any balance due the CONSULTANT of the gross amount earned will be made promptly upon its verification by the AGENCY after the completion of the work under this AGREEMENT, contingent upon receipt of all PS&E plans, maps, notes, reports, electronic data and other related documents which are required to be furnished under this AGREEMENT. Acceptance of such Final Payment by the CONSULTANT shall constitute a release of all claims for payment, which the CONSULTANT may have against the AGENCY unless such claims are specifically reserved in writing and transmitted to the AGENCY by the CONSULTANT prior to its acceptance. Said Final Payment shall not, however, be a bar to any claims that the AGENCY may have against the CONSULTANT or to any remedies the AGENCY may pursue with respect to such claims.

The payment of any billing will not constitute agreement as to the appropriateness of any item and at the time of final audit, all required adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment to the CONSULTANT, the CONSULTANT will refund such overpayment to the AGENCY within thirty (30) days of notice of the overpayment. Such refund shall not constitute a waiver by the CONSULTANT for any claims relating to the validity of a finding by the AGENCY of overpayment. The CONSULTANT has twenty (20) days after receipt of the final POST AUDIT to begin the appeal process to the AGENCY for audit findings.

7. Inspection of Cost Records: The CONSULTANT and their sub-consultants shall keep available for inspection by representatives of the AGENCY, STATE and the United States, for a period of three (3) years after receipt of final payment, the cost records and accounts pertaining to this AGREEMENT and all items related to or bearing upon these records with the following exception: if any litigation, claim or audit arising out of, in connection with, or related to this contract is initiated before the expiration of the three (3) year period, the cost records and accounts shall be retained until such litigation, claim, or audit involving the records is completed.
## 2014-2015 Fee & Rate Schedule

### Including Prevailing Wage Projects

#### Whatcom County

<table>
<thead>
<tr>
<th>Office</th>
<th>Rate</th>
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<tbody>
<tr>
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### Field-Regular Wage

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<tr>
<td>3 Person Survey Crew</td>
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<tr>
<td>Hydrographic Survey Crew</td>
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### Field-Prevailing Wage

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<tr>
<td>3 Person Survey Crew</td>
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**Please Note:** Rates are based on a ten (10) hour/day, forty (40) hour/week maximum. Hours beyond ten (10) hours/day, forty (40) hours/week will be billed at time-and-a-half. All federal holidays and Sundays are billed at double time unless otherwise stated.

### Other Expenses

<table>
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<tbody>
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<tr>
<td>Subconsultants</td>
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<td>Traffic Control</td>
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<td>Specialized Rental Equipment</td>
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<tr>
<td>Fees – Application Fees, Title Company Fees, Recording Fees</td>
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<td>Miscellaneous Fees – Map Copies, Postage Expenses, etc.</td>
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<td>Mileage</td>
<td>Standard Federal Rate</td>
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Exhibit H
Title VI Assurances

During the performance of this AGREEMENT, the CONSULTANT, for itself, its assignees, and successors in interest agrees as follows:

1. Compliance with Regulations: The CONSULTANT shall comply with the Regulations relative to non-discrimination in federally assisted programs of the AGENCY, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the “REGULATIONS”), which are herein incorporated by reference and made a part of this AGREEMENT.

2. Non-discrimination: The CONSULTANT, with regard to the work performed during the AGREEMENT, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of sub-consultants, including procurement of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the REGULATIONS, including employment practices when the AGREEMENT covers a program set forth in Appendix B of the REGULATIONS.

3. Solicitations for Sub-consultants, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiations made by the CONSULTANT for work to be performed under a sub-contract, including procurement of materials or leases of equipment, each potential sub-consultant or supplier shall be notified by the CONSULTANT of the CONSULTANT’S obligations under this AGREEMENT and the REGULATIONS relative to non-discrimination on the grounds of race, color, sex, or national origin.

4. Information and Reports: The CONSULTANT shall provide all information and reports required by the REGULATIONS or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by AGENCY, STATE or the Federal Highway Administration (FHWA) to be pertinent to ascertain compliance with such REGULATIONS, orders and instructions. Where any information required of a CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, the CONSULTANT shall so certify to the AGENCY, STATE or the FHWA as appropriate, and shall set forth what efforts it has made to obtain the information.

5. Sanctions for Non-compliance: In the event of the CONSULTANT’S non-compliance with the non-discrimination provisions of this AGREEMENT, the AGENCY shall impose such AGREEMENT sanctions as it, the STATE or the FHWA may determine to be appropriate, including, but not limited to:

- Withholding of payments to the CONSULTANT under the AGREEMENT until the CONSULTANT complies, and/or;
- Cancellation, termination, or suspension of the AGREEMENT, in whole or in part
6. Incorporation of Provisions: The CONSULTANT shall include the provisions of paragraphs (1) through (5) in every sub-contract, including procurement of materials and leases of equipment, unless exempt by the REGULATIONS, or directives issued pursuant thereto. The CONSULTANT shall take such action with respect to any sub-consultant or procurement as the AGENCY, STATE or FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance.

Provided, however, that in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a sub-consultant or supplier as a result of such direction, the CONSULTANT may request the AGENCY and the STATE enter into such litigation to protect the interests of the AGENCY and the STATE and, in addition, the CONSULTANT may request the United States enter into such litigation to protect the interests of the United States.
Exhibit I
Payment Upon Termination of Agreement
By the Agency Other Than for
Fault of the Consultant

(Refer to Agreement, Section IX)

Lump Sum Contracts
A final payment shall be made to the CONSULTANT which when added to any payments previously made shall total the same percentage of the Lump Sum Amount as the work completed at the time of termination is to the total work required for the PROJECT. In addition, the CONSULTANT shall be paid for any authorized extra work completed.

Cost Plus Fixed Fee Contracts
A final payment shall be made to the CONSULTANT which when added to any payments previously made, shall total the actual costs plus the same percentage of the fixed fee as the work completed at the time of termination is to the total work required for the Project. In addition, the CONSULTANT shall be paid for any authorized extra work completed.

Specific Rates of Pay Contracts
A final payment shall be made to the CONSULTANT for actual hours charged at the time of termination of this AGREEMENT plus any direct nonsalary costs incurred at the time of termination of this AGREEMENT.

Cost Per Unit of Work Contracts
A final payment shall be made to the CONSULTANT for actual units of work completed at the time of termination of this AGREEMENT.
Exhibit J
Alleged Consultant Design Error Procedures

The purpose of this exhibit is to establish a procedure to determine if a consultant’s alleged design error is of a nature that exceeds the accepted standard of care. In addition, it will establish a uniform method for the resolution and/or cost recovery procedures in those instances where the agency believes it has suffered some material damage due to the alleged error by the consultant.

Step 1 – Potential Consultant Design Error(s) is Identified by Agency’s Project Manager

At the first indication of potential consultant design error(s), the first step in the process is for the Agency’s project manager to notify the Director of Public Works or Agency Engineer regarding the potential design error(s). For federally funded projects, the Region Highways and Local Programs Engineer should be informed and involved in these procedures. (Note: The Director of Public Works or Agency Engineer may appoint an agency staff person other than the project manager, who has not been directly involved in the project, to be responsible for the remaining steps in these procedures.)

Step 2 - Project Manager Documents the Alleged Consultant Design Error(s)

After discussion of the alleged design error(s) and the magnitude of the alleged error(s), and with the Director of Public Works or Agency Engineer’s concurrence, the project manager obtains more detailed documentation than is normally required on the project. Examples include: all decisions and descriptions of work; photographs, records of labor, materials and equipment.

Step 3 – Contact the Consultant Regarding the Alleged Design Error(s)

If it is determined that there is a need to proceed further, the next step in the process is for the project manager to contact the consultant regarding the alleged design error(s) and the magnitude of the alleged error(s). The project manager and other appropriate agency staff should represent the agency and the consultant should be represented by their project manager and any personnel (including sub-consultants) deemed appropriate for the alleged design error(s) issue.

Step 4 – Attempt to Resolve Alleged Design Error with Consultant

After the meeting(s) with the consultant have been completed regarding the consultant’s alleged design error(s), there are three possible scenarios:

• It is determined via mutual agreement that there is not a consultant design error(s). If this is the case, then the process will not proceed beyond this point.

• It is determined via mutual agreement that a consultant design error(s) occurred. If this is the case, then the Director of Public Works or Agency Engineer, or their representatives, negotiate a settlement with the consultant. The settlement would be paid to the agency or the amount would be reduced from the consultant’s agreement with the agency for the services on the project in which the design error took place. The agency is to provide H&LP, through the Region
Local Programs Engineer, a summary of the settlement for review and to make adjustments, if any, as to how the settlement affects federal reimbursements. No further action is required.

- There is not a mutual agreement regarding the alleged consultant design error(s). The consultant may request that the alleged design error(s) issue be forwarded to the Director of Public Works or Agency Engineer for review. If the Director of Public Works or Agency Engineer, after review with their legal counsel, is not able to reach mutual agreement with the consultant, proceed to Step 5.

Step 5 – Forward Documents to Highways and Local Programs

For federally funded projects all available information, including costs, should be forwarded through the Region Highways and Local Programs Engineer to H&LP for their review and consultation with the FHWA. H&LP will meet with representatives of the agency and the consultant to review the alleged design error(s), and attempt to find a resolution to the issue. If necessary, H&LP will request assistance from the Attorney General’s Office for legal interpretation. H&LP will also identify how the alleged error(s) affects eligibility of project costs for federal reimbursement.

- If mutual agreement is reached, the agency and consultant adjust the scope of work and costs to reflect the agreed upon resolution. H&LP, in consultation with FHWA, will identify the amount of federal participation in the agreed upon resolution of the issue.

- If mutual agreement is not reached, the agency and consultant may seek settlement by arbitration or by litigation.
Exhibit K
Consultant Claim Procedures

The purpose of this exhibit is to describe a procedure regarding claim(s) on a consultant agreement. The following procedures should only be utilized on consultant claims greater than $1,000. If the consultant’s claim(s) are a total of $1,000 or less, it would not be cost effective to proceed through the outlined steps. It is suggested that the Director of Public Works or Agency Engineer negotiate a fair and reasonable price for the consultant’s claim(s) that total $1,000 or less.

This exhibit will outline the procedures to be followed by the consultant and the agency to consider a potential claim by the consultant.

Step 1 – Consultant Files a Claim with the Agency Project Manager

If the consultant determines that they were requested to perform additional services that were outside of the agreement’s scope of work, they may be entitled to a claim. The first step that must be completed is the request for consideration of the claim to the Agency’s project manager.

The consultant’s claim must outline the following:

- Summation of hours by classification for each firm that is included in the claim;
- Any correspondence that directed the consultant to perform the additional work;
- Timeframe of the additional work that was outside of the project scope;
- Summary of direct labor dollars, overhead costs, profit and reimbursable costs associated with the additional work; and
- Explanation as to why the consultant believes the additional work was outside of the agreement scope of work.

Step 2 – Review by Agency Personnel Regarding the Consultant’s Claim for Additional Compensation

After the consultant has completed step 1, the next step in the process is to forward the request to the Agency’s project manager. The project manager will review the consultant’s claim and will met with the Director of Public Works or Agency Engineer to determine if the Agency agrees with the claim. If the FHWA is participating in the project’s funding, forward a copy of the consultant’s claim and the Agency’s recommendation for federal participation in the claim to the WSDOT Highways and Local Programs through the Region Local Programs Engineer. If the claim is not eligible for federal participation, payment will need to be from agency funds.

If the Agency project manager, Director of Public Works or Agency Engineer, WSDOT Highways and Local Programs (if applicable), and FHWA (if applicable) agree with the consultant’s claim, send a request memo, including backup documentation to the consultant to either supplement the agreement, or create a new agreement for the claim. After the request has been approved, the Agency shall write the supplement and/or new agreement and pay the consultant the amount of the claim. Inform the consultant that the final payment for the agreement is subject to audit. No further action in needed regarding the claim procedures.
If the Agency does not agree with the consultant’s claim, proceed to step 3 of the procedures.

Step 3 – Preparation of Support Documentation Regarding Consultant’s Claim(s)

If the Agency does not agree with the consultant’s claim, the project manager shall prepare a summary for the Director of Public Works or Agency Engineer that included the following:

- Copy of information supplied by the consultant regarding the claim;
- Agency’s summation of hours by classification for each firm that should be included in the claim;
- Any correspondence that directed the consultant to perform the additional work;
- Agency’s summary of direct labor dollars, overhead costs, profit and reimbursable costs associated with the additional work;
- Explanation regarding those areas in which the Agency does/does not agree with the consultant’s claim(s);
- Explanation to describe what has been instituted to preclude future consultant claim(s); and
- Recommendations to resolve the claim.

Step 4 – Director of Public Works or Agency Engineer Reviews Consultant Claim and Agency Documentation

The Director of Public Works or Agency Engineer shall review and administratively approve or disapprove the claim, or portions thereof, which may include getting Agency Council or Commission approval (as appropriate to agency dispute resolution procedures). If the project involves federal participation, obtain concurrence from WSDOT Highways and Local Programs and FHWA regarding final settlement of the claim. If the claim is not eligible for federal participation, payment will need to be from agency funds.

Step 5 – Informing Consultant of Decision Regarding the Claim

The Director of Public Works or Agency Engineer shall notify (in writing) the consultant of their final decision regarding the consultant’s claim(s). Include the final dollar amount of the accepted claim(s) and rationale utilized for the decision.

Step 6 – Preparation of Supplement or New Agreement for the Consultant’s Claim(s)

The agency shall write the supplement and/or new agreement and pay the consultant the amount of the claim. Inform the consultant that the final payment for the agreement is subject to audit.
Exhibit M-1(a)
Certification Of Consultant

I hereby certify that I am Lawrence W. Steele and duly authorized representative of the firm of Larry Steele & Associates, Inc. whose address is 1334 King Street, Suite 1, Bellingham, WA 98229 and that neither I nor the above firm I here represent has:

(a) Employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above CONSULTANT) to solicit or secure the AGREEMENT;

(b) Agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out this AGREEMENT; or

(c) Paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above CONSULTANT) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out this AGREEMENT; except as hereby expressly stated (if any);

I acknowledge that this certificate is to be available to the Washington State Department of Transportation and the Federal Highway Administration, U.S. Department of Transportation in connection with this AGREEMENT involving participation of Federal-aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

11.19.14
Date

Signature

DOT 140-089 EF Exhibit M-1(a)
Revised 6/05
Exhibit M-1(b)
Certification Of Agency Official

I hereby certify that I am the AGENCY Official of the Local Agency of Whatcom County and WCFCZD, Washington, and that the consulting firm or its representative has not been required, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this AGREEMENT to:

(a) Employ or retain, or agree to employ to retain, any firm or person; or

(b) Pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind; except as hereby expressly stated (if any):

I acknowledge that this certificate is to be available to the Washington State Department of Transportation and the Federal Highway Administration, U.S. Department of Transportation, in connection with this AGREEMENT involving participation of Federal-aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

______________________________  ________________________________
Date                                    Signature
Exhibit M-2
Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Primary Covered Transactions

I. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;

B. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission or fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

C. Are not presently indicted 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 (I) (B). of this certification; and

D. Have not within a three (3) year period preceding this application/proposal had one or more public transactions (federal, state, or local) terminated for cause or default.

II. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Consultant (Firm): Larry Steele & Associates, Inc.

11.19.14 (Date) 

President (Signature) President or Authorized Official of Consultant
Exhibit M-3
Certification Regarding The Restrictions
of The use of Federal Funds for Lobbying

The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal 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. 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 Federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts which exceed $100,000 and that all such subrecipients shall certify and disclose accordingly.

Consultant (Firm): Larry Steele & Associates, Inc.

11.19.14
(Date)

(Signature) President or Authorized Official of Consultant

DOT Form 140-589 EF Exhibit M-3
Revised 6/05

192
**WHATCOM COUNTY COUNCIL AGENDA BILL**

**CLEARANCES**

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<th>Date Received in Council Office</th>
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**RECEIVED**

**DEC 02 2014**

**WHATCOM COUNTY COUNCIL**

**TITLE OF DOCUMENT:**

Interagency Agreement between Washington State Department of Ecology and Whatcom County Flood Control Zone District for 2015 Washington Conservation Corps Crew Sponsorship

**ATTACHMENTS:**

- Interagency Agreement and attachments (2)

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<th>( ) Yes</th>
<th>( ) No</th>
<th>SEPA review completed?</th>
<th>( ) Yes</th>
<th>( ) No</th>
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| Should Clerk schedule a hearing? | ( ) Yes | ( ) No | Requested Date: |

**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:** (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)

This Interagency Agreement with the Washington State Department of Ecology provides a Washington Conservation Corps crew for the period of January 1, 2015 through September 20, 2015. The crew will implement and maintain watershed restoration and stormwater projects and assist with water quality monitoring. The crew is co-sponsored with Nooksack Salmon Enhancement Association (NSEA) which has entered into a separate agreement for $55,210. Total cost to the Flood Control Zone District is not to exceed $60,000 and is included in the 2015 Public Works Natural Resources budget.

**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, Whatcom County Executive and Honorable Members of the Whatcom County Council acting as the Whatcom County Flood Control Zone District Board of Supervisors

THROUGH: Frank M. Abart, Public Works Director

FROM: Gary Stoyka, Natural Resources Manager
       John N. Thompson, Senior Planner/ESA

DATE: November 24, 2014


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

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

- **Background and Purpose**
  This Washington State Department of Ecology interagency agreement provides Whatcom County, in partnership with the Nooksack Salmon Enhancement Association (NSEA), a Washington Conservation Corps (WCC) crew for the period of January 1, 2015 through September 20, 2015. This agreement builds on 14 years of similar collaborative work. The crew will continue to work on behalf of Whatcom County implementing new watershed restoration projects, maintaining existing restoration projects, and assisting with water quality monitoring and improvements.

- **Funding Amount and Source**
  The Ecology agreement is not to exceed $60,000 and is included in the 2015 Public Works Natural Resource budget. NSEA is providing $55,210 toward the $115,210 annual crew cost under a separate sponsor agreement with Ecology that began October 1, 2014.

- **Differences from Previous Contract**
  This is a new interagency agreement.

Please contact Gary at extension 50618 or John at extension 50695, if you have any questions or concerns regarding the terms of this agreement.

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

<table>
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<tbody>
<tr>
<td>Contract or Grant Administrator:</td>
<td>John N. Thompson</td>
</tr>
<tr>
<td>Contractor’s / Agency Name:</td>
<td>Washington State Department of Ecology</td>
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**Is this a New Contract?**  Yes ☒ No ☐
**If not, is this an Amendment or Renewal to an Existing Contract?**
**Yes ☐ No ☒**
**If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #:**

**Does contract require Council Approval?**  Yes ☐ No ☒
**If No, include WCC:**
(see Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)

**Is this a grant agreement?**
Yes ☐ No ☒
**If yes, grantor agency contract number(s):**

**Is this contract grant funded?**
Yes ☐ No ☒
**If yes, Whatcom County grant contract number(s):**

**Is this contract the result of a RFP or Bid process?**
Yes ☐ No ☒
**If yes, RFP and Bid number(s):**

**Is this agreement excluded from E-Verify?**
No ☐ Yes ☒
**If no, include Attachment D Contractor Declaration form.**

If YES, indicate exclusion(s) below:
- ☐ Professional services agreement for certified/licensed professional.
- ☐ Contract work is for less than $100,000.
- ☐ Contract work is for less than 120 days.
- ☒ Interlocal Agreement (between Governments).
- ☐ Contract for Commercial off the shelf items (COTS).
- ☐ Work related subcontract less than $25,000.
- ☐ Public Works - Local Agency/Federally Funded FHWA.

**Contract Amount:(sum of original contract amount and any prior amendments):**
$ 60,000

**This Amendment Amount:**

**Total Amended Amount:**

Contracts that require Council Approval (incl. agenda bill & memo)
- Professional Services Agreement above $20,000.
- Bid is more than $50,000.
- Amendments that have either an increase greater than 10% or provide a $10,000 increase in amount (whichever is greater)

**RENEWALS: Council approval is not required when exercising an option to renew that is provided in the original contract.**

**Summary of Scope:** This Interagency Agreement with the Washington State Department of Ecology provides a Washington Conservation Corps crew for the period of January 1, 2015 through September 20, 2015. The crew will implement and maintain watershed restoration and stormwater projects and assist with water quality monitoring. The crew is co-sponsored with Nooksack Salmon Enhancement Association (NSEA) which has entered into a separate agreement for $55,210. Total cost to Whatcom County is not to exceed $60,000 and is included in the 2015 Public Works Natural Resources budget.

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**Contract Routing:**
1. Prepared by: John N. Thompson
2. Attorney signoff: Daniel L. Gibson
3. AS Finance reviewed: bbennett
4. IT reviewed (if IT related):
5. Contractor signed:
6. Submitted to Exec.:
7. Council approved (if necessary):
8. Executive signed:
9. Original to Council:

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Last Edited: 060414
INTERAGENCY AGREEMENT (IAA)

BETWEEN
The State of Washington, Department of ECOLOGY

AND
Whatcom County Flood Control Zone District

THIS AGREEMENT is made and entered into by and between the Department of Ecology, hereinafter referred to as "ECOLOGY", and _____ Whatcom County Flood Control Zone District _____, hereinafter referred to as the "SPONSOR".

IT IS THE PURPOSE OF THIS AGREEMENT to provide Washington Conservation Corps (WCC) members to complete natural resource projects in Whatcom County, pursuant to Chapter 43.220 of the Revised Code of Washington.

THEREFORE, IT IS MUTUALLY AGREED THAT:

STATEMENT OF WORK
Both parties agree to do all things necessary for or incidental to the performance of the work set forth in Attachment "A" attached hereto and incorporated herein.

PERIOD OF PERFORMANCE
Subject to its other provisions, the period of performance of this Agreement shall commence on 1/1/2015 and be completed on 9/20/2015, unless terminated sooner as provided herein. The WCC Crew and/or WCC Individual Placement corpermember specified in this agreement will be available to SPONSOR on the dates set forth on the calendar in Attachment "B" attached hereto and incorporated herein.

COMPENSATION
The parties have determined that the cost of accomplishing the work herein will not exceed $60,000. Payment for satisfactory performance of the work shall not exceed this amount unless the parties mutually agree to a higher amount. Compensation for service(s) shall be based on the following established rates:

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Total SPONSOR COST $60,000

Above cost Not to be Exceeded
The costs reimbursed to ECOLOGY by SPONSOR are a cost-share rate. ECOLOGY will provide the remainder of the funding for the projected total costs of $195,000 dollars annually per WCC Crew consisting of 5 WCC Members and 1 WCC Supervisor and/or $22,500 dollars annually per WCC Individual Placement.

FUNDING AVAILABILITY
The obligation of the SPONSOR to provide reimbursements beyond the end fiscal year 2014 is contingent upon appropriation of funds by the SPONSOR's governing body for the specific purpose of funding the project, which is the subject of this Agreement. Upon the failure of such appropriation, the SPONSOR may terminate this Agreement.

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

BILLING PROCEDURE
ECOLOGY shall submit invoices with a state invoice voucher (A19-1A) monthly to the SPONSOR's designated contact person listed under the "Contract Management" section. Payment to ECOLOGY for approved and completed work will be made by warrant or account transfer by SPONSOR within 30 days of receipt of the invoice. Upon expiration of the Agreement, any claim for payment not already made shall be submitted within 30 days after the expiration date or the end of the fiscal year, whichever is earlier.

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

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

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

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

AGREEMENT ALTERATIONS AND AMENDMENTS
This Agreement may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

TERMINATION
Either party may terminate this Agreement upon 30 days' prior written notification to the other party. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

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

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

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

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

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

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

WAIVER
A failure by either party to exercise its rights under this Agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of the party and attached to the original Agreement.

SEVERABILITY
If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this agreement, and to this end the provisions of this Agreement are declared to be severable.

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

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

The Contract/Program Manager for ECOLOGY is:

Bridget Mason
PO Box 47600
Olympia, WA 98504
360-407-6516
bridget.mason@ecy.wa.gov

The Contract/Program Manager for SPONSOR is:

John N. Thompson
322 N. Commercial Street, Suite 110
Bellingham WA 98225
(360) 676-6876 ext. 50695
jnthomps@co.whatcom.wa.us
IN WITNESS WHEREOF, the parties have executed this Agreement.

State of Washington
Department of ECOLOGY

Signature Date

Gordon White, SEA Program Manager
Printed Name, Title

SPONSOR
Whatcom County

See attached County signature page
Signature Date

Printed Name, Title
WHATCOM COUNTY:
Recommended for Approval:

[Signature] 11/24/14
Department Director  Date

Approved as to form:

Daniel L. Lebron  11/25/14
Prosecuting Attorney  Date

Approved:
Accepted for Whatcom County:

By: __________________________
Jack Louws, Whatcom County Executive

STATE OF WASHINGTON )
COUNTY OF WHATCOM ) ss

On this _____ day of __________, 20 __, before me personally appeared Jack Louws, to me known to be the Executive of Whatcom County, who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

______________________________
NOTARY PUBLIC in and for the State of Washington, residing at
______________________________  My commission expires ____________________.
STATEMENT OF WORK ATTACHMENT A

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

ECOLOGY shall:
1. Provide WCC members for the number of weeks specified in this agreement. Full-time crews and Individual Placements are available to SPONSOR for a maximum of 41 weeks during the Federal AmeriCorps program service year, within which members will be allowed to work up to 1,880 hours total hours (includes training, meetings, spikes, and other professional development.
2. Hire members to begin work no sooner than October 6, 2014 and no later than October 30, 2014 to attain a full AmeriCorps scholarship. Member vacancies may be filled with a 900 hour, half-term AmeriCorps Education Award beginning April 1, 2015. Any further member hiring for the remainder of the program year is at the discretion of ECOLOGY and based on availability.
3. In the event of a disaster response deployment, the WCC Program will make every effort to fulfill sponsor program needs, including sending additional members, whenever possible. Invoices will include all activities during the program year including training, community service events, and other activities required by WCC, excluding Emergency Response, if needed.
4. Provide training and development specified in Attachment "B": eight (8) days of formal WCC member training, a four (4) day Orientation Training, and one (1) day dedicated to MLK Community Service. An eight-day spike will be scheduled on dates to be determined in coordination with the SPONSOR. These dates, along with up to three (3) additional days reserved for meetings, trainings or other events, are dates in which WCC members and supervisors are logging hours, but are unavailable to sponsor to perform project work.
5. Provide a 4-day Assistant Supervisor training to the designated Assistant Supervisor.
6. For crew(s), ECOLOGY agrees to provide a crew of 5 members, a crew supervisor, vehicle, and basic hand tools.
7. Cost-share rates are not based on actual attendance, however, invoices will be reduced for member or supervisor vacancies lasting 20 days or more.

SPONSOR shall:
1. Obtain applicable permits as set by local, state, tribal or federal laws and regulations.
2. Provide site orientation for WCC members, specific on-the job task training, and any materials beyond basic hand tools to complete tasks assigned under this Agreement.
3. Help to promote the AmeriCorps and WCC brand name, logo, slogans and phrases. The WCC will provide camera-ready logo upon request. AmeriCorps is a registered service mark of the Corporation for National and Community Service.
4. For a SPONSOR hosting Individual Placement positions, SPONSOR agrees to provide a work station, email, transportation to and from WCC events (or private mileage reimbursement for personal vehicle use), and day- to-day direction of work activities.
5. For a SPONSOR hosting WCC Crew(s), SPONSOR agrees to provide a secure site to store tools and park crew vehicles as well as desk and internet access for the crew supervisor. Vehicle is not to be used for heavy hauling. The primary use of the crew vehicle is for transportation of crew, tools, and safety equipment.
Special Terms and Conditions:
A. The assignment of corpsmembers shall not result in the displacement of currently employed workers, including partial displacement such as reduction in hours of nonovertime work, wages, or other employment benefits. Agencies that participate in the program may not terminate, lay-off, or reduce the working hours of any employee for the purpose of using a corpsmember with available funds. In circumstances where substantial efficiencies or a public purpose may result, participating agencies may use corpsmembers to carry out essential agency work or contractual functions without displacing current employees.
B. All state holidays and 3 planning days are non-working days for members. Planning days are to be used by WCC staff/supervisors for planning purposes.
C. The WCC standard 40-hour workweek is Monday through Thursday from 7:00am to 5:30pm. An alternate work schedule may be arranged with prior approval from the WCC.

Prohibited Activities:
While charging time to the AmeriCorps program, accumulating service or training hours, or otherwise performing activities supported by the AmeriCorps program or CNCS, staff and members may not engage in the following activities (see 45 CFR § 2520.65):
A. Attempting to influence legislation;
B. Organizing or engaging in protests, petitions, boycotts, or strikes;
C. Assisting, promoting, or deterring union organizing;
D. Impairing existing contracts for services or collective bargaining agreements;
E. Engaging in partisan political activities, or other activities designed to influence the outcome of an election to any public office;
F. Participating in, or endorsing, events or activities that are likely to include advocacy for or against political parties, political platforms, political candidates, proposed legislation, or elected officials;
G. Engaging in religious instruction, conducting worship services, providing instruction as part of a program that includes mandatory religious instruction or worship, constructing or operating facilities devoted to religious instruction or worship, maintaining facilities primarily or inherently devoted to religious instruction or worship, or engaging in any form of religious proselytization;
H. Providing a direct benefit to—
   I. A business organized for profit;
   II. A labor union;
   III. A partisan political organization;
   IV. A nonprofit organization that fails to comply with the restrictions contained in
   V. section 501(c)(3) of the Internal Revenue Code of 1986 related to engaging in political activities or substantial amount of lobbying except that nothing in these provisions shall be construed to prevent participants from engaging in advocacy activities undertaken at their own initiative; and
   VI. An organization engaged in the religious activities described in paragraph 3.g. above, unless CNCS assistance is not used to support those religious activities;
I. Conducting a voter registration drive or using CNCS funds to conduct a voter registration drive;
J. Providing abortion services or referrals for receipt of such services; and
K. Such other activities as CNCS may prohibit.
AmeriCorps members may not engage in the above activities directly or indirectly by recruiting, training, or managing others for the primary purpose of engaging in one of the activities listed above. Individuals may exercise their rights as private citizens and may participate in the activities listed above on their initiative, on non-AmeriCorps time, and using non-CNCS funds. Individuals should not wear the AmeriCorps logo while doing so.
### 2014-2015 WCC Events Calendar

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#### Members' Potential Hours

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#### Notes

- The specified end date shown (09/17/2015) may be extended to 09/20/2015 if the mutually agreed upon work schedule extends through Sunday.
Water Quality & Habitat Monitoring and Improvement Projects

- Birch Bay Watershed
- Drayton Harbor Watershed
- Portage Bay Shellfish District
- Lake Whatcom
- South Fork

New Restoration Projects

- Canyon Creek (N Fork Nooksack River)
- Birch Bay
- Drayton Harbor
- Mainstem tributaries
- South Fork and tributaries
- Middle Fork

Maintain Existing Projects

- Birch Bay
- Drayton Harbor
- Mainstem tributaries
- South Fork & tributaries
- North Fork tributaries (e.g. High Creek)
- Lake Whatcom
- Friday Creek
Grant Agreement between Whatcom County Flood Control Zone District (FCZD) and Washington State Department of Ecology (DOE) for design and construction of the Deming Levee Upstream Improvement Project.

### ATTACHMENTS:

Three (3) copies of a grant agreement with the Washington State Department of Ecology.

### 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 between Washington State Department of Ecology and Whatcom County Flood Control Zone District (FCZD) provides $1,440,000 towards the design and construction of the Deming Levee Upstream Improvement Project. The grant will reimburse the FCZD for eligible design, construction and construction support costs incurred during the grant performance period.
MEMORANDUM

TO: The Honorable Jack Louws, Whatcom County Executive and Honorable Members of the Whatcom County Council acting as the Whatcom County Flood Control Zone District Board of Supervisors

THROUGH: Frank M. Abart, Public Works Director

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

RE: Deming Levee Upstream Improvement Project Ecology Grant Agreement

DATE: November 17, 2014

Enclosed are three (3) originals of a grant agreement between Washington State Department of Ecology and Whatcom County Flood Control Zone District for your review and signature.

- Requested Action
  Public Works respectfully requests that the County Executive, following approval by the County Council acting as the Flood Control Zone District (FCZD) Board of Supervisors, enter into a grant agreement with the Washington Department of Ecology (DOE) for the design and construction of the Deming Levee Upstream Improvement Project.

- Background and Purpose
  The Floodplain Management and Control Competitive Grant Program was created by the Washington State Legislature in 2013. In April 2014 Whatcom County was awarded $1,440,000 from the Washington State Department of Ecology. The grant provides for partial reimbursement of design, construction and construction support costs incurred between May 1, 2014 through June 30, 2017.

- Funding Amount and Source
  The agreement provides $1,440,000 in grant funding and requires a 20% match. These funds are currently authorized by the legislature through June 30th 2015. Re-appropriation of the unspent funds for this project by the state legislature is expected next year for the 2015-2017 biennium. An amendment to this agreement will be forthcoming at that time.

Please contact Paula at extension 50625 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>Public Works</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract or Grant Administrator:</td>
<td>Paula J. Cooper, River and Flood Manager</td>
</tr>
<tr>
<td>Contractor's / Agency Name:</td>
<td>Washington State Department of Ecology</td>
</tr>
</tbody>
</table>

**Is this a New Contract?**  Yes  X  No
**If not, is this an Amendment or Renewal to an Existing Contract?**  Yes ___  No ___
**If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #__________

(see Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)

**Does contract require Council Approval?**  Yes  X  No ___
**If No, include WCC ________

**Is this a grant agreement?**  Yes  X  No ___
**If yes, grantor agency contract number(s) ________  CFDA # ________

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

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

**Is this agreement excluded from E-Verify? No ___  Yes  X  If no, include Attachment D Contractor Declaration

---

**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.
- X Interlocal Agreement (between Gov't's)
- Public Works - Local Agency/Federally Funded FHWA

| Contract Amount:(sum of original contract amount and any prior amendments) | $1,440,000 |
| This Amendment Amount: | $ |
| Total Amended Amount: | $1,440,000 |

Contracts that require Council Approval (incl. agenda bill & memo)
- Professional Services Agreement above $20,000.
- Bid is more than $50,000.
- Amendments that have either an increase greater than 10% or provide a $10,000 increase in amount (whichever is greater)

RENEWALS: Council approval is not required when exercising an option to renew that is provided in the original contract.

**Summary of Scope:**

This grant agreement between Washington State Department of Ecology and Whatcom County Flood Control Zone District (FCZD) provides $1,440,000 for the design and construction of the Deming Levee Upstream Improvement Project. The grant will reimburse the FCZD for eligible design, construction and construction support costs incurred this year through 2017.

| Term of Contract: | Expiration Date: June 30, 2017 |

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

1. Prepared by:  
2. Attorney reviewed:  DG  Electronic  
3. AS Finance reviewed:  BB  Electronic  
4. IT reviewed if IT related: 
5. Attorney signoff:  Donald Leeber  
6. Contractor signed:  
7. Submitted to Exec Office:  
8. Council approved (if necessary):  
9. Executive signed:  
10. Original to Council:  

Date 11/03/2014  
Date 11/05/2014  
Date 11/25/14  
Date 11/25/14  

---

207
ECOLOGY Grant Agreement No. G1500033

between the

State of Washington Department of Ecology and
Whatcom County Flood Control District

Project Title: Deming Levee Upstream Improvement Project

THIS is a binding agreement entered into by and between the state of Washington, Department of ECOLOGY, (PO Box 47600, Olympia, Washington, 98504-7600) hereinafter referred to as "ECOLOGY" and Whatcom County Flood Control Zone District, hereinafter referred to as the "RECIPIENT" to carry out the activities described herein.

RECIPIENT Name: Whatcom County Flood Control Zone District
322 N. Commercial, Suite 120
Bellingham, WA 98225-4042

RECIPIENT Project Coordinator: Gary Goodall
Telephone: (360) 676-6876
e-mail address: ggoodall@co.whatcom.wa.us

Fiscal Contact for RECIPIENT: Frank Abart
Telephone: (360) 676-6876
e-mail address: fabart@co.whatcom.wa.us

Payee on Warrant: Whatcom County Flood Control Zone District
(address as above)

Project Manager for ECOLOGY: Jessica Hamill
SEA Program Northwest Regional Office
3190 160th Ave SE
Bellevue, WA 98008-5452
Phone (425) 649-7049
e-mail address: Jessica.Hamill@ecy.wa.gov

The source of funds provided by ECOLOGY are authorized by the 2013 Washington State Legislature, §3069 of the Capital Budget.

Maximum Capital Investment Funding: $1,440,000
Maximum Eligible Project Cost: $1,935,000

State Maximum Cost Share Rate: 80% UP TO a maximum State Share of $1,440,000

The start date (performance period) of this agreement is May 1, 2014; the end date is June 30, 2017.¹

¹ Note: The anticipated completion date is in 2017. Funds released beyond June 30, 2015 are subject to legislative appropriation for future biennium and will be addressed by a formal amendment to this agreement.
Scope of Work

Project Title: Deming Levee Upstream Improvement Project

Description

Background
The town of Deming is partially protected from Nooksack River flooding by an engineered levee located directly in front of the Mount Baker High School and Nooksack Tribal land. However, this levee segment ties into a substandard, non-engineered earthen berm at the upstream end, which experiences frequent overtopping. This substandard berm was overtopped in 2006 and flood waters crested within 1-foot of the crest in 2009. Floodwaters enter the town of Deming when the berm overtops, thereby affecting public and private infrastructure, including roadways.

Project
The project will construct a new levee (approximately 850 feet long) setback from the river, at the upstream end of the existing engineered levee, easterly to the BNSF Railroad grade. The new levee would be protected from scour and offer 100-year flood protection, consistent with the existing engineered structure.

The objective of the Deming Levee Upstream Improvement Project is to reduce the risk of flooding to the Mount Baker School District facilities (including the sewage lagoon, bus barn, and maintenance facilities), Nooksack Tribal facilities, Nooksack River Casino drain field, and structures in the town of Deming. This project has been identified in the Lower Nooksack River Comprehensive Flood Hazard Management Plan.

Scope of Work
The overall scope of work includes design and construction of a setback levee behind the existing insufficient berm, such that the new levee meets current engineering standards and provides a higher level of protection for the town of Deming.

In addition to design and construction, the Recipient will perform project coordination, management, and administration functions necessary to complete the tasks in the scope of work. The Recipient will also complete site investigations/studies, complete a basis of design report including the permitting necessary for implementation of the project, procure a contractor to complete construction of the levee improvement project, and lastly, the Recipient will complete post-construction plantings and an as-built survey.

Location
Latitude: 48.820732 Longitude: -122.211614
River: Nooksack River Mile: 35.9

Work Program
The RECIPIENT shall perform the following work tasks:

Task 1: Project Coordination
The RECIPIENT will provide Project Coordination to ensure effective communication on this project with all interested parties including Ecology, all affected local, state, federal agencies, tribal nations, local land owners, and other applicable stakeholders. In addition, the RECIPIENT should consult with all other
Agreement No. G1500033 between the
Washington State Department of ECOLOGY and Whatcom County Flood Control Zone District
Project Title: Deming Levee Upstream Improvement Project

appropriate entities that may have useful scientific, technical, or cultural information that will augment this project. Coordination issues include, but are not limited to, flood plain management, habitat and fish protection and restoration, public access and recreation, cultural and archaeological resources, etc.

The RECIPIENT is responsible for conducting Project Management activities to include project scheduling, assuring quality control, adherence to the scope of work, time lines, and due dates; application for, receipt of, and compliance with all required permits, licenses, easements, or property rights necessary for the project; and as applicable compliance with deed restrictions on acquisitions as well as conducting the competitive procurement process including preparation of grant bidding documents, advertisement; award of grants and grant monitoring.

The RECIPIENT will provide Project Administration including submittal of quarterly progress reports and reimbursement requests with corresponding supporting documentation; maintenance of project records, submittal and compliance of deliverables on established due dates.

**Deliverables:** Updates in Quarterly Progress Reports as in the following Sample:

<table>
<thead>
<tr>
<th>Progress Report</th>
<th>Reporting Period</th>
<th>Date Due</th>
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<tbody>
<tr>
<td>First Quarter</td>
<td>April 1 – June 30</td>
<td>July 31</td>
</tr>
<tr>
<td>Second Quarter</td>
<td>July 1 – September 30</td>
<td>October 31</td>
</tr>
<tr>
<td>Third Quarter</td>
<td>October 1 - December 31</td>
<td>January 31</td>
</tr>
<tr>
<td>Fourth Quarter</td>
<td>January 1 – March 31</td>
<td>April 30</td>
</tr>
</tbody>
</table>

See Special Terms and Conditions for details on progress reporting.

Due Date: 30 days following end of each quarter.

Task Cost: $10,000

Cost to Ecology: $8,000

County FCZD Cost: $2,000

**Task 2:** Site Investigation and Studies

The consulting team selected by the RECIPIENT is preparing a wetland impacts study to evaluate potential direct and indirect impacts associated with construction of a new levee. The goal of this task is to provide direction on how to address the wetland impacts and mitigation. Once impacts are known, the design of the new levee can proceed. RECIPIENT will complete studies to support the design for the new levee. Examples of the studies that will be completed include but may not be limited to the following:

- Geotechnical investigation
- Seepage and slope stability analysis
- Interior drainage analysis
- Scour erosion protection design
Agreement No. G1500033 between the
Washington State Department of ECOLOGY and Whatcom County Flood Control Zone District
Project Title: Deming Levee Upstream Improvement Project

Deliverables: Documentation of the investigations and studies, provided as appendices to the Basis of Design Report (Task 3)

Due Date: December 2014

Task Cost: $100,000

Cost to Ecology: $80,000

County FCZD Cost: $20,000

Task 3: Basis of Design Report and Permit Submittal

RECIPIENT will prepare a basis of design report. The report will include detailed documentation of the technical analysis to support the design. Comments on the draft design report will be incorporated into the 30% design (Task 4).

Prior to commencement of any construction, the RECIPIENT shall secure the necessary approvals and permits required by authorities having jurisdiction over the project, provide assurance to Ecology that all approvals and permits have been secured, and make copies available to Ecology. This task will involve the RECIPIENT developing permit applications for applicable permits, listed in the table below.

<table>
<thead>
<tr>
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<td>01/2016</td>
<td>11/30/2016</td>
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<td>USACOE</td>
<td>2/5/2015</td>
<td>10/2015</td>
<td>10/31/2016</td>
</tr>
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<td>USACOE “Cultural Resources”</td>
<td>2/2015</td>
<td>10/2015</td>
<td>10/2016</td>
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<td>Section 404 Nationwide 13</td>
<td>Army Corps of Engineers</td>
<td>2/2015</td>
<td>10/2015</td>
<td>10/2016</td>
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<td>Services Consultation (BA)</td>
<td>USACOE</td>
<td>2/2015</td>
<td>10/2015</td>
<td>10/2016</td>
</tr>
<tr>
<td>SEPA DNS</td>
<td>Whatcom Co PDS</td>
<td>2/2015</td>
<td>01/21/2016</td>
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<tr>
<td>Shoreline Conditional Use/Substantial Development</td>
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<td>1/2016</td>
<td>3/2016</td>
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<tr>
<td>Floodplain Development</td>
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</table>
Agreement No. G1500033 between the
Washington State Department of ECOLOGY and Whatcom County Flood Control Zone District
Project Title: Deming Levee Upstream Improvement Project

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<tr>
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<td>Nooksack Tribal Access Permit</td>
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<td>BNSF R/R Access/Const. Permit</td>
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</table>

**Deliverables:** Final Basis of Design Report, which will include but may not be limited to the following:

- Geotechnical Report
- Wetland and Stream Delineation Report
- Biological Assessment
- Conceptual Mitigation Plan and Supporting Documentation
- BNSF Construction Requirements
- Bank erosion protection analysis technical memorandum
- Permit applications

**Due Date:** January 2015

**Task Cost:** $25,000

**Cost to State:** $20,000

**County FCZD Cost:** $5,000

**Task 4: 30% Plans and Specifications Estimate**

RECIPIENT will prepare 30% plans, to include construction costs estimates and specifications table of contents. The 30% design will be for the selected alternative and will be based on regulatory requirements (Task 3), site conditions and constraints (Task 2), as well as County and stakeholder input (Task 1). Once comments are received, RECIPIENT and consultant will review and discuss those comments. All decisions made during the aforementioned meeting(s) will be documented in an action item/decision log and incorporated into the 30% design.

**Deliverables:**

1. Meeting notes from project kickoff
2. Draft and Permit ready 30% design plans
3. 30% level construction cost estimates
Due Date: February 2015
Task Cost: $70,000
Cost to State: $56,000
County FCZD Cost: $14,000

Task 5: 90% Plans, Specifications and Estimate
RECIPIENT will prepare 90% design plans, cost estimate, as well as review and incorporate comments

Deliverables: One set of plans sealed (stamped) by an engineer licensed in the State of Washington. At the conclusion of the project, the engineer will provide a signed final project summary report declaring that the project was, to the best of his/her knowledge, constructed and completed in accordance with the construction plans and specifications and accepted engineering / construction practices.

Due Date: March 2016*
Task Cost: $80,000
Cost to State: $64,000
County FCZD Cost: $16,000

Task 6: Construction Management
RECIPIENT will develop bid documents and procure a contractor in accordance with established State or County procurement procedures. The design consultant will provide construction management support during project construction. The RECIPIENT will provide construction supervision throughout construction.

Deliverables: Copy of contract with selected contractor and progress summaries provided in the quarterly progress reports

Due Date: November 2016*
Task Cost: $100,000
Cost to State: $80,000
County FCZD Cost: $20,000
Task 7: **Construction (Contractor)**

The selected construction contractor (Task 6), under the supervision of the RECIPENT, will construct the new levee, log structures, and other related work per the final construction design plan set.

**Deliverables:**

1. One hard copy: Annotated as-built plan set sealed / stamped by the project engineer and noting as-built elevations, structure locations, and any changes from the construction plan set.

2. One hard copy: A final project memorandum signed by the Project Engineer declaring that the project was constructed and completed in accordance with the construction plans and specifications as well as generally accepted engineering/construction practice.

3. One set: Digital photographic documentation of the project before, during, and after construction to effectively illustrate important phases of construction and project progress. Each image will be labeled with the date, location and features represented. Updates in progress reports due quarterly.

**Due Date:** November 2016*

**Task Cost:** $1,500,000

**Cost to State:** $1,132,000

**County FCZD Cost:** $368,000

Task 8: **Planting and As-built Survey**

The RECIPENT will develop a planting plan of native species that will enhance all disturbed areas to provide shade for improved water quality (temperature) and future large woody debris to benefit fish habitat. Methods, materials, and species for vegetation used will be consistent with specific needs of designated areas of this project.

The RECIPENT will develop a monitoring plan to ensure the viability of plantings; with recommendations for corrective action if re-vegetation fails to thrive.

The RECIPENT will conduct and as-built survey upon completion of construction.

**Deliverables:**

1. **Final Planting Plan** - due January 2017

2. **Update in progress reports:** to include digital photographic documentation before, during and after each successive planting to effectively illustrate important phases of planting and plant viability. Each image will be labeled as to date, location and what features it represents – due quarterly as seasonally appropriate.

3. **As-built survey**
Agreement No. G1500033 between the
Washington State Department of ECOLOGY and Whatcom County Flood Control Zone District
Project Title: Deming Levee Upstream Improvement Project

<table>
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<th>Task 9:</th>
<th>Final Report</th>
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</table>

**Note**: The RECIPIENT shall notify ECOLOGY in writing of the project's completion and arrange for final inspection of the project by ECOLOGY.

**Note**: All deliverables are to be sent to ECOLOGY's Project Manager as listed on page one of this agreement.

* Funds released beyond June 30, 2015 are subject to legislative appropriation for future biennium and will be addressed by a formal amendment to this agreement.
Budget Conditions

1. Failure to comply with required permits constitutes a breach of contract, which may result in termination of this agreement.

2. Project Administration:

For the administration of this agreement the RECIPIENT must follow the current edition of the Administrative Requirements for RECIPIENTS of ECOLOGY Grants and Loans (Yellow Book). Please note that this document is being updated. In the event of inconsistency between these documents, unless otherwise provided herein, the inconsistency will be resolved by giving precedence in the following order:

a) Applicable Federal and State statutes and regulations.
b) Scope of Work.
c) Special Terms and Conditions.
d) Any terms incorporated herein by reference including the "Administrative Requirements for RECIPIENTS of ECOLOGY Grants and Loans."
e) The General Terms and Conditions.

3. Invoicing:

- Grants are awarded on a reimbursable basis. The RECIPIENT initially pays project costs as they incur. Invoicing to ECOLOGY is usually by quarter but not more often than once per month. Upon presentation of an invoice to the RECIPIENT, ECOLOGY's share of the project is reimbursed to the RECIPIENT.

- The RECIPIENT must submit complete backup documents with each invoice including but not limited to all invoiced costs and time sheets - signed and dated by employee and supervisor. The RECIPIENT must keep these expenses in grant files according to budget task for a period of three years after project completion and make them available at any time for inspection by ECOLOGY.

- Expenditures will be monitored by ECOLOGY for compliance with the budget as listed in the Budget Matrix on page 11. When submitting invoices to ECOLOGY, the RECIPIENT shall highlight (or otherwise indicate) all costs on backup documentation to avoid data searches for cost verification by ECOLOGY. These costs will be listed on ECOLOGY's Voucher Support Form (C2 form) with subtotals. All payment requests must have forms A, B, C (and D if applicable for consultant services), be accompanied by a commensurate progress report, and receive ECOLOGY Project Manager approval before payment can be released.

- Budget deviations are allowed between budget objects (mobilization, equipment, etc., example, a grantee may spend less money on one object and more on another), but in no circumstances may the RECIPIENT exceed the total project cost. If the total of all budget deviations exceeds 10 percent of the entire project cost, the ECOLOGY Project Manager may require a written budget redistribution.
• **NOTE:** For payment requests, the RECIPIENT must use the ECOLOGY forms provided. Otherwise, ECOLOGY will return requests to the RECIPIENT for submittal on the correct forms.

• Requests for reimbursement must be **submitted at least quarterly** but not more than once per month by the RECIPIENT on state invoice voucher forms (A-19-1A).

• **Right to Audit:** The RECIPIENT agrees that payment(s) made under this grant shall be subject to reduction for amount charged thereto which are found after audit examination not to constitute allowable costs under this grant. The RECIPIENT shall refund by check payable to ECOLOGY the amount of such reduction of payments under completed or terminated grants.

• All travel costs shall not exceed State travel rates at the time of expense: http://www.ofm.wa.gov/resources/travel.asp.

• Payment of invoices is contingent on receipt of viable deliverables as determined by ECOLOGY’s Project Manager.

4. The source of funds provided by ECOLOGY are authorized by the 2013 Washington State Legislature, §3069 of the Capital Budget.

5. **Expenditure Budget:** (for RECIPIENT reporting and ECOLOGY tracking purposes):

   Maximum Eligible Project Cost  $1,935,000

   State Maximum Cost Share Rate: 80% UP TO a maximum State Share of $1,440,000.

   See Budget Matrix on page 11 for budget breakout.
<table>
<thead>
<tr>
<th>TASK</th>
<th>Work Item</th>
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<td><strong>Project Subtotals</strong></td>
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<td></td>
<td>$1,935,000</td>
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<td><strong>Total Project</strong></td>
<td></td>
<td></td>
<td></td>
<td>$1,935,000</td>
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</table>
Special Terms and Conditions

AGREEMENT PROVISIONS

1. **Compliance with all Laws:** The RECIPIENT shall comply fully with all applicable federal, state, and local laws, orders, regulations, and permits.

2. **Restrictions on Lobbying:** The RECIPIENT of this agreement is prohibited from using funds provided by this agreement for lobbying purposes in accordance with the “Administrative Requirements for Recipients of ECOLOGY Grants and Loans”, Publication No. 91-18, current edition, Part III, Section D, Unallowable Costs.

3. **Local Decision:** This grant is made in response to a request for financial assistance from the RECIPIENT to undertake an Integrated Floodplain Restoration project. The choice of floodplain management activities addressed by this grant is a local decision made solely by the RECIPIENT. The RECIPIENT is not acting as an agent of the State.

4. **Lawsuits:** ECOLOGY shall not be responsible for any non-contractual damage or inverse condemnation claims resulting from the structures or works constructed, repaired, restored, maintained, or improved pursuant to this grant.

5. **Responsibilities of the Project Manager:** The RECIPIENT’s Project Manager shall be responsible for the procedural obligations under this agreement in addition to his/her duty to coordinate the project hereunder. He/She shall cooperate with all parties concerned in every way possible to promote successful completion of the services described in the Scope of Work.

6. **Environmental Standards:**
   a. RECIPIENTS who collect environmental-monitoring data must provide these data to ECOLOGY using the Environmental Information Management System (EIM). To satisfy this requirement these data must be successfully loaded into EIM, see instructions on the EIM website at: [http://www.ecy.wa.gov/eim](http://www.ecy.wa.gov/eim).
   b. RECIPIENTS are required to follow ECOLOGY’s data standards when Geographic Information System (GIS) data are collected and processed. More information and requirements are available at: [http://www.ecy.wa.gov/services/gis/data/standards/standards.htm](http://www.ecy.wa.gov/services/gis/data/standards/standards.htm). RECIPIENTS shall provide copies to ECOLOGY of all final GIS data layers, imagery, related tables, raw data collection files, map products, and all metadata and project documentation.
   c. RECIPIENTS must prepare a Quality Assurance Project Plan (QAPP) when a project involves the collection of environmental measurement data. QAPP is to ensure the consistent application of quality assurance principles to the planning and execution of all activities involved in generating data. RECIPIENTS must follow ECOLOGY’s Guidelines for Preparing Quality Assurance Project Plans for Environmental Studies, July 3004 (ECOLOGY Publication No. 04-03-030). ECOLOGY shall review and approve the QAPP prior to start of work. The size, cost, and complexity of the QAPP should be in proportion to the magnitude of the sampling effort.
7. **Quarterly Reporting:** Quarterly Reports are contingent on the start date of the agreement. For timely preparation and review, quarterly reports shall convey essential information in a simple, concise manner through the use of bulleted summary statements, lists, and tables and include the following:

   a. A comparison of actual accomplishments to the objectives established for the reporting period including a description of issues on fisheries resources;
   b. For any work related to GIS, designate data standard utilized and associated data documentation.
   c. Status of project schedule.
   d. Personnel changes.
   e. Any difficulties encountered during the quarter.
   f. Environmental benefits being achieved by the project.

**Note:** A quarterly progress report is required for each quarter of this agreement. If no work was conducted in that quarter, state that and submit the report.

**Reporting Periods (sample)**

<table>
<thead>
<tr>
<th>Progress Report</th>
<th>Reporting Period</th>
<th>Date Due</th>
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<tbody>
<tr>
<td>First Quarter</td>
<td>April 1 – June 30</td>
<td>July 31</td>
</tr>
<tr>
<td>Second Quarter</td>
<td>July 1 – Sept. 30</td>
<td>October 31</td>
</tr>
<tr>
<td>Third Quarter</td>
<td>October 1 – Dec. 31</td>
<td>January 31</td>
</tr>
<tr>
<td>Fourth Quarter</td>
<td>January 1 – March 31</td>
<td>April 30</td>
</tr>
</tbody>
</table>

**For Report Contents and ECOLOGY’s forms:** Please visit our website at: [http://www.ecy.wa.gov/programs/sea/grants/flooddamageprevention](http://www.ecy.wa.gov/programs/sea/grants/flooddamageprevention).

**Identification of Project Materials:** All reports, maps, and other documents published as part of this grant agreement shall carry the name of the RECIPIENT, ECOLOGY’s grant number (in the upper right hand corner), title, the specific task number of the product and date centered on the front cover or title page (or in the case of maps, the block which contains the name of the Government unit or Department).

8. **Format for Publications and Brochures:** Any (hard copy) publications or brochures required as a product of this agreement shall conform to minimum standards of size, 8-1/2" x 11" white, recycled paper equivalent in weight to 30 lb. bond, single spaced, printed both sides, and no less than 1" margins. Photos, illustrations, and graphs must be of reproducible quality.
9. **Amendments and Modifications:** This Agreement may be altered, amended, or waived only by a written amendment executed by both parties. No subsequent modification(s) or amendment(s) of this Agreement will be of any force or effect unless in writing and signed by authorized representatives of both parties. ECOLOGY and the RECIPIENT may change their respective staff contacts and administrative information without the concurrence of either party.

10. **Minority And Women's Business (MWBE) Participation:** The RECIPIENT agrees to solicit and recruit, to the maximum extent possible, certified minority-owned (MBE) and women-owned (WBE) businesses in purchases and contracts initiated after the effective date of this Agreement.

   In the absence of more stringent goals established by the RECIPIENT's jurisdiction, the RECIPIENT agrees to utilize ECOLOGY'S goals for minority- and women-owned business participation in all bid packages, request for proposals, and purchase orders. These goals are expressed as a percentage of the total dollars available for the purchase or contract and are as follows:

<table>
<thead>
<tr>
<th>Category</th>
<th>MBE Percentage</th>
<th>WBE Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction/Public Works</td>
<td>10% MBE</td>
<td>6% WBE</td>
</tr>
<tr>
<td>Architecture/Engineering</td>
<td>10% MBE</td>
<td>6% WBE</td>
</tr>
<tr>
<td>Purchased Goods</td>
<td>8% MBE</td>
<td>4% WBE</td>
</tr>
<tr>
<td>Purchased Services</td>
<td>10% MBE</td>
<td>4% WBE</td>
</tr>
<tr>
<td>Professional Services</td>
<td>10% MBE</td>
<td>4% WBE</td>
</tr>
</tbody>
</table>

Meeting these goals is voluntary and no contract award or rejection shall be made based on achievement or non-achievement of the goals. Achievement of the goals is encouraged, however, and the RECIPIENT and ALL prospective bidders or persons submitting qualifications shall take the following affirmative steps in any procurement initiated after the effective date of this Agreement:

   a. Include qualified minority and women's businesses on solicitation lists.
   b. Assure that qualified minority and women's businesses are solicited whenever they are potential sources of services or supplies.
   c. Divide the total requirements, when economically feasible, into smaller tasks or quantities, to permit maximum participation by qualified minority and women's businesses.
   d. Establish delivery schedules, where work requirements permit, which will encourage participation of qualified minority and women's businesses.
   e. Use the services and assistance of the State Office of Minority and Women's Business Enterprises (OMWBE) and the Office of Minority Business Enterprises of the U.S. Department of Commerce, as appropriate.

By signing this Agreement, the RECIPIENT certifies that the above steps were, or will be followed. Any contractor engaged by the RECIPIENT under this agreement shall be required to follow the above five affirmative steps in the award of any subcontract(s).
Agreement No. G1500033 between the
Washington State Department of ECOLOGY and Whatcom County Flood Control Zone District
Project Title: Deming Levee Upstream Improvement Project

The RECIPIENT shall report to ECOLOGY at the time of submitting each invoice, on
forms provided by ECOLOGY, any payments made to qualified firms. The report will
address:

a. Name and state OMWBE certification number of any qualified firm receiving
funds under the voucher, including any sub-and/or sub-subcontractors.

b. The total dollar amount paid to qualified firms under this invoice.

13. **Right to Audit:** The RECIPIENT agrees that payment(s) made under this grant
shall be subject to reduction for amount charged thereto which are found after audit
examination not to constitute allowable costs under this grant. The RECIPIENT
shall refund by check payable to ECOLOGY the amount of such reduction of pay-
ments under completed or terminated grants.

14. **Grant Closeout:** The end date for this project is **June 30, 2017**. A grace period of
45 days for all deliverables and invoice vouchers is allowed as stipulated in the
scope of work or by the State Office of Financial Management (OFM) through
ECOLOGY's Fiscal Office.

15. **All Writings Contained Herein:** This agreement, the appended "General Terms
and Conditions", and ECOLOGY’s current edition of "Administrative Requirements
for Recipients of ECOLOGY Grants and Loans" contain the entire understanding
between the parties, and there are no other understandings or representations
except those set forth or incorporated by reference herein. No subsequent
modification(s) or amendments to this agreement shall be of any force or effect
unless in writing, signed by authorized representatives of the RECIPIENT and
ECOLOGY and made a part of this agreement.

IN WITNESS WHEREOF, the parties hereby sign this Grant Agreement:

**State of Washington**
Department of ECOLOGY

<table>
<thead>
<tr>
<th>Gordon White</th>
<th>Date</th>
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<tbody>
<tr>
<td>Program Manager</td>
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<td>Shorelands and Environmental Assistance Program</td>
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**Whatcom County Flood Control Zone District**

See attached signature page

<table>
<thead>
<tr>
<th>Signature, Authorized Official</th>
<th>Date</th>
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Print Name of Authorized Official

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<th>Title of Authorized Official</th>
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(Note: Insert additional signature blocks(s) and/or pages if more than one
signature block is required)

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1 In the event the agreement ends at June 30, at the end of the State biennium, the RECIPIENT will
be required to submit both payment request and all deliverables by July 18 or the date as decided by
the ECOLOGY Fiscal Office.
Agreement No. G1500033 between the
Washington State Department of ECOLOGY and Whatcom County Flood Control Zone District
Project Title: Deming levee Upstream Improvement Project

WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT:
Recommended for Approval:

[Signature]
Frank M. Abart, Public Works Director Date

Approved as to form only:

[Signature]
Daniel Gibson, Chief Civil Deputy Prosecutor Date

Approved:
Accepted for Whatcom County Flood Control Zone District

By:
Jack Louws, Whatcom County Executive, Date
acting for the Whatcom County
Flood Control Zone District Board of Supervisors

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 ________________.
WORK PRODUCTS

Copies of documents produced by the RECIPIENT, including quarterly reports and any work products developed under this grant shall be sent to the below PROJECT MANAGER address.

Project Manager for Ecology: Jessica Hamill
SEA Program Northwest Regional Office
3190 160th Ave SE
Bellevue, WA 98008-5452
Phone (425) 649-7049
E-mail address: Jessica.Hamill@ecy.wa.gov

1. Two signed copies of progress reports and all deliverables shall be submitted as specified in Special Terms and Conditions and by the due date under the task description.

CULTURAL AND HISTORIC RESOURCES PROTECTION

The RECIPIENT must comply with all requirements listed in Section 106 of the National Historic Preservation Act or Executive Order 05-05 prior to implementing any project that involves soil disturbing activity.

The RECIPIENT must conduct and submit a cultural resources survey or complete and submit an EZ-1 Form to ECOLOGY's project manager prior to any soil disturbing activities.

ECOLOGY will contact the Department of Archaeology and Historic Preservation (DAHP) and affected tribes regarding the proposed project activities in order to fulfill Section 106 or Executive Order 05-05 requirements. Any prior communication between the RECIPIENT, the DAHP, and the tribes is not sufficient to meet requirements. Any mitigation measures as an outcome of this process will be requirements of this agreement.

Any soil disturbing activities that occur prior to the completion of the Section 106 or Executive Order 05-05 process will not be eligible for reimbursement. Activities associated with cultural resources review are grant eligible and reimbursable.
ATTACHMENT II: General Terms And Conditions
Pertaining To Grant And Loan Agreements Of The Department Of ECOLOGY

A. RECIPIENT PERFORMANCE
All activities for which grant/loan funds are to be used shall be accomplished by the RECIPIENT and RECIPIENT’s employees. The RECIPIENT shall only use contractor/consultant assistance if that has been included in the agreement’s final scope of work and budget.

B. SUBGRANTEE/CONTRACTOR COMPLIANCE
The RECIPIENT must ensure that all subgrantees and contractors comply with the terms and conditions of this agreement.

C. THIRD PARTY BENEFICIARY
The RECIPIENT shall ensure that in all subcontracts entered into by the RECIPIENT pursuant to this agreement, the state of Washington is named as an express third-party beneficiary of such subcontracts with full rights as such.

D. CONTRACTING FOR SERVICES (BIDDING)
Contracts for construction, purchase of equipment and professional architectural and engineering services shall be awarded through a competitive process, if required by State law. RECIPIENT shall retain copies of all bids received and contracts awarded, for inspection and use by ECOLOGY.

E. ASSIGNMENTS
No right or claim of the RECIPIENT arising under this agreement shall be transferred or assigned by the RECIPIENT.

F. COMPLIANCE WITH ALL LAWS
1. The RECIPIENT shall comply fully with all applicable Federal, State and local laws, orders, regulations and permits.

   Prior to commencement of any construction, the RECIPIENT shall secure the necessary approvals and permits required by authorities having jurisdiction over the project, provide assurance to ECOLOGY that all approvals and permits have been secured, and make copies available to ECOLOGY upon request.

2. Discrimination. ECOLOGY and the RECIPIENT agree to be bound by all Federal and State laws, regulations, and policies against discrimination. The RECIPIENT further agrees to affirmatively support the program of the Office of Minority and Women’s Business Enterprises to the maximum extent possible. If the agreement is federally-funded, the RECIPIENT shall report to ECOLOGY the percent of grant/loan funds available to women or minority owned businesses.

3. Wages and Job Safety. The RECIPIENT agrees to comply with all applicable laws, regulations, and policies of the United States and the State of Washington which affect wages and job safety.

4. Industrial Insurance. The RECIPIENT certifies full compliance with all applicable state industrial insurance requirements. If the RECIPIENT fails to comply with such laws, ECOLOGY shall have the right to immediately terminate this agreement for cause as provided in Section K.1, herein.

G. KICKBACKS
The RECIPIENT is prohibited from inducing by any means any person employed or otherwise involved in this project to give up any part of the compensation to which he/she is otherwise entitled or, receive any fee, commission or gift in return for award of a subcontract hereunder.
H. AUDITS AND INSPECTIONS
1. The RECIPIENT shall maintain complete program and financial records relating to this agreement. Such records shall clearly indicate total receipts and expenditures by fund source and task or object. All grant/loan records shall be kept in a manner which provides an audit trail for all expenditures. All records shall be kept in a common file to facilitate audits and inspections.

Engineering documentation and field inspection reports of all construction work accomplished under this agreement shall be maintained by the RECIPIENT.

2. All grant/loan records shall be open for audit or inspection by ECOLOGY or by any duly authorized audit representative of the State of Washington for a period of at least three years after the final grant payment/loan repayment or any dispute resolution hereunder. If any such audits identify discrepancies in the financial records, the RECIPIENT shall provide clarification and/or make adjustments accordingly.

3. All work performed under this agreement and any equipment purchased, shall be made available to ECOLOGY and to any authorized state, federal or local representative for inspection at any time during the course of this agreement and for at least three years following grant/loan termination or dispute resolution hereunder.

4. RECIPIENT shall meet the provisions in OMB Circular A-133 (Audits of States, Local Governments & Non Profit Organizations), including the compliance Supplement to OMB Circular A-133, if the RECIPIENT expends $500,000 or more in a year in Federal funds. The $500,000 threshold for each year is a cumulative total of all federal funding from all sources. The RECIPIENT must forward a copy of the audit along with the RECIPIENT'S response and the final corrective action plan to ECOLOGY within ninety (90) days of the date of the audit report.

I. PERFORMANCE REPORTING
The RECIPIENT shall submit progress reports to ECOLOGY with each payment request or such other schedule as set forth in the Special Conditions. The RECIPIENT shall also report in writing to ECOLOGY any problems, delays or adverse conditions which will materially affect their ability to meet project objectives or time schedules. This disclosure shall be accompanied by a statement of the action taken or proposed and any assistance needed from ECOLOGY to resolve the situation. Payments may be withheld if required progress reports are not submitted.

Quarterly reports shall cover the periods January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. Reports shall be due within thirty (30) days following the end of the quarter being reported.

J. COMPENSATION
1. Method of compensation. Payment shall normally be made on a reimbursable basis as specified in the grant agreement and no more often than once per month. Each request for payment will be submitted by the RECIPIENT on State voucher request forms provided by ECOLOGY along with documentation of the expenses. Payments shall be made for each task/phase of the project, or portion thereof, as set out in the Scope of Work when completed by the RECIPIENT and approved as satisfactory by the Project Manager.

The payment request form and supportive documents must itemize all allowable costs by major elements as described in the Scope of Work. Instructions for submitting the payment requests are found in "Administrative Requirements for Recipients of Ecology Grants and Loans", Part IV, published by ECOLOGY. A copy of this document shall be furnished to the RECIPIENT. When payment requests are approved by ECOLOGY, payments will be made to the mutually agreed upon designee. Payment requests shall be submitted to ECOLOGY and directed to the Project Manager assigned to administer this agreement.

2. Period of Compensation. Payments shall only be made for actions of the RECIPIENT pursuant to the grant/loan agreement and performed after the effective date and prior to the expiration date of this agreement, unless those dates are specifically modified in writing as provided herein.
Agreement No. G1500033 between the
Washington State Department of ECOLOGY and Whatcom County Flood Control Zone District
Project Title: Deming Levee Upstream Improvement Project

3. Final Request(s) for Payment. The RECIPIENT should submit final requests for compensation within forty-five (45) days after the expiration date of this agreement and within fifteen (15) days after the end of a fiscal biennium. Failure to comply may result in delayed reimbursement.

4. Performance Guarantee. ECOLOGY may withhold an amount not to exceed ten percent (10%) of each reimbursement payment as security for the RECIPIENT’s performance. Monies withheld by ECOLOGY may be paid to the RECIPIENT when the project(s) described herein, or a portion thereof, have been completed if, in ECOLOGY’s sole discretion, such payment is reasonable and approved according to this agreement and, as appropriate, upon completion of an audit as specified under section J.5. herein.

5. Unauthorized Expenditures. All payments to the RECIPIENT may be subject to final audit by ECOLOGY and any unauthorized expenditure(s) charged to this grant/loan shall be refunded to ECOLOGY by the RECIPIENT.

6. Mileage and Per Diem. If mileage and per diem are paid to the employees of the RECIPIENT or other public entities, it shall not exceed the amount allowed under state law for state employees.

7. Overhead Costs. No reimbursement for overhead costs shall be allowed unless provided for in the Scope of Work hereunder.

K. TERMINATION

1. For Cause. The obligation of ECOLOGY to the RECIPIENT is contingent upon satisfactory performance by the RECIPIENT of all of its obligations under this agreement. In the event the RECIPIENT unjustifiably fails, in the opinion of ECOLOGY, to perform any obligation required of it by this agreement, ECOLOGY may refuse to pay any further funds there under and/or terminate this agreement by giving written notice of termination.

A written notice of termination shall be given at least five working days prior to the effective date of termination. In that event, all finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, and reports or other materials prepared by the RECIPIENT under this agreement, at the option of ECOLOGY, shall become DEPARTMENT property and the RECIPIENT shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Despite the above, the RECIPIENT shall not be relieved of any liability to ECOLOGY for damages sustained by ECOLOGY and/or the State of Washington because of any breach of agreement by the RECIPIENT. ECOLOGY may withhold payments for the purpose of setoff until such time as the exact amount of damages due ECOLOGY from the RECIPIENT is determined.

2. Insufficient Funds. The obligation of ECOLOGY to make payments is contingent on the availability of state and federal funds through legislative appropriation and state allotment. When this agreement crosses over state fiscal years the obligation of ECOLOGY is contingent upon the appropriation of funds during the next fiscal year. The failure to appropriate or allot such funds shall be good cause to terminate this agreement as provided in paragraph K.1 above.

When this agreement crosses the RECIPIENT’s fiscal year, the obligation of the RECIPIENT to continue or complete the project described herein shall be contingent upon appropriation of funds by the RECIPIENT’s governing body; provided, however, that nothing contained herein shall preclude ECOLOGY from demanding repayment of ALL funds paid to the RECIPIENT in accordance with Section O herein.

3. Failure to Commence Work. In the event the RECIPIENT fails to commence work on the project funded herein within four months after the effective date of this agreement, or by any date agreed upon in writing for commencement of work, ECOLOGY reserves the right to terminate this agreement.

L. WAIVER

Waiver of any RECIPIENT default is not a waiver of any subsequent default. Waiver of a breach of any provision of this agreement is not a waiver of any subsequent breach and will not be construed as a modification of the terms of this agreement unless stated as such in writing by the authorized representative of ECOLOGY.
M. PROPERTY RIGHTS

1. Copyrights and Patents. When the RECIPIENT creates any copyrightable materials or invents any patentable property, the RECIPIENT may copyright or patent the same but ECOLOGY retains a royalty-free, nonexclusive and irrevocable license to reproduce, publish, recover or otherwise use the material(s) or property and to authorize others to use the same for federal, state or local government purposes. Where federal funding is involved, the federal government may have a proprietary interest in patent rights to any inventions that are developed by the RECIPIENT as provided in 35 U.S.C. 200-212.

2. Publications. When the RECIPIENT or persons employed by the RECIPIENT use or publish information of ECOLOGY; present papers, lectures, or seminars involving information supplied by ECOLOGY; use logos, reports, maps or other data, in printed reports, signs, brochures, pamphlets, etc., appropriate credit shall be given to ECOLOGY.

3. Tangible Property Rights. ECOLOGY’s current edition of “Administrative Requirements for Recipients of Ecology Grants and Loans”, Part V, shall control the use and disposition of all real and personal property purchased wholly or in part with funds furnished by ECOLOGY in the absence of state, federal statute(s), regulation(s), or policy(s) to the contrary or upon specific instructions with respect thereto in the Scope of Work.

4. Personal Property Furnished by ECOLOGY. When ECOLOGY provides personal property directly to the RECIPIENT for use in performance of the project, it shall be returned to ECOLOGY prior to final payment by ECOLOGY. If said property is lost, stolen or damaged while in the RECIPIENT’s possession, ECOLOGY shall be reimbursed in cash or by setoff by the RECIPIENT for the fair market value of such property.

5. Acquisition Projects. The following provisions shall apply if the project covered by this agreement includes funds for the acquisition of land or facilities:
   a. Prior to disbursement of funds provided for in this agreement, the RECIPIENT shall establish that the cost of land/or facilities is fair and reasonable.
   b. The RECIPIENT shall provide satisfactory evidence of title or ability to acquire title for each parcel prior to disbursement of funds provided by this agreement. Such evidence may include title insurance policies, Torrens certificates, or abstracts, and attorney's opinions establishing that the land is free from any impediment, lien, or claim which would impair the uses contemplated by this agreement.

6. Conversions. Regardless of the contract termination date shown on the cover sheet, the RECIPIENT shall not at any time convert any equipment, property or facility acquired or developed pursuant to this agreement to uses other than those for which assistance was originally approved without prior written approval of ECOLOGY. Such approval may be conditioned upon payment to ECOLOGY of that portion of the proceeds of the sale, lease or other conversion or encumbrance which monies granted pursuant to this agreement bear to the total acquisition, purchase or construction costs of such property.

N. SUSTAINABLE PRODUCTS

In order to sustain Washington’s natural resources and ecosystems, the RECIPIENT is encouraged to implement sustainable practices where and when possible. These practices include use of clean energy, and purchase and use of sustainably produced products (e.g., recycled paper). For more information, see http://www.ecy.wa.gov/sustainability/

O. RECOVERY OF PAYMENTS TO RECIPIENT

The right of the RECIPIENT to retain monies paid to it as reimbursement payments is contingent upon satisfactory performance of this agreement including the satisfactory completion of the project described in the Scope of Work. In the event the RECIPIENT fails, for any reason, to perform obligations required of it by this agreement, the RECIPIENT may, at ECOLOGY's sole discretion, be required to repay to ECOLOGY all grant/loan funds disbursed to the RECIPIENT for those parts of the project that are rendered worthless in the opinion of ECOLOGY by such failure to perform.

Page 20 of 22
Interest shall accrue at the rate of twelve percent (12%) per year from the time ECOLOGY demands repayment of funds. If payments have been discontinued by ECOLOGY due to insufficient funds as in Section K.2 above, the RECIPIENT shall not be obligated to repay monies which had been paid to the RECIPIENT prior to such termination. Any property acquired under this agreement, at the option of ECOLOGY, may become ECOLOGY'S property and the RECIPIENT'S liability to repay monies shall be reduced by an amount reflecting the fair value of such property.

P. PROJECT APPROVAL
The extent and character of all work and services to be performed under this agreement by the RECIPIENT shall be subject to the review and approval of ECOLOGY through the Project Manager or other designated official to whom the RECIPIENT shall report and be responsible. In the event there is a dispute with regard to the extent and character of the work to be done, the determination of the Project Manager or other designated official as to the extent and character of the work to be done shall govern. The RECIPIENT shall have the right to appeal decisions as provided for below.

Q. DISPUTES
Except as otherwise provided in this agreement, any dispute concerning a question of fact arising under this agreement which is not disposed of in writing shall be decided by the Project Manager or other designated official who shall provide a written statement of decision to the RECIPIENT. The decision of the Project Manager or other designated official shall be final and conclusive unless, within thirty days from the date of receipt of such statement, the RECIPIENT mails or otherwise furnishes to the Director of ECOLOGY a written appeal.

In connection with appeal of any proceeding under this clause, the RECIPIENT shall have the opportunity to be heard and to offer evidence in support of this appeal. The decision of the Director or duly authorized representative for the determination of such appeals shall be final and conclusive. Appeals from the Director's determination shall be brought in the Superior Court of Thurston County. Review of the decision of the Director will not be sought before either the Pollution Control Hearings Board or the Shoreline Hearings Board. Pending final decision of dispute hereunder, the RECIPIENT shall proceed diligently with the performance of this agreement and in accordance with the decision rendered.

R. CONFLICT OF INTEREST
No officer, member, agent, or employee of either party to this agreement who exercises any function or responsibility in the review, approval, or carrying out of this agreement, shall participate in any decision which affects his/her personal interest or the interest of any corporation, partnership or association in which he/she is, directly or indirectly interested; nor shall he/she have any personal or pecuniary interest, direct or indirect, in this agreement or the proceeds thereof.

S. INDEMNIFICATION
1. ECOLOGY shall in no way be held responsible for payment of salaries, consultant's fees, and other costs related to the project described herein, except as provided in the Scope of Work.

2. To the extent that the Constitution and laws of the State of Washington permit, each party shall indemnify and hold the other harmless from and against any liability for any or all injuries to persons or property arising from the negligent act or omission of that party or that party's agents or employees arising out of this agreement.

T. GOVERNING LAW
This agreement shall be governed by the laws of the State of Washington.

U. SEVERABILITY
If any provision of this agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this agreement which can be given effect without the invalid provision, and to this end the provisions of this agreement are declared to be severable.
V. PRECEDENCE
In the event of inconsistency in this agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: (a) applicable Federal and State statutes and regulations; (b) Scope of Work; (c) Special Terms and Conditions; (d) Any terms incorporated herein by reference including the "Administrative Requirements for Recipients of Ecology Grants and Loans"; and (e) the General Terms and Conditions.

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

SS-010 Rev. 04/04
MODIFIED 12/13
Interlocal Agreement between Whatcom County and the Whatcom Conservation District for Non-Dairy Livestock Technical Assistance

This interlocal agreement will provide funds to the Whatcom Conservation District to implement a technical assistance program for landowners and operators with non-dairy livestock as a component of the Whatcom County PIC program.
MEMORANDUM

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

THROUGH: Frank M. Abart, Public Works Director

FROM: Gary Stoyka, Natural Resources Manager
       Erika Douglas, Senior Planner-Marine Resources

RE: Interlocal Agreement between Whatcom County and the Whatcom Conservation District: Whatcom County Pollution Identification and Correction (PIC) Program Non-Dairy Livestock Technical Assistance

DATE: November 21, 2014

Please find enclosed for your review and signature two (2) originals of an interlocal agreement, between Whatcom County and the Whatcom Conservation District, in the amount of $180,000 to provide technical assistance for landowners and operators with non-dairy livestock in PIC focus areas.

Requested Action
Public Works respectfully requests that the County Council authorize the County Executive to sign the attached interlocal agreement.

Background and Purpose
On September 30, 2014, the Whatcom County Council adopted a resolution supporting the Whatcom County PIC Program. This program was identified by the Portage Bay Shellfish Protection District Advisory Committee as the highest priority in the update of the Shellfish Recovery Plan. Several other committees and local organizations have also identified this strategic approach as a solid option for addressing water quality issues in the county.

Whatcom County received a grant from the Washington State Department of Health to enhance the PIC program including technical assistance for agricultural operations through a partnership with the Whatcom Conservation District. This interlocal agreement will provide funding to the Whatcom Conservation District to provide these services in the PIC focus areas.

Funding Amount and Source
This interlocal agreement will provide $180,000 to the Whatcom Conservation District to implement a technical assistance program as a component of the Whatcom County PIC program. This agreement is fully funded through Washington State Department of Health interagency agreement N20989. Please contact Erika Douglas at extension 50692 if you have any questions or concerns regarding the terms of this agreement.

Enclosures
WHATCOM COUNTY CONTRACT INFORMATION SHEET

Originating Department: Public Works- Natural Resources
Contract or Grant Administrator: Erika Douglas
Contractor’s / Agency Name: Whatcom Conservation District

Is this a New Contract? Yes ☒ No ☐ If not, is this an Amendment or Renewal to an Existing Contract? Yes ☐ No ☒ If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: __________

Does contract require Council Approval? Yes ☒ No ☐ If No, include WCC: 
(see Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)

Is this a grant agreement? Yes ☐ No ☒ If yes, grantor agency contract number(s): N20989 CFDA#: 66.123

Is this contract grant funded? Yes ☒ No ☐ If yes, Whatcom County grant contract number(s): __________

Is this the result of a RFP or Bid process? Yes ☒ No ☐ If yes, RFP and Bid number(s): __________

Is this agreement excluded from E-Verify? No ☐ Yes ☒ If no, include Attachment D Contractor Declaration form.

If YES, indicate exclusion(s) below:
☒ Professional services agreement for certified/licensed professional.
☐ Contract work is for less than $100,000.
☐ Contract work is for less than 120 days.
☒ Interlocal Agreement (between Governments).
☐ Contract for Commercial off the shelf items (COTS).
☐ Work related subcontract less than $25,000.
☐ Public Works - Local Agency/Federally Funded FHWA.

Contract Amount: (sum of original contract amount and any prior amendments):
$ 180,000

This Amendment Amount:
$ __________

Total Amended Amount:
$ __________

Contracts that require Council Approval (incl. agenda bill & memo)
• Professional Services Agreement above $20,000.
• Bid is more than $50,000.
• Amendments that have either an increase greater than 10% or provide a $10,000 increase in amount (whichever is greater)

RENEWALS: Council approval is not required when exercising an option to renew that is provided in the original contract.

Summary of Scope: This interlocal agreement will provide funds to the Whatcom Conservation District to implement a technical assistance program for landowners and operators with non-dairy livestock as a component of the Whatcom County PIC program.


Contract Routing:
1. Prepared by: E. Douglas Date: 11/21/14
2. Attorney signoff: Daniel L. Gibson Date: 11/24/14
3. AS Finance reviewed: MBD 11/25/14
4. IT reviewed (if IT related):
5. Contractor signed:
6. Submitted to Exec.: Date: 12/2/14
7. Council approved (if necessary):
8. Executive signed:
9. Original to Council:

Last Edited 060414

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2014 INTERLOCAL AGREEMENT
WHATCOM COUNTY- WHATCOM CONSERVATION DISTRICT
Pollution Identification and Correction (PIC) Program
Non-Dairy Livestock Technical Assistance

WHEREAS, Whatcom County (County) and the Whatcom Conservation District (WCD) desire to establish an arrangement wherein Whatcom County will provide funding to the WCD to provide technical assistance for the non-dairy livestock best management practices component of the Whatcom County Pollution Identification and Correction (PIC) program to the mutual advantage of each jurisdiction; and,

WHEREAS, the Drayton Harbor Shellfish Recovery Plan identified a coordinated water quality monitoring program to identify pollution sources and increased capacity for following up on monitoring findings as high priorities; and,

WHEREAS, the Portage Bay Shellfish Recovery Plan identified a Whatcom County PIC program as the highest priority recommendation; and,

WHEREAS, a PIC program is a data-driven program guiding pollution tracking activities to areas with the greatest water quality problems, followed by technical and financial assistance offered to landowners to implement fixes to improve and protect water quality; and,

WHEREAS, agricultural activities have been identified as one priority source of bacteria in the Drayton Harbor and Portage Bay Shellfish Protection Districts; and,

WHEREAS, the WCD provides local expertise and technical assistance to landowners with livestock to support development and implementation of farm plans; and,

WHEREAS, the most efficient use of resources is to have the WCD supplement its technical assistance and cost-share programs consistent with the specific needs of the Whatcom County PIC program as described in Exhibit A to help improve and protect water quality in the Drayton Harbor and Portage Bay Shellfish Protection Districts; and

WHEREAS, Whatcom County has received grant funding from the Washington State Department of Health (DOH Interagency Agreement N20989) to enhance the Whatcom County PIC program which includes funding for WCD staff for non-dairy livestock technical assistance; and

WHEREAS, it is in the best interest of each party to enter into this Interlocal Agreement.

NOW THEREFORE, the WCD and County agree as follows:

I. Purpose: The purpose of this agreement is to set the terms whereby the County will make available funds to the WCD so that the WCD will implement the non-dairy livestock best management practices component of the PIC program as described in Exhibit A attached hereto.

II. Administration: No new or separate legal or administrative entity is created to administer the provisions of this agreement.

III. Whatcom Conservation District Responsibilities: The WCD hereby agrees to implement the non-dairy livestock best management practices component of the PIC program as described in Exhibit A attached hereto.
IV. **Whatcom County Responsibilities**: The County hereby agrees to reimburse the WCD, not to exceed the total budget amount allocated to the WCD as shown in Exhibit B attached hereto, for the costs in providing and performing the services stated.

V. **Payment**: Contractor shall submit itemized invoices in a format approved by the County in accordance with the requirements of Exhibit B. The County will compensate the WCD for services rendered within thirty (30) days following receipt of an approved invoice, provided all other terms and conditions of the contract have been met and are certified as such by the Contract Administrator.

VI. **Term**: This Agreement shall be effective for services performed from December 20, 2014, through October 15, 2016.

VII. **Responsible Persons**: The persons responsible for administration of this Agreement shall be the Whatcom County Public Works (WCPW) Department Director and the WCD Executive Director or their respective designees.

VIII. **Treatment of Assets and Property**: No fixed assets or personal or real property will be jointly or cooperatively acquired, held, used, or disposed of pursuant to this Agreement.

IX. **Indemnification**: Each party agrees to be responsible and assume liability for its own wrongful and/or negligent acts or omissions or those of their officials, officers, agents, or employees to the fullest extent required by law, and further agrees to save, indemnify, defend, and hold the other party harmless from any such liability. It is further provided that no liability shall attach to the Parties by reason of entering into this Agreement except as expressly provided herein.

X. **Modifications**: This Agreement may be changed, modified, amended or waived only by written agreement executed by the Parties hereto. Waiver or breach of any term or condition of this Agreement shall not be considered a waiver of any prior or subsequent breach.

XI. **Applicable Law**: In the performance of this Agreement, it is mutually understood and agreed upon by the Parties hereto that this Agreement shall be governed by the laws and regulations of the State of Washington and the federal government, both as to interpretation and performance. The venue of any action arising herefrom shall be in the Superior Court of the State of Washington in and for Whatcom County.

XII. **Severability**: In the event any term or condition of this Agreement or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other terms, conditions, or applications of this Agreement that can be given effect without the invalid term, condition, or application. To this end the terms and conditions of this Agreement are declared severable.

XIII. **Special Terms and Conditions**: This Agreement is funded contract between Washington State Department of Health (DOH or Department) and Whatcom County (DOH Contract N20989). The following terms and conditions from the DOH contract apply:

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

**CONFIDENTIALITY/SAFEGUARDING OF INFORMATION**: The use or disclosure by any party of any information concerning a client obtained in providing service under this agreement shall be subject to Chapter 42.56 RCW and Chapter 70.02 RCW, as well as any other applicable federal and state statutes and regulations. Any unauthorized access or use of confidential information must be reported to the DOH IT Security Officer at (360) 236-4432. The notification must be made in the most expedient time possible (usually within 24
hours of discovery) and without unreasonable delay, consistent with the legitimate needs of law enforcement, or any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

**DISPUTES:** In the event that a dispute arises under this Agreement, it shall be determined by a Dispute Board in the following manner: Each party to this agreement shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall review the facts, contract terms and applicable statutes and rules and make a determination of the dispute. The determination of the Dispute Board shall be final and binding on the parties hereto. As an alternative to this process, either of the parties may request intervention by the Governor, as provided by RCW 43.17.330, in which event the Governor’s process will control.

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

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

- Applicable state and federal statutes and rules;
- Special Terms and Conditions: EPA Administrative & Programmatic Conditions;
- Federal Compliance, and Standard Federal Certifications and Assurances;
- Statement of work, and;
- Any other provisions of the agreement, including materials incorporated by reference.

**PRIVACY:** Personal information collected, used or acquired in connection with this contract shall be used solely for the purposes of this contract. Contractor and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the agency or as provided by law. Contractor agrees to implement physical, electronic and managerial safeguards to prevent unauthorized access to personal information.

The Department reserves the right to monitor, audit or investigate the use of personal information collected, used or acquired by the contractor through this contract. The monitoring, auditing, or investigating may include but is not limited to “salting” by the department. Contractor shall certify the return or destruction of all personal information upon expiration of this contract. Salting is the act of placing a record containing unique but false information in a database that can be used later to identify inappropriate disclosure of data contained in the database.

Any breach of this provision may result in termination of the contract and the demand for return of all personal information. The contractor agrees to indemnify and hold harmless the department for any damages related to the contractor’s unauthorized use of personal information.

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

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

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

**SUBCONTRACTING:** Neither the Contractor, nor any subcontractors, shall enter into subcontracts for any of the work contemplated under this agreement without prior written approval of DOH.

**SUSPENSION OF PERFORMANCE AND RESUMPTION OF PERFORMANCE:** In the event contract 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, DOH may give notice to Contractor to suspend performance as an alternative to termination. DOH may elect to give written notice to Contractor to suspend performance when DOH determines that there is a reasonable likelihood that the funding insufficiency may be resolved in a timeframe that would allow performance to be resumed prior to the end date of this contract. Notice may include notice by facsimile or email to Contractor's representative. Contractor shall suspend performance on the date stated in the written notice to suspend. During the period of suspension of performance each party may inform the other of any conditions that may reasonably affect the potential for resumption of performance.

When DOH determines that the funding insufficiency is resolved, DOH may give Contractor written notice to resume performance and a proposed date to resume performance. Upon receipt of written notice to resume performance, Contractor will give written notice to DOH as to whether it can resume performance, and, if so, the date upon which it agrees to resume performance. If Contractor gives notice to DOH that it cannot resume performance, the parties agree that the Contract will be terminated retroactive to the original date of termination. If the date Contractor gives notice it can resume performance is not acceptable to DOH, the parties agree to discuss an alternative acceptable date. If an alternative date is not acceptable to DOH, the parties agree that the Contract will be terminated retroactive to the original date of termination.

**TERMINATION:** Either party may terminate this Agreement upon 30 days prior written notification to the other party. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

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

In addition, WCD is subject to all applicable grant requirements described in Exhibit C. Special Terms and Conditions-EPA Administrative & Programmatic Conditions, Exhibit D. Federal Compliance and Standard Federal Certifications and Assurances, and Exhibit E. Federal Assurances-Non Construction Programs. WCD shall sign the 1) Federal Compliance and Standard Certifications and Assurances and 2) Federal Assurances-Non-Construction Programs documents.

**XIV. Entire Agreement:** This Agreement contains all the terms and conditions agreed upon by the Parties. All items incorporated herein by reference are attached. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the Parties hereto.
XV. **Recordation:** Upon execution of this Agreement, Whatcom County shall file a copy of it with the office of its County Auditor pursuant to the requirements of RCW 39.34.

IN WITNESS WHEREOF, the parties have signed this Agreement this ____________ day of ________________________, 2014.

WHATCOM CONSERVATION DISTRICT

By __________________________
Joe Heller, WCD Chair

Approved as to form:

_________________________
Office of the WCD Attorney

WHATCOM COUNTY

By __________________________
Jack Louws, County Executive

Approved as to form:

_________________________
Whatcom County Prosecuting Attorney

_________________________
Director of Public Works

STATE OF WASHINGTON    )
COUNTY OF WHATCOM      ) ss.

On this __________ day of ________________________, 2014, before me personally appeared Jack Louws, to me known to be the County Executive of Whatcom County and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

_________________________
NOTARY PUBLIC in and for the State of Washington, residing at _________________.
My commission expires: _________________

STATE OF WASHINGTON    )
COUNTY OF WHATCOM      ) ss.

On this __________ day of ________________________, 2014, before me personally appeared Joe Heller, to me known to be the Chair of the Whatcom Conservation District and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

_________________________
NOTARY PUBLIC in and for the State of Washington, residing at _________________
My commission expires: _________________
EXHIBIT A - SCOPE OF WORK
Pollution Identification and Correction (PIC) Program
Non-Dairy Livestock Technical Assistance

PROJECT DESCRIPTION
The purpose of this interlocal agreement is to identify the activities that will be conducted by the WCD to provide community outreach, and technical assistance to non-dairy livestock owners in support of the Whatcom County PIC Program. In general the categories of activities consist of program administration, broad community outreach and engagement for landowners with livestock, and site-specific technical assistance. Details of each of these activities are provided below.

Task 1: Program Administration
WCD will track and report participation in community outreach efforts, landowner contacts and technical assistance, and financial assistance provided under this program.

Deliverables and Timelines:
- Monthly invoices and summaries of landowner/operator contacts. Monthly summaries will include a list of landowners/operators that have been contacted, landowners/operators participating in the program, and the corresponding parcels owned or operated.
- Quarterly progress reports. Quarterly reports will include number of landowners/operators contacted, number of landowners/operators participating in the program, number and type of pollution sources identified, number of farm plans completed, and number of BMPs installed. This information will be summarized by focus area.
- Quarterly reports shall be submitted by the following dates:
  o January 14, April 7, July 7, and October 7, 2015.
  o January 7, April 7, and September 7, 2016.

Task 2: Non-Dairy Livestock Technical Assistance
- Introductory letters from the County Executive and County Council will be sent to landowners in the PIC focus areas informing landowners of water quality issues, potential sources of fecal coliform bacteria, and the PIC program.
- WCPW staff will generate and prioritize a list of parcels with potential livestock activities in PIC focus areas and provide this list to WCD. One week following the introductory letter, WCPW will send the first in a series of three letters to landowners with potential livestock (as described in Flow Chart B). WCD will directly contact (through phone calls and site-visits) landowners/operators of these parcels. Initial contact will occur within one week of issuance of the first letter from WCPW sent to landowners (per Flow Chart B). WCD will continue to attempt direct contact throughout the following two month period of subsequent letters sent by WCPW as described in Flow Charts A & B.
- Through direct landowner/operator contacts, WCD staff will offer free technical assistance to landowners/operators in the form of confidential risk assessments, farm plan development, and guidance in the implementation of BMPs. BMP cost-share options will be described and offered as available.
- WCD will offer technical assistance for temporary fixes to problems identified through the risk assessment that require immediate attention (e.g. animal access to creek, discharge or potential discharge of manure to creek or ditch). Permanent fixes for these problems will be addressed through development and implementation of a farm plan.
• Whatcom County will exercise prosecutorial discretion in withholding enforcement action for violations of the Critical Areas Ordinance or referral of landowners to other agencies for enforcement so long as the landowner is demonstrating good faith in working with the WCD to correct pollution problems.

**Deliverables and Timelines:**

- Monthly summaries of landowner/operator contacts shall be submitted to the County by the tenth day of the following month. Monthly summaries will include a list of landowners/operators that have been contacted, landowners/operators participating in the program, and the corresponding parcels owned or operated.
- Progress will be tracked through quarterly reports described above including number of landowners/operators contacted, number of landowners/operators participating in the program, number and type of pollution sources identified, number of farm plans completed, number of BMPs planned and installed. This information will be aggregated by focus area.
- A minimum of 75 landowners/operators will be contacted in Drayton Harbor watershed focus areas and 75 landowners/operators will be contacted in Nooksack River watershed focus areas (as identified in the Whatcom County PIC program) per year. There is a goal of providing site risk assessments to 50% of landowners/operators that are contacted,
- Quarterly reports shall be submitted by the following dates:
  - January 14, April 7, July 7, and October 7, 2015.
  - January 7, April 7, and October 7, 2016.
Flow Chart A
Broad-Scale Description of Landowner Contacts through Whatcom County PIC Program

Whatcom County Pollution Identification and Correction (PIC) Program
Community Solutions for Clean Water

- Routine Water Quality Monitoring
  - Identify Focus Areas
- Conduct Recon Study of Drainage (GIS, wetland, survey, segmented monitoring)
- Identify Priority Parcels through Water Quality Data and Recon Study
- Dairy/WCPW: Notifies WSODA
- Evidence of Erosion
- Non-Dairy: WCPW Refers Landowner to WCD
- WCD Contacts Landowner
- Problems identified
- No Livestock or no problems
- WCD Provides Technical and Financial Assistance
- BMP Installation During 6-Month Period
- Response: Problems Corrected
- Landowner is in Compliance and Protecting Water Quality
- No Response: Referral for Compliance / Enforcement (PES, DOE)
- Health Contacts Landowner with 3 Letters (Tech and Financial Assistance Available)
- Current ROSS, No Problems
- No Response: Compliance / Enforcement (Health)
- WCPW Notifies NFDES jurisdiction
- Evidence of Stormwater Outfall
- Evidence of Septic
- WCPW Notifies Health
- Health Reviews ROSS Status
- Response: No Problems / Problems Corrected
- No Response: ROSS, No Problems
- WCD Contacts Landowner
- No Response: ROSS / Problems Corrected
Flow Chart B
Description of Landowner Contacts for Non-Dairy Livestock

Introductory PIC Letter Sent by Council Executive and Council to Watershed Residents (1 week)

First WCPW Letter Sent to Landowners with Potential Livestock Source (30 days)

Second WCPW Letter Sent to Landowners with Potential Livestock Source (21 days)

Third WCPW Letter Sent to Landowners with Potential Livestock Source (2 weeks)

WCPW Sends Referral to Appropriate Regulatory Agency with Background Documentation
- Priority Level
- Discharge or Potential to Discharge
- Water Quality Data

Referrals to PDS with Clear Violations will be Given 10 Days to Respond to PDS. Notice of Violation and Standard Compliance Process. All Landowners Entering Compliance Phase will be Required to Submit and Implement a Certified Farm Plan.

WCD Initiates Offers of Technical Assistance Through Phone Calls and/or Door Knocking. Progress Reports to WCPW (following timeline on left). Continue Offers Through Timeframe of WCPW Letters.

1 week

No Response to Offer of Technical Assistance

Offer Accepted and Landowner Engaged

Animal Access or Discharge Identified Through Technical Assistance

Unwilling to Implement Emergency Action

Implements Emergency Action and Initiates Development of Farm Plan. Offer Incentives.

Farm Plan or Farm Plan Checklist Completed

Unwilling to Implement Farm Plan. No Longer Eligible for Incentives.

Implements Farm Plan. Remains Eligible for Incentives.
As consideration for the services provided pursuant to the Scope of Work, the total budget is not to exceed $180,000 with additional details provided below. This budget includes $160,000 in federal funding from DOH Grant Agreement N20989 and $20,000 from local County funds. Federal funding is provided by US Environmental Protection Agency federal grant award #PC-00J88801, DOH Puget Sound Restoration, CFDA# 66.123, CFDA Title: Puget Sound Action Agenda: Technical Investigations and Implementation Assistance Program. Requests for payment and reimbursement by the County will coincide and be based on the successful completion of services described in Exhibit A.

Requests for reimbursement should contain the name of the employee, title, dates of service, number of hours, individual hourly billing rate, total by employee and grand total. Requests for reimbursement of printing expenses must be accompanied by copies of paid invoices itemizing costs incurred. Supporting records shall comply with documentation requirements found in OMB Super Circular 2 CFR Part 200.430 (i) Standards for Documentation of Personnel Expenses. Whatcom County does not reimburse the cost of alcoholic beverages. Any work performed prior to the effective date of this contract or continuing after the completion date of the same unless otherwise agreed upon in writing, will be at the contractor’s expense.

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<td><strong>Totals</strong></td>
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<td><strong>Not to exceed $180,000.00</strong></td>
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* These are 2014 rates and are subject to changes with annual WCD adjustments.
EXHIBIT C
DOH CONTRACT N20989
SPECIAL TERMS AND CONDITIONS
EPA Administrative & Programmatic Conditions

Administrative Conditions

1. Hotel-Motel Fire Safety Act

Pursuant to 40 CFR 30.18, if applicable, and 15 USC 2225a, the recipient agrees to ensure that all space for conferences, meetings, conventions, or training seminars funded in whole or in part with federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (PL 101-391, as amended). Recipients may search the Hotel-Motel National Master List at http://www.usfa.dhs.gov/applications/hotel to see if a property is in compliance (FEMA ID is currently not required), or to find other information about the Act.

2. Recycled Paper

INSTITUTIONS OF HIGHER EDUCATION HOSPITALS AND NON-PROFIT ORGANIZATIONS:
In accordance with 40 CFR 30.16, the recipient agrees to use recycled paper and double sided printing for all reports which are prepared as a part of this agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration.

STATE AGENCIES AND POLITICAL SUBDIVISIONS:
In accordance with Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962) any State agency or agency of a political subdivision of a State which is using appropriated Federal funds shall comply with the requirements set forth. Regulations issued under RCRA Section 6002 apply to any acquisition of an item where the purchase price exceeds $10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was $10,000 or more. RCRA Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by EPA. These guidelines are listed in 40 CFR 247.

STATE AND LOCAL INSTITUTIONS OF HIGHER EDUCATION AND NON-PROFIT ORGANIZATIONS:
In accordance with 40 CFR 30.16, State and local institutions of higher education, hospitals, and non-profit organizations that receive direct Federal funds shall give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to EPA's guidelines.

STATE TRIBAL AND LOCAL GOVERNMENT RECIPIENTS:
In accordance with the polices set forth in EPA Order 1000.25 and Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management (January 24, 2007), the recipient agrees to use recycled paper and double sided printing for all reports which are prepared as a part of this agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration.

3. Lobbying

ALL RECIPIENTS:
The recipient agrees to comply with Title 40 CFR Part 34, New Restrictions on Lobbying. The recipient shall include the language of this provision in award documents for all subawards exceeding $100,000, and require that subrecipients submit certification and disclosure forms accordingly.
EXHIBIT C
DOH CONTRACT N20989
SPECIAL TERMS AND CONDITIONS
EPA Administrative & Programmatic Conditions

In accordance with the Byrd Anti-Lobbying Amendment, any recipient who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such expenditure.

PART 30 RECIPIENTS:
All contracts awarded by a recipient shall contain, when applicable, the anti-lobbying provision as stipulated in the Appendix at Title 40 CFR Part 30.

Pursuant to Section 18 of the Lobbying Disclosure Act, the recipient affirms that it is not a nonprofit organization described in Section 501(c) (4) of the Internal Revenue Code of 1986, or that it is a nonprofit organization described in Section 501(c) (4) of the Code but does not and will not engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act.

4. Lobbying and Litigation

ALL RECIPIENTS:
The chief executive officer of this recipient agency shall ensure that no grant funds awarded under this assistance agreement are used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. The recipient shall abide by its respective OMB Circular (A-21, A-87, or A-122), which prohibits the use of Federal grant funds for litigation against the United States or for lobbying or other political activities.

5. Suspension and Debarment

Recipient shall fully comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532, entitled “Responsibilities of Participants Regarding Transactions (Doing Business with Other Persons).” Recipient is responsible for ensuring that any lower tier covered transaction as described in Subpart B of 2 CFR Part 180 and 2 CFR Part 1532, entitled “Covered Transactions,” includes a term or condition requiring compliance with Subpart C. Recipient is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. Recipient acknowledges that failing to disclose the information as required at 2 CFR 180.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment.

Recipient may access the Excluded Parties List System at www.epis.gov. This term and condition supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."

6. Drug-Free Workplace Certification for all EPA Recipients

The recipient organization of this EPA assistance agreement must make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in Title 2 CFR Part 1536 Subpart B. Additionally, in accordance with these regulations, the recipient organization must identify all known workplaces under its federal awards, and keep this information on file during the performance of the award.

Those recipients who are individuals must comply with the drug-free provisions set forth in Title 2 CFR Part 1536 Subpart C.

The consequences for violating this condition are detailed under Title 2 CFR Part 1536 Subpart E. Recipients can access the Code of Federal Regulations (CFR) Title 2 Part 1536 at http://ecfr.gpoaccess.gov.
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7. Management Fees

Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term "management fees or similar charges" refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs which are not allowable under this assistance agreement. Management fees or similar charges may not be used to improve or expand the project funded under this agreement, except to the extent authorized as a direct cost of carrying out the scope of work.

8. Reimbursement Limitation

If the recipient expends more than the amount of federal funding in its EPA approved budget in anticipation of receiving additional funds from EPA, it does so at its own risk. EPA is not legally obligated to reimburse the recipient for costs incurred in excess of the EPA approved budget.

9. Trafficking in Persons

a. Provisions applicable to a recipient that is a private entity.

1. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not—
   i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
   ii. Procure a commercial sex act during the period of time that the award is in effect; or
   iii. Use forced labor in the performance of the award or subawards under the award.

2. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity—
   i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or
   ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either—
      A. Associated with performance under this award; or
      B. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our Agency at 2 CFR 1532.

b. Provision applicable to a recipient other than a private entity. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—

1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or
2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—
   i. Associated with performance under this award; or
   ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 CFR 1532.

c. Provisions applicable to any recipient.

1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:
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i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
ii. Is in addition to all other remedies for noncompliance that are available to us under this award.

3. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

d. Definitions. For purposes of this award term:
   1. “Employee” means either:
      i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
      ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.

10. Trafficking Victim Protection Act of 2000 (TVPA) as Amended.

To implement requirements of Section 106 of the Trafficking Victims Protection Act of 2000, as amended, the following provisions apply to this award:

a. We, as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity: (1) is determined to have violated an applicable prohibition in the Prohibition Statement below; or (2) has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in the Prohibition Statement below through conduct that is either: (a) associated with performance under this award; or (b) imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 2 CFR part 1532. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in the Prohibition Statement below.

b. Our right to terminate unilaterally that is described in paragraph a of this award term: (1) implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and (2) is in addition to all other remedies for noncompliance that are available to us under this award.

c. You must include the requirements of the Prohibition Statement below in any subaward you make to a private entity.

Prohibition Statement - You as the recipient, your employees, subrecipients under this award, and subrecipients’ employees may not engage in severe forms of trafficking in persons during the period of time that the award is in effect; procure a commercial sex act during the period of time that the award is in effect; or use forced labor in the performance of the award or subawards under the award.

11. DUNS and CCR Requirements (Updated 8/1/12)

A. Requirement for Central Contractor Registration (CCR)/System for Award Management (SAM).
Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain the currency of your information in the SAM until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.
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B. Requirement for Data Universal Numbering System (DUNS) numbers. If you are authorized to make subawards under this award, you:

1. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its DUNS number to you.

2. May not make a subaward to an entity unless the entity has provided its DUNS number to you.

C. Definitions. For purposes of this award term:

1. Central Contractor Registration (CCR)/System for Award Management (SAM) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the System for Award Management (SAM) Internet site http://www.sam.gov.

2. Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at http://fedgov.dnb.com/webform).

3. Entity, as it is used in this award term, means all of the following, as defined at 2 CFR part 25, subpart C:
   a. A Governmental organization, which is a State, local government, or Indian tribe;
   b. A foreign public entity;
   c. A domestic or foreign nonprofit organization;
   d. A domestic or foreign for-profit organization; and
   e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

4. Subaward:
   a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
   b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. -.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").
   c. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.

5. Subrecipient means an entity that:
   a. Receives a subaward from you under this award; and
   b. Is accountable to you for the use of the Federal funds provided by the subaward.

12. Subawards

a. The recipient agrees to:

   (1) Establish all subaward agreements in writing;
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(2) Maintain primary responsibility for ensuring successful completion of the EPA-approved project (this responsibility cannot be delegated or transferred to a subrecipient);
(3) Ensure that any subawards comply with the standards in Section 210(a)-(d) of OMB Circular A-133 and are not used to acquire commercial goods or services for the recipient;
(4) Ensure that any subawards are awarded to eligible subrecipients and that proposed subaward costs are necessary, reasonable, and allocable;
(5) Ensure that any subawards to 501(c)(4) organizations do not involve lobbying activities;
(6) Monitor the performance of their recipients and ensure that they comply with all applicable regulations, statutes, and terms and conditions which flow down in the subaward;
(7) Obtain EPA's consent before making a subaward to a foreign or international organization, or a subaward to be performed in a foreign country; and
(8) Obtain approval from EPA for any new subaward work that is not outlined in the approved work plan in accordance with 40 CFR Parts 30.25 and 31.30, as applicable.

b. Any questions about subrecipient eligibility or other issues pertaining to subawards should be addressed to the recipient's EPA Project Officer. Additional information regarding subawards may be found at http://www.epa.gov/ogd/guide/subaward-policy-part-2.pdf. Guidance for distinguishing between vendor and subrecipient relationships and ensuring compliance with Section 210(a)-(d) of OMB Circular A-133 can be found at http://www.epa.gov/ogd/guide/subawards-appendix-b.pdf and http://www.whitehouse.gov/sites/default/files/omb/assets/a133/a133_revised_2007.pdf.

c. The recipient is responsible for selecting its subrecipients and, if applicable, for conducting subaward competitions.

13. CIVIL RIGHTS OBLIGATIONS

GENERAL

This term and condition incorporates by reference the signed assurance provided by the recipient's authorized representative on: 1) EPA Form 4700-4, "Preaward Compliance Review Report for All Applicants and Recipients Requesting EPA Financial Assistance"; and 2) Standard Form 424B or Standard Form 424D, as applicable. These assurances and this term and condition obligate the recipient to comply fully with applicable civil rights statutes and implementing EPA regulations.

STATUTORY REQUIREMENTS

In carrying out this agreement, the recipient must comply with:

- Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP), by entities receiving Federal financial assistance.
- Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities by entities receiving Federal financial assistance; and
- The Age Discrimination Act of 1975, which prohibits age discrimination by entities receiving Federal financial assistance.

If the recipient is conducting an education program under this agreement, it must also comply with:

- Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in education programs and activities operated by entities receiving Federal financial assistance.

If this agreement is funded with financial assistance under the Clean Water Act (CWA), the recipient must also comply with:
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- Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex in CWA-funded programs or activities.

REGULATORY REQUIREMENTS

The recipient agrees to comply with all applicable EPA civil rights regulations, including:

- For Title IX obligations, 40 C.F.R. Part 5; and
- For Title VI, Section 504, Age Discrimination Act, and Section 13 obligations, 40 C.F.R. Part 7.
- As noted on the EPA Form 4700-4 signed by the recipient’s authorized representative, these regulations establish specific requirements including maintaining compliance information, establishing grievance procedures, designating a Civil Rights Coordinator, and providing notices of non-discrimination.

TITLE VI – LEP, Public Participation and Affirmative Compliance Obligation

- As a recipient of EPA financial assistance, you are required by Title VI of the Civil Rights Act to provide meaningful access to LEP individuals. In implementing that requirement, the recipient agrees to use as a guide the Office of Civil Rights (OCR) document entitled "Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons." The guidance can be found at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2004_register&docid=fr25jn04-79.pdf

- If the recipient is administering permitting programs under this agreement, the recipient agrees to use as a guide OCR’s Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs. The Guidance can be found at http://edocket.access.gpo.gov/2006/pdf/06-2691.pdf.
- In accepting this assistance agreement, the recipient acknowledges it has an affirmative obligation to implement effective Title VI compliance programs and ensure that its actions do not involve discriminatory treatment and do not have discriminatory effects even when facially neutral. The recipient must be prepared to demonstrate to EPA that such compliance programs exist and are being implemented or to otherwise demonstrate how it is meeting its Title VI obligations.

14. Disadvantaged Business Enterprise Requirements

General Compliance, 40 CFR, Part 33

The recipient agrees to comply with the requirements of EPA’s Program for Utilization of Small, Minority and Women’s Business Enterprises in procurement under assistance agreements, contained in 40 CFR, Part 33.

15. Payment to Consultants

EPA participation in the salary rate (excluding overhead) paid to individual consultants retained by recipients or by a recipient’s contractors or subcontractors shall be limited to the maximum daily rate for Level IV of the Executive Schedule (formerly GS-18), to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. This rate does not include transportation and subsistence costs for travel performed (the recipient will pay these in accordance with their normal travel reimbursement practices).
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Subagreements with firms for services which are awarded using the procurement requirements in 40 CFR Parts 30 or 31, are not affected by this limitation unless the terms of the contract provide the recipient with responsibility for the selection, direction, and control of the individuals who will be providing services under the contract at an hourly or daily rate of compensation. See 40 CFR 30.27(b) or 40 CFR 31.36(j), as applicable, for additional information.

As of January 1, 2014, the limit is $602.24 per day $75.28 per hour.

NOTE: For future years' limits, the recipient may find the annual salary for Level IV of the Executive Schedule on the following Internet site: http://www.opm.gov/oca. Select "Salary and Wages", and select "Rates of Pay for the Executive Schedule". The annual salary is divided by 2087 hours to determine the maximum hourly rate, which is then multiplied by 8 to determine the maximum daily rate.

Programmatic Conditions

1. Electronic and Information Technology Accessibility
   Recipients and subrecipients are subject to the program accessibility provisions of Section 504 of the Rehabilitation Act, codified in 40 CFR Part 7, which includes an obligation to provide individuals with disabilities reasonable accommodations and an equal and effective opportunity to benefit from or participate in a program, including those offered through electronic and information technology ("EIT"). In compliance with Section 504, EIT systems or products funded by this award must be designed to meet the diverse needs of users (e.g., U.S. public, recipient personnel) without barriers or diminished function or quality. Systems shall include usability features or functions that accommodate the needs of persons with disabilities, including those who use assistive technology. At this time, the EPA will consider a recipient's websites, interactive tools, and other EIT as being in compliance with Section 504 if such technologies meet standards established under Section 508 of the Rehabilitation Act, codified at 36 CFR Part 1194. While Section 508 does not apply directly to grant recipients, we encourage recipients to follow either the 508 guidelines or other comparable guidelines that concern accessibility to EIT for individuals with disabilities. Recipients may wish to consult the latest Section 508 guidelines issued by the US Access Board or W3C's Web Content Accessibility Guidelines (WCAG) 2.0 (see http://www.access-board.gov/sec508/guide/index.htm).

2. Competency of Organizations Generating and/or Using Environmental Measurement Data
   In accordance with Agency Policy Directive Number FEM-2012-02, Policy to Assure the Competency of Organizations Generating Environmental Measurement Data under Agency-Funded Assistance Agreements, recipient shall maintain competency for the duration of the project period of this agreement and this will be documented during the annual reporting process. A copy of the Policy is available online at http://www.epa.gov/fem/lab_comp.htm or a copy may also be requested by contacting the EPA Project Officer for this award.

Federal Assistance Agreement Funds Up To $200,000
Recipient agrees that if the total federal funding obligated on this award exceeds $200,000 (resulting from subsequent amendments to this agreement) and will involve the use or generation of environmental data it will (unless it has otherwise done so) demonstrate competency prior to carrying out any activities involving the generation or use of environmental data under this agreement.

Federal Assistance Agreement Funds Exceed or Expect to Exceed $200,000
Recipient agrees, by entering into this agreement, that it has demonstrated competency prior to award, or alternatively, where a pre-award demonstration of competency is not practicable. Recipient agrees to submit documentation and demonstrate competency prior to carrying out any activities under the award involving the generation or use of environmental data.
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R10 Quality Assurance Team Contact: Gina Grepo-Grove, Quality Assurance Manager, at (206) 553-1632 or email: Grepo-Grove.Gina@epa.gov.

3. Sufficient Progress

DOH may terminate the assistance agreement for failure of the sub-recipient to make sufficient progress so as to reasonably ensure completion of the project within the project period, including any extensions. DOH will measure sufficient progress by examining the performance required under the workplan in conjunction with the milestone schedule, the time remaining for performance within the project period, and/or the availability of funds necessary to complete the project.

4. Semi-Annual Performance Reports

Sub-recipients will submit performance reports to the DOH Grant Manager every six (6) months, unless a different reporting frequency is outlined in the Scope of Work, during the life of the project. DOH will provide the Financial and Ecosystem Accounting Tracking System (FEATS) reporting forms. Reports are due 15 calendar days after the end of each reporting period. The reporting periods shall end March 31st and September 30th of each calendar year. Reports shall be submitted electronically. The sub-recipient agrees to submit performance reports that include brief information on each of the following areas:

(a) a comparison of actual accomplishments to the outputs/outcomes established in the assistance agreement work plan for the period;
(b) the reasons for slippages if established outputs/outcomes were not met;
(c) additional pertinent information, including when appropriate, analysis and information of cost overruns or high unit costs.

In addition to the semi-annual performance reports, the sub-recipient shall immediately notify the DOH Grant Manager of developments that have a significant impact on the award-supported activities. As appropriate, the sub-recipient agrees to inform the DOH Grant Manager as soon as problems, delays or adverse conditions become known which will materially impair the ability to meet the outputs/outcomes specified in the assistance agreement work plan. This notification shall include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.

5. Final Performance Report

In addition to the periodic performance reports, the sub-recipient shall submit a final performance report through FEATS, which is due 90 calendar days after the expiration or termination of the award. The report shall be submitted to the EPA Project Officer and must be provided electronically. The report shall generally contain the same information as in the periodic reports, but should cover the entire project period. After completion of the project, the EPA Project Officer may waive the requirement for a final performance report if the EPA Project Officer deems such a report is inappropriate or unnecessary.

6. Recognition of EPA Funding

Reports, documents, signage, videos, or other media, developed as part of projects funded by this assistance agreement shall contain the following statement:

"This project has been funded wholly or in part by the United States Environmental Protection Agency under assistance agreement PC-00J88801 to Washington Department of Health. The contents of this document do not necessarily reflect the views and policies of the Environmental Protection Agency, nor does mention of trade names or commercial products constitute endorsement or recommendation for use."

7. Copyrighted Material
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In accordance with 40 CFR 31.34 for State, local and Indian Tribal governments or 40 CFR 30.36 for other recipients, EPA has the right to reproduce, publish, use, and authorize others to use copyrighted works or other data developed under this assistance agreement for Federal purposes.

Examples of a Federal purpose include but are not limited to: (1) Use by EPA and other Federal employees for official Government purposes; (2) Use by Federal contractors performing specific tasks for the Government; (3) Publication in EPA documents provided the document does not disclose trade secrets (e.g. software codes) and the work is properly attributed to the recipient through citation or otherwise; (4) Reproduction of documents for inclusion in Federal depositories; (5) Use by State, tribal and local governments that carry out delegated Federal environmental programs as "co-regulators" or act as official partners with EPA to carry out a national environmental program within their jurisdiction and; (6) Limited use by other grantees to carry out Federal grants provided the use is consistent with the terms of EPA's authorization to the other grantee to use the copyrighted works or other data.

Under Item 5, the grantee acknowledges that EPA may authorize another grantee(s) to use the copyrighted works or other data developed under this grant as a result of:

a. the selection of another grantee by EPA to perform a project that will involve the use of the copyrighted works or other data or;
b. termination or expiration of this agreement.

In addition, EPA may authorize another grantee to use copyrighted works or other data developed with Agency funds provided under this grant to perform another grant when such use promotes efficient and effective use of Federal grant funds.

8. Quality Assurance Requirements

Acceptable Quality Assurance documentation must be submitted to the DOH within 30 days of the acceptance of this agreement or another date as negotiated with the DOH Grant Coordinator.

Please refer to The Department of Ecology's website at http://www.ecy.wa.gov/programs/eap/qa/docs/NEPQAPP/index.html for guidance and templates. Submit the Acceptable Quality Assurance documentation to Tom Gries at tgr1461@ecy.wa.gov for review with a cc: to mary.knackstedt@doih.wa.gov and megan.schell@doih.wa.gov. No work involving direct measurements or data generation, environmental modeling, compilation of data from literature or electronic media, and data supporting the design, construction, and operation of environmental technology shall be initiated under this project until the Department of Ecology Quality Coordinator has approved the quality assurance document and a copy has been provided to DOH.

9. Environmental Data and Information Technology

Subrecipients are required to institute standardized reporting requirements into their work plans and include such costs in their budgets. All environmental data will be required to be entered into the Agency's Storage and Retrieval data system (STORET). The best method (local or state consolidated) for reporting will be determined on a project-by-project basis between the DOH Grant Coordinator, Ecology's NEP Quality Coordinator, and the subrecipient. STORET is a repository for water quality, biological, and other physical data used by state environmental agencies, EPA and other federal agencies, universities, private citizens, and many other organizations. It is highly recommended that the grant recipient attend EPA sponsored STORET training as soon as practical and as training is available. Information regarding training sessions sponsored by EPA will be provided by the EPA Project Officer. More information about STORET can be found at http://www.epa.gov/STORET.

Region 10 STORET Contact
Ted Enderle, STORET Coordinator
10. Peer Review

The results of this project may affect management decisions relating to Puget Sound. Prior to finalizing any significant technical products the Principal Investigator (PI) of this project must solicit advice, review and feedback from a technical review or advisory group consisting of relevant subject matter specialists. A record of comments and a brief description of how respective comments are addressed by the PI will be provided to the Project Monitor prior to releasing any final reports or products resulting from the funded study.

11. Program Income

If program income is generated, the recipient is required to account for program income related to this project. Program income earned during the project period shall be retained by the recipient and shall be added to funds committed to the project by EPA and the recipient, and shall be used to further eligible project objectives.

12. Minority and Women-Owned Business Enterprise (MBE/WBE) Fair Share Objectives and Reporting

Sub-recipients are held to the same requirements as the recipient of the EPA Grant and must accept the MBE/WBE fair share objectives/goals negotiated with EPA by the Washington Office of Minority and Women’s Business Enterprises as follows:

MBE: PURCHASED GOODS 8%, PURCHASED SERVICES 10%, PROFESSIONAL SERVICES 10%
WBE: PURCHASED GOODS 4%, PURCHASED SERVICES 4%, PROFESSIONAL SERVICES 4%

By accepting this financial assistance the sub-recipient is accepting the fair share objectives/goals stated above and attests to the fact that it is purchasing the same or similar construction, supplies, services and equipment, in the same or similar relevant geographic buying market as, Washington Office of Minority and Women’s Business Enterprises.

Sub-recipients are required to submit MBE/WBE utilization reports annually. Reports will be in the following format and will include all qualifying purchases. Reporting period is from October 1 to September 30, and upon contract completion. Reports are due to DOH 15 calendar days after the end of each reporting period.

<table>
<thead>
<tr>
<th>1. Procurement Made By (check box)</th>
<th>2. Business Enterprise (check box)</th>
<th>3. $ Value of Procurement</th>
<th>4. Date of Purchase MM/DD/YY</th>
<th>5. Type of Product or Services * (Enter Code)</th>
<th>6. Name/Address/Phone Number of MBE/WBE Contractor or Vendor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recipient</td>
<td>Subrecipient</td>
<td>Prime</td>
<td>Minority</td>
<td>Women</td>
<td></td>
</tr>
</tbody>
</table>

*Type of product or service codes: 1 = Construction  2 = Supplies  3 = Services  4 = Equipment

DOH Program Contact (Name, Program Title, Mailing Address, Email Address, Phone & Fax Number)
Mary Knackstedt, Office of Shellfish and Water Protection
PO Box 47824
Olympia WA 98504-7824
360.236.3319; mary.knackstedt@doh.wa.gov
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Megan Schell, Office of Shellfish and Water Protection
PO Box 47824
Olympia, WA 98504-7824
360.236.3307; megan.schell@doh.wa.gov

13. Riparian Buffers

Riparian buffer restoration projects in agricultural areas shall be consistent with the interim riparian buffer recommendations provided to EPA and the Natural Resource Conservation Service by National Marine Fisheries Service letters of February 4, 2013 and April 9, 2013, or the October 28, 2013 guidance previously agreed to by Lead Organizations (LOs) (see attachments). LOs shall confirm in writing projects’ consistency with the recommendations referenced above. When evaluating project proposals, LOs also should consider the extent to which proposals include appropriate riparian buffers or otherwise address pollution sources on other water courses on the properties in the project area to support water quality and salmon recovery. Deviations can only be obtained through an exception approved by EPA. In order for EPA to evaluate a request for an exception, the LO must submit the scientific rationale demonstrating adequacy of buffers for supporting water quality and salmon recovery. The request must summarize tribal input on the scientific rationale or other relevant issues. The scientific rationale could be developed from sources such as site-specific assessment data, salmon recovery plans, Total Maximum Daily Loads (TMDLs) and the state nonpoint plan. EPA will confer with the National Oceanic and Atmospheric Administration (NOAA) and the Washington Department of Ecology and provide the opportunity for affected tribes to consult with EPA before making a final decision on a deviation request.
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<table>
<thead>
<tr>
<th>NMFS Channel Type</th>
<th>Channel Types</th>
<th>Habitat Functions/Composition</th>
<th>Buffer – Minimum Default Width</th>
</tr>
</thead>
</table>
| **Class I**       | 1. Constructed Ditches, Intermittent Streams and Ephemeral Streams that are not identified as being accessed and were historically not accessed by anadromous or ESA listed fish species  
2. Perennial waters that are not identified as being accessed and were historically not accessed by anadromous or ESA listed fish species | Water quality protection; shade; sediment filtration | 1. 35’  
2. 50’ |
| **Class II**      | Modified or highly entrenched perennial, intermittent and ephemeral waters that are identified as being accessed or were historically accessed by anadromous or ESA listed fish species | Water quality, large wood debris (LWD) for cover, complexity and shade | 100’ supporting site assessment recommended to increase buffer width |
| **Class III**     | Unconfined perennial, intermittent and ephemeral waters that are identified as being accessed or were historically accessed by anadromous or ESA listed fish species | Water quality, large wood debris (LWD) for cover, complexity and shade | 100’ supporting site assessment recommended to increase buffer width |
| **Class IV**      | N/A | N/A | N/A |
| **Class V**       | Perennial, intermittent and ephemeral waters that are identified as being accessed or were historically accessed by anadromous or ESA listed fish species in intertidal and estuarine streams and channels | Site potential vegetation (salt water) sedges, shrubs, etc. | 35’ – 75’ Supporting site assessment of adjacent land use recommended to increase buffer protections needed to meet all applicable water quality standards. |
Special Terms and Conditions
EPA Administrative & Programmatic Conditions

Ms. Roylene Rides-at-the Door
USDA Natural Resources Conservation Service
316 W. Boone Avenue, Suite 450
Spokane, Washington 99201-2348

Mr. Dennis McLellan, Regional Administrator
EPA - Region 10
1200 6th Ave., Suite 900
Seattle, Washington 98101

Dear Ms. Rides-at-the-Door and Mr. McLellan:

Our three agencies have been in very active discussions on opportunities to restore the health of our streams and nearshore areas as part and parcel of our collective effort to address the Treaty rights issues associated with the continuing loss of habitat productivity of importance to salmon and steelhead populations and other fishery resources in the Pacific Northwest. In particular, we have been examining the adequacy of our current approaches to describing those riparian buffers in lower elevation landscapes that may be necessary to protect and restore important aquatic functions.

NOAA Fisheries has recently reviewed the current scientific information associated with this topic in order to assist us in identifying approaches that might help protect aquatic functions important to fishery resources. In this context, I am writing to recommend that you use on an interim basis the enclosed matrix of riparian buffers in programs EPA or the NRCS support or fund. I would also couple this with our request to join with us and others to refine the matrix based on best available science over the coming months. For your information, I have enclosed a brief synopsis of existing scientific information about the relationship between riparian buffers and aquatic stream functions important to Pacific salmonids in the low elevation agricultural landscapes of western Washington which I believe will help provide some meaningful background for our recommendation.

Several factors provide context for our recommendation. Numerous populations of salmon and steelhead in the Pacific Northwest are at risk of extinction and as a consequence, federally-reserved treaty rights to harvest these fish are also at risk. Degradation and loss of freshwater and estuarine habitat are significant factors in the decline of these populations. Salmon habitat ranges from the forested areas of the upper elevations to the lower-elevation floodplains to the estuarine and near-shore habitats of Puget Sound. All of these areas provide vital functions in
the system as whole, particularly the lower-elevation and estuarine areas that are the focus of my recommendation. There are many ongoing efforts to rebuild Puget Sound salmon, including those of numerous state and federal agencies, tribal and local governments and the private sector. I am providing the enclosed matrix as NOAA Fisheries’ recommendation for minimum riparian buffers in lower-elevation agricultural landscapes. Our technical guidance is intended to help shape recovery and rebuilding efforts effectively and to offer our technical advice on what aquatic functions fish need.

In some cases, our recommendations are framed in terms of ranges of buffer widths rather than point estimates, and expressed as probabilities of achieving desired outcomes. Local conditions and local circumstances matter, and may affect the choice of the riparian buffer most effective at achieving salmon recovery. Nevertheless, the scientific information does support conclusions about the probability of differing buffer ranges to provide a range of aquatic functions that are essential for water quality and salmon needs, as depicted in the enclosures. We are ready to work with project proponents, landowners, agencies, departments and tribes to provide technical advice and find solutions that will support salmon recovery.

The enclosed matrix has its origins in the Washington Agriculture, Fish and Water process (AFW), which occurred from 1999 to 2003 and included participation by state and federal agencies, tribal governments and diverse agricultural interests. One of the efforts undertaken in the AFW process was to identify riparian buffers for agricultural landscapes that provide adequate salmon habitat and are implementable. Several options were developed by the AFW caucuses. For the sake of clarity, the enclosed matrix displays the proposal developed by the federal caucus at the request of the AFW Executive Committee, Option 3. It was presented to the Executive Committee by NOAA Fisheries, along with several caveats which still hold true today: 1) there is a technical basis for the buffer table, supported by the refereed literature and other references; 2) it represents a coarse-scale classification; and 3) the goal of the matrix is to meet state and federal water quality standards and improve salmon habitat. NOAA Fisheries explained the numbers are within an advisable range, and stated there is flexibility to implement more complex approaches when looking at specific sites, so long as water quality protection and salmon habitat function are equivalent or better than that provided by our recommendations.

This history is relevant today as our view of the buffer table is unchanged. We supported its use in 2002, and we still support its use in 2012 as a guide for establishing interim minimum buffers for programs to promote good water quality and aquatic conditions important to salmon and other aquatic life. While the table identifies buffers as narrow as 35 feet for limited situations, in most settings buffers will need to be significantly wider than this to meet salmon habitat needs. We recommend protecting wider buffers where they exist and creating wider buffers where it is practicable and where local watershed conditions warrant. Further, we are convinced that any strategy to meaningfully increase the agricultural landscape’s contribution to salmon recovery, as well as any strategy to sufficiently protect water quality, should contain a robust riparian restoration program.
If you have any further questions about this letter, please feel free to call me directly or Mr. Steve Landino, the director of our Washington State Habitat Office.

Sincerely,

[Signature]

William W. Stelle, Jr.
Regional Administrator

Enclosures

cc: Puget Sound Federal Caucus Agencies
    Northwest Indian Fisheries Commission
    Washington State Dept. of Ecology
    Washington State Department of Fish and Wildlife
    Washington State Department of Natural Resources
    Washington State Department of Agriculture
    Washington State Department of Health
    Washington State Conservation Commission
    Washington Recreation and Conservation Office
    Puget Sound Partnership
Ms. Roylene Rides-at-the-Door
Washington State Conservationist
USDA - Natural Resources Conservation Service
316 W. Boone Avenue, Suite 450
Spokane, Washington 99201-2348

Mr. Dennis McLerran, Regional Administrator
U.S. Environmental Protection Agency – Region 10
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

Dear Ms. Rides-at-the-Door and Mr. McLerran:

I am writing to convey my support for slight modifications to the riparian matrix that I distributed on January 30 of this year. As Natural Resources Conservation Service (NRCS) staff developed guidance for implementing riparian restoration actions consistent with the matrix, they discovered that internal agency issues prevented the use of a 100-year soil site index upon which the matrix is predicated. It is my understanding that the NRCS is required to use soils data that are available on line, and that only 50-year soil site index data are so available. Fortunately, NRCS and NMFS staff crafted a workaround that requires only minor modifications to the matrix while enabling the use of 50-year soil site index data.

Buffers for two of the channel types on the matrix were to be set at minimums equal to either two-thirds or three-fourths of a 100-year-old site potential tree. Using the same fractions of a 50-year site index potential tree height, at least where site potential trees are conifers, would result in much narrower buffers. However, a review of conifer growth rates across a range of western Washington soil types suggests that modifying the matrix to set minimums at three-fourths and 100 percent of a 50-year old site potential tree height, respectively, would yield nearly identical minimum buffer widths as those in the original matrix. I support this modification as a practical accommodation to on-the-ground implementation.

In addition, I understand there are concerns that the matrix is too vague regarding type 1 channels. The intent is that type 1 channels not contribute to water quality problems downstream. Reference to the Field Office Technical Guide is intended to convey that the necessary width and composition of buffers on type 1 channels will vary depending on the adjacent land use and geomorphic setting.
SPECIAL TERMS AND CONDITIONS
EPA Administrative & Programmatic Conditions

To implement the recommendations in the matrix, when surface waters are present, water quality must be identified as a resource concern and appropriate combinations of best management practices (BMPs) must be applied to ensure the associated farm operation will comply with water quality standards. For example, where pathogens are of concern, there is no support in the literature for buffers narrower than 35 feet. Therefore, we expect that type 1 channels on lands occupied by livestock or where manure is being applied will be treated with a combination of BMPs that will result in a buffer width of 35 feet or greater, e.g., a 15-foot wide hedgerow and a 20-foot or wider filter strip.

Lastly, I agree that channel type 4, leveed channels, should be removed from the list, as these features are managed according to Corps of Engineers’ requirements.

I look forward to working with each of you in applying our shared authorities and responsibilities to dramatically improve habitat and water quality in the Puget Sound basin. If you have any further questions about this letter, please feel free either to call me directly or to contact Mr. Steve Landino, the director of our Washington State Habitat Office.

Sincerely,

[Signature]

William W. Stelle, Jr.
Regional Administrator

cc: Washington State Dept. of Ecology
    Washington State Conservation Commission
    Mike Graymun, Northwest Indian Fisheries Commission
    Thomas Eaton, Environmental Protection Agency
    Linda Anderson Carnahan, Environmental Protection Agency
    Sherre Copeland, Natural Resources Conservation Service

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1 BMPs may include conservation practices found in the Field Office Technical Guide applied in manner that results in compliance with water quality standards.

2 Fish presence based on Washington’s Integrated Fish Distribution database. Fish presence includes all classes of presence of anadromous or ESA listed fish. Where no fish distribution data is available, fish presence must be determined by contacting local WDFW or Tribal biologist.

3 Buffer widths are required minimums, however, if a landowner believes that the buffers called for by the table significantly interfere with his/her ability to reasonably use their property, there is a process to identify alternative buffers that are smaller. Please see FAQs for more information.

4 Generally, buffer vegetation is required between the watercourse and dike, based upon the criteria of the corresponding channel type. However, levee vegetation requirements are subject to U.S. Army Corps of Engineers (Corps) guidance which can be found in Engineering Technical Letter No. 1110-2-571, “Engineering and Design: Guidelines for Landscape Planting and Vegetation Management at Levees, Floodwalls, Embankment Dams, and Appurtenant Structures”, as well as in the USACE Levee Owner’s Manual for Non-Federal Flood Control Works.

4 Estuarine channels are defined as stream channels having direct, daily tidal influence such that the vegetation is adapted to saltwater or intertidal conditions.
EXHIBIT D

FEDERAL COMPLIANCE
AND STANDARD FEDERAL CERTIFICATIONS AND ASSURANCES

In the event federal funds are included in this agreement, added by future amendment(s), or redistributed between fund sources resulting in the provision of federal funds, the following sections apply: I. Federal Compliance and II. Standard Federal Assurances and Certifications. In the instance of inclusion of federal funds as a result of an amendment, the Contractor may be designated as a subrecipient and the effective date of the amendment shall also be the date at which these requirements go into effect.

I. FEDERAL COMPLIANCE - The use of federal funds requires additional compliance and control mechanisms to be in place. The following represents the majority of compliance elements that may apply to any federal funds provided under this contract. (Refer to Catalog of Domestic Assistance number(s) cited in the “Payment” section of this contract for requirements specific to that fund source.) For clarification regarding any of these elements or details specific to the federal funds in this contract, contact:

Compliance and Internal Control Officer
Office of Financial Services
Department of Health
Post Office Box 47901
Olympia, Washington 98504-7901

1. COMPLIANCE CIRCULAR - OMB “super Circular” 2 CFR Part 200 contains the requirements which govern expenditure of federal funds. The Circular contains the applicable administrative requirements, cost principles and audit requirements applicable to this contract.

2. CITIZENSHIP/ALIEN VERIFICATION/DETERMINATION - The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 (PL 104-193) states that federal public benefits should be made available only to U.S. citizens and qualified aliens. Entities that offer a service defined as a “federal public benefit” must make a citizenship/qualified alien determination/verification of applicants at the time of application as part of the eligibility criteria. Non-US citizens and unqualified aliens are not eligible to receive the services. PL 104-193 also includes specific reporting requirements. Exemptions from the determination/verification requirement is afforded the following programs offered by the Department of Health: Family Planning, Breast & Cervical Health Program (BCHP), Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), WIC Farmers Market Program, Immunization Programs, and Ryan White CARE Act programs and other communicable disease treatment and diagnostic programs.

3. CIVIL RIGHTS AND NONDISCRIMINATION - During the performance of this agreement, the Contractor shall comply with all current and future federal statutes relating to nondiscrimination. These include but are not limited to: Title VI of the Civil Rights Act of 1964 (PL 88-352), Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681-1683 and 1685-1686), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Age Discrimination Act of 1975 (42 U.S.C. §§
6101-6107), the Drug Abuse Office and Treatment Act of 1972 (PL 92-255), the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290dd-3 and 290ee-3), Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), and the Americans with Disability Act (42 U.S.C., Section 12101 et seq.).

4. SINGLE AUDIT ACT - A subrecipient (including private, for-profit hospitals and non-profit institutions) shall adhere to the federal Office of Management and Budget (OMB) Circular A-133, as well as all applicable federal and state statutes and regulations. A subrecipient who expends $500,000 or more in federal awards during a given fiscal year shall have a single or program-specific audit for that year in accordance with the provisions of OMB Circular A-133.

II. STANDARD FEDERAL CERTIFICATIONS AND ASSURANCES - Following are the Assurances, Certifications, and Special Conditions that apply to all federally funded (in whole or in part) agreements administered by the Washington State Department of Health.

CERTIFICATIONS

1. CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

The undersigned (authorized official signing for the contracting organization) certifies to the best of his or her knowledge and belief, that the contractor, defined as the primary participant in accordance with 45 CFR Part 76, and its principals:

A. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

B. have not within a 3-year period preceding this contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

C. are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and

D. have not within a 3-year period preceding this contract had one or more public transactions (Federal, State, or local) terminated for cause or default.
Should the contractor not be able to provide this certification, an explanation as to why should be placed after the assurances page in the contract.

The contractor agrees by signing this contract that it will include, without modification, the clause titled Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions in all lower tier covered transactions (i.e., transactions with sub- grantees and/or contractors) and in all solicitations for lower tier covered transactions in accordance with 45 CFR Part 76.

2. CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

The undersigned (authorized official signing for the contracting organization) certifies that the contractor will, or will continue to, provide a drug-free workplace in accordance with 45 CFR Part 76 by:

A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee’s workplace and specifying the actions that will be taken against employees for violation of such prohibition;

B. Establishing an ongoing drug-free awareness program to inform employees about

   i. The dangers of drug abuse in the workplace;
   ii. The contractor’s policy of maintaining a drug-free workplace;
   iii. Any available drug counseling, rehabilitation, and employee assistance programs; and
   iv. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

C. Making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by paragraph (a) above;

D. Notifying the employee in the statement required by paragraph (a), above, that, as a condition of employment under the contract, the employee will—

   i. Abide by the terms of the statement; and
   ii. Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

E. Notifying the agency in writing within ten calendar days after receiving notice under paragraph (d) (2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every contract officer or other designee on whose
contract activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

F. Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d) (ii), with respect to any employee who is so convicted—

i. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

ii. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

G. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (A), (B), (C), (D), (E), and (F).

For purposes of paragraph (e) regarding agency notification of criminal drug convictions, DOH has designated the following central point for receipt of such notices:

Compliance and Internal Control Officer
Office of Grants Management
WA State Department of Health
PO Box 47905
Olympia, WA 98504-7905

3. CERTIFICATION REGARDING LOBBYING

Title 31, United States Code, Section 1352, entitled “Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions,” generally prohibits recipients of Federal grants and cooperative agreements from using Federal (appropriated) funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a SPECIFIC grant or cooperative agreement. Section 1352 also requires that each person who requests or receives a Federal grant or cooperative agreement must disclose lobbying undertaken with non-Federal (nonappropriated) funds. These requirements apply to grants and cooperative agreements EXCEEDING $100,000 in total costs (45 CFR Part 93).

The undersigned (authorized official signing for the contracting organization) certifies, to the best of his or her knowledge and belief, that:

A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an
officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

B. If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions. (If needed, Standard Form-LLL, "Disclosure of Lobbying Activities," its instructions, and continuation sheet are included at the end of this application form.)

C. The undersigned shall require that the language of this certification be included in the award documents for all subcontracts at all tiers (including subcontracts, subcontracts, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

4. CERTIFICATION REGARDING PROGRAM FRAUD CIVIL REMEDIES ACT (PFCRA)

The undersigned (authorized official signing for the contracting organization) certifies that the statements herein are true, complete, and accurate to the best of his or her knowledge, and that he or she is aware that any false, fictitious, or fraudulent statements or claims may subject him or her to criminal, civil, or administrative penalties. The undersigned agrees that the contracting organization will comply with the Public Health Service terms and conditions of award if a contract is awarded.

5. CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE

Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law also applies to
children's services that are provided in indoor facilities that are constructed, operated, or maintained with such Federal funds. The law does not apply to children's services provided in private residence, portions of facilities used for inpatient drug or alcohol treatment, service providers whose sole source of applicable Federal funds is Medicare or Medicaid, or facilities where WIC coupons are redeemed.

Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity.

By signing the certification, the undersigned certifies that the contracting organization will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act.

The contracting organization agrees that it will require that the language of this certification be included in any subcontracts which contain provisions for children's services and that all subrecipients shall certify accordingly.

The Public Health Services strongly encourages all recipients to provide a smoke-free workplace and promote the non-use of tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

6. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS INSTRUCTIONS FOR CERTIFICATION

By signing and submitting this proposal, the prospective contractor is providing the certification set out below.

A. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective contractor shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective contractor to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

B. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.
C. The prospective contractor shall provide immediate written notice to the department or agency to whom this contract is submitted if at any time the prospective contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

D. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the person to whom this contract is submitted for assistance in obtaining a copy of those regulations.

E. The prospective contractor agrees by submitting this contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by DOH.

F. The prospective contractor further agrees by submitting this contract that it will include the clause titled Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transaction, provided by HHS, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

G. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (of excluded parties).

H. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

I. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, DOH may terminate this transaction for cause or default.
7. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS -- PRIMARY COVERED TRANSACTIONS

A. The prospective contractor certifies to the best of its knowledge and belief, that it and its principals:

i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

ii. Have not within a three-year period preceding this contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

iii. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

iv. Have not within a three-year period preceding this contract had one or more public transactions (Federal, State or local) terminated for cause or default.

B. Where the prospective contractor is unable to certify to any of the statements in this certification, such prospective contractor shall attach an explanation to this contract.

**CONTRACTOR’S SIGNATURE IS REQUIRED**

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EXHIBIT E

FEDERAL ASSURANCES - NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the contractor, I certify that the contractor:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management, and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. $4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §§794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et
seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with the provisions of the Hatch Act (5 U.S.C. 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.


10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1721 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, Audits of States, Local Governments, and Non-Profit Organizations.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

**CONTRACTOR'S SIGNATURE IS REQUIRED**

<table>
<thead>
<tr>
<th>SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL</th>
<th>TITLE</th>
</tr>
</thead>
<tbody>
<tr>
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</table>

Please also print or type name:

<table>
<thead>
<tr>
<th>ORGANIZATION NAME: (if applicable)</th>
<th>DATE</th>
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</thead>
<tbody>
<tr>
<td></td>
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</tr>
</tbody>
</table>
Interlocal Agreement between Whatcom County Flood Control Zone District and the Whatcom Conservation District for Livestock Best Management Practices Outreach and Cost-Share

This interlocal agreement will be used to enhance and support elements of Whatcom County's Pollution Identification and Correction (PIC) Program. This agreement will provide community outreach and financial assistance to landowners and operators with non-dairy livestock in PIC focus areas.
MEMORANDUM

TO: The Honorable Jack Louws, Whatcom County Executive for the Whatcom County Flood Control Zone District Board of Supervisors

THROUGH: Frank M. Abart, Public Works Director

FROM: Gary Stoyka, Natural Resources Manager
       Erika Douglas, Senior Planner-Marine Resources

RE: Interlocal Agreement between Whatcom County Flood Control Zone District and the Whatcom Conservation District: Whatcom County Pollution Identification and Correction (PIC) Program Agricultural BMP Cost-Share

DATE: November 24, 2014

Please find enclosed for your review and signature two (2) originals of an interlocal agreement, between the Whatcom County Flood Control Zone District (FCZD) and the Whatcom Conservation District, in the amount of $80,000 to provide community outreach and financial assistance for landowners and operators with non-dairy livestock in PIC focus areas.

Requested Action
Public Works respectfully requests that the County Executive, acting for the Whatcom County Flood Control Zone District (FCZD) Board of Supervisors, execute the attached interlocal agreement.

Background and Purpose
On September 30, 2014, the Whatcom County Council adopted a resolution supporting the Whatcom County PIC Program. This program was identified by the Portage Bay Shellfish Protection District Advisory Committee as the highest priority in the update of the Shellfish Recovery Plan. Several other committees and local organizations have also identified this strategic approach as a solid option for addressing water quality issues in the county.

This interlocal agreement will provide funding to the Whatcom Conservation District to support community outreach and financial assistance to landowners and operators with non-dairy livestock in Whatcom County PIC focus areas.

Funding Amount and Source
This interlocal agreement with the Whatcom Conservation District will provide $80,000 to support the non-dairy livestock component of the Whatcom County PIC program through a partnership with the Whatcom Conservation District. This agreement will be funded through the 2015 FCZD budget for Public Works- Natural Resources programs. Please contact Erika Douglas at extension 50692 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>Public Works- Natural Resources</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract or Grant Administrator:</td>
<td>Erika Douglas</td>
</tr>
<tr>
<td>Contractor's / Agency Name:</td>
<td>Whatcom Conservation District</td>
</tr>
</tbody>
</table>

#### Is this a New Contract?  
Yes ☒ No ☐  
If not, is this an Amendment or Renewal to an Existing Contract?  
Yes ☐ No ☒  
If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: ____

#### Does contract require Council Approval?  
Yes ☒ No ☐  
If No, include WCC:  
(see Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)

#### Is this a grant agreement?  
Yes ☐ No ☒  
If yes, grantor agency contract number(s): N20989- CFDA#: 66.123-

#### Is this contract grant funded?  
Yes ☐ No ☒  
If yes, Whatcom County grant contract number(s): ____________

#### Is this contract the result of a RFP or Bid process?  
Yes ☐ No ☒  
If yes, RFP and Bid number(s): Contract  
Cost Center: 813002

#### Is this agreement excluded from E-Verify?  
No ☐ Yes ☒  
If no, include Attachment D Contractor Declaration form.

If YES, indicate exclusion(s) below:  
☐ Professional services agreement for certified/licensed professional.  
☐ Contract work is for less than $100,000.  
☐ Contract work is for less than 120 days.  
☒ Interlocal Agreement (between Governments).  
☐ Contract for Commercial off the shelf items (COTS).  
☐ Work related subcontract less than $25,000.  
☐ Public Works - Local Agency/Federally Funded FHWA.

#### Contract Amount:(sum of original contract amount and any prior amendments):  
$ 80,000

#### This Amendment Amount:  
$

#### Total Amended Amount:  
$

#### Summary of Scope:  
This interlocal agreement will be used to enhance and support elements of Whatcom County’s Pollution Identification and Correction (PIC) Program. This agreement will provide community outreach and financial assistance to landowners and operators with non-dairy livestock in PIC focus areas.

<table>
<thead>
<tr>
<th>Term of Contract:</th>
<th>January 1, 2015 - December 31, 2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>Expiration Date:</td>
<td>December 31, 2016</td>
</tr>
</tbody>
</table>

### Contract Routing:

1. Prepared by: E. Douglas  
   Date: 11/24/14
2. Attorney signoff: Daniel L. Gibson  
   Date: 11/24/14
3. AS Finance reviewed:  
   Date: 12/1/14
4. IT reviewed (if IT related):  
   Date: 11/25/14
5. Contractor signed:  
   Date: 12/2/14
6. Submitted to Exec.:  
   Date: 12/2/14
7. Council approved (if necessary):  
   Date: 12/2/14
8. Executive signed:  
   Date: 12/2/14
9. Original to Council:  
   Date: 12/2/14

Last Edited: 060414
2014 INTERLOCAL AGREEMENT
WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT- WHATCOM CONSERVATION DISTRICT
Pollution Identification and Correction (PIC) Program
Livestock Best Management Practices Outreach and Cost-Share

WHEREAS, Whatcom County Flood Control Zone District, hereinafter referred to as the “County” and the Whatcom Conservation District hereinafter referred to as the “WCD” desire to establish an arrangement wherein the County will provide funding to the WCD to provide community outreach and financial assistance programs for the non-dairy livestock best management practices component of the Whatcom County Pollution Identification and Correction (PIC) program to the mutual advantage of each jurisdiction; and,

WHEREAS, the Drayton Harbor Shellfish Recovery Plan identified a coordinated water quality monitoring program to identify pollution sources and increased capacity for following up on monitoring findings as high priorities; and,

WHEREAS, the Portage Bay Shellfish Recovery Plan identified a Whatcom County PIC program as the highest priority recommendation; and,

WHEREAS, a PIC program is a data-driven program guiding pollution tracking activities to areas with the greatest water quality problems, followed by technical and financial assistance offered to landowners to implement fixes to improve and protect water quality; and,

WHEREAS, agricultural activities have been identified as one priority source of bacteria in the Drayton Harbor and Portage Bay Shellfish Protection Districts; and,

WHEREAS, the WCD provides local expertise and technical assistance to landowners with livestock to support development and implementation of farm plans; and,

WHEREAS, the WCD also administers landowner incentive and cost-share programs including CREP and Washington State Conservation Commission (WSCC) Livestock Cost-share Program for Whatcom County; and

WHEREAS, a more flexible cost-share option is needed to provide financial assistance to landowners with small farms that do not meet the requirements of existing federal and state cost-share programs; and

WHEREAS, the most efficient use of resources is to have the WCD supplement its outreach and cost-share programs consistent with the specific needs of the Whatcom County PIC program as described in Exhibit A to help improve and protect water quality in the Drayton Harbor and Portage Bay Shellfish Protection Districts; and

WHEREAS, it is in the best interest of each party to enter into this Interlocal Agreement.

NOW THEREFORE, the WCD and County agree as follows:

I. Purpose: The purpose of this agreement is to set the terms whereby the County will make available funds to the WCD to implement an outreach and cost-share program for landowners/operators with livestock in PIC program focus area as described in Exhibit A attached hereto.
II. **Administration:** No new or separate legal or administrative entity is created to administer the provisions of this agreement.

III. **Whatcom Conservation District Responsibilities:** The WCD hereby agrees to implement the non-dairy livestock outreach and cost-share program as described in Exhibit A attached hereto.

IV. **Whatcom County Responsibilities:** The County hereby agrees to reimburse the WCD, not to exceed the total budget amount allocated to the WCD as shown in Exhibit B attached hereto, for the costs in providing and performing the services stated.

V. **Payment:** Contractor shall submit itemized invoices in a format approved by the County. Each request for payment shall include invoices which detail work performed and supplies or materials purchased. Each request for reimbursement of payments to landowners will include copies of equipment, supply or vendor receipts and substantiation for equipment and labor hours paid. The County will compensate the WCD for services rendered within thirty (30) days following receipt of an approved invoice, provided all other terms and conditions of the contract have been met and are certified as such by the Contract Administrator.

VI. **Term:** This Agreement shall be effective for services performed from January 1, 2015 through December 31, 2016.

VII. **Responsible Persons:** The persons responsible for administration of this Agreement shall be the Whatcom County Public Works (WCPW) Department Director and the WCD Executive Director or their respective designees.

VIII. **Treatment of Assets and Property:** No fixed assets or personal or real property will be jointly or cooperatively acquired, held, used, or disposed of pursuant to this Agreement.

IX. **Indemnification:** Each party agrees to be responsible and assume liability for its own wrongful and/or negligent acts or omissions or those of their officials, officers, agents, or employees to the fullest extent required by law, and further agrees to save, indemnify, defend, and hold the other party harmless from any such liability. It is further provided that no liability shall attach to the Parties by reason of entering into this Agreement except as expressly provided herein.

X. **Modifications:** This Agreement may be changed, modified, amended or waived only by written agreement executed by the Parties hereto. Waiver or breach of any term or condition of this Agreement shall not be considered a waiver of any prior or subsequent breach.

XI. **Applicable Law:** In the performance of this Agreement, it is mutually understood and agreed upon by the Parties hereto that this Agreement shall be governed by the laws and regulations of the State of Washington and the federal government, both as to interpretation and performance. The venue of any action arising herefrom shall be in the Superior Court of the State of Washington in and for Whatcom County.

XII. **Severability:** In the event any term or condition of this Agreement or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other terms, conditions, or applications of this Agreement that can be given effect without the invalid term, condition, or application. To this end the terms and conditions of this Agreement are declared severable.
XIII. **Entire Agreement:** This Agreement contains all the terms and conditions agreed upon by the Parties. All items incorporated herein by reference are attached. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the Parties hereto.

XIV. **Recordation:** Upon execution of this Agreement, Whatcom County shall file a copy of it with the office of its County Auditor pursuant to the requirements of RCW 39.34.

IN WITNESS WHEREOF, the parties have signed this Agreement this __________ day of __________, 2014.

WHATCOM CONSERVATION DISTRICT
By __________________________
Joe Heller, WCD Chair

Approved as to form: __________________________
Office of the WCD Attorney

WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT
By __________________________
Jack Louws, County Executive

Approved as to form: __________________________
Whatcom County Prosecuting Attorney

Director of Public Works

STATE OF WASHINGTON  )
COUNTY OF WHATCOM  ) ss.

On this __________ day of __________, 2014, before me personally appeared Jack Louws, acting on behalf of the Whatcom County Flood Control Zone District Board of Supervisors, and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

NOTARY PUBLIC in and for the State of Washington, residing at ________________
My commission expires: ________________

STATE OF WASHINGTON  )
COUNTY OF WHATCOM  ) ss.

On this __________ day of __________, 2014, before me personally appeared Joe Heller, to me known to be the Chair of the Whatcom Conservation District and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

NOTARY PUBLIC in and for the State of Washington, residing at ________________
My commission expires: ________________
EXHIBIT A- SCOPE OF WORK
Pollution Identification and Correction (PIC) Program
Livestock Best Management Practices Outreach and Cost-Share

PROJECT DESCRIPTION
The purpose of this interlocal agreement is to identify the activities that will be conducted by the WCD to provide outreach and financial assistance to non-dairy livestock owners in support of and in coordination with the Whatcom County PIC Program.

Task 1: Community Outreach
WCD will develop and implement a community outreach program for landowners/operators with livestock in Whatcom County PIC focus areas. This will include developing and distributing educational materials, hosting community workshops/trainings, and organizing other educational campaigns in coordination with WCPW to support the PIC.

Deliverables and Timelines:
- Progress will be tracked through quarterly reports. Quarterly reports will include the type and location of outreach events, number of participants, and a description of educational materials and programs developed and coordinated.
- Electronic files of advertisements, educational materials, and workshop evaluations.

Task 2: Temporary Fixes of Immediate Problems
- WCD will offer assistance and supplies for temporary fixes to problems identified through a site risk assessment that require immediate attention (e.g. animal access to creek, discharge or potential discharge of manure to creek or ditch). Permanent fixes for these problems will be addressed through development and implementation of a farm plan.

Deliverables:
- Monthly summaries of the location, type of pollution sources identified, and type and number of temporary BMPs installed. These statistics will be summarized on a quarterly basis by PIC focus area.

Task 3: Non-Dairy Livestock Cost-Share
- WCD and WCPW staff will develop an agreed upon list of eligible cost-share projects. Guidance and application documents created for the 2009 Drayton Harbor pilot cost-share program will be reviewed and adapted for this program.
- WCD will direct landowners/operators to the most appropriate sources of cost-share funding including funding provided by the county under this agreement, funding provided to the WCD from other sources, and other options through the Whatcom Clean Water program (WCWP).
- WCD staff will assist landowners/operators in completing cost-share applications and provide copies to WCPW for approval of cost-share funding prior to submission to the WCD Board. WCD Board will approve cost-share applications awarded funding by WCPW. No reimbursement will be made where the implementation of BMPs has begun before WCPW and WCD approval. WCD will assist landowners with BMP installation and recordkeeping according to the cost-share program requirements. WCD will receive notification of project completion from landowner/operator and schedule a site visit to verify that BMPs have been installed according to plan specifications. Following the site visit, WCD will approve or deny reimbursement of funds. If reimbursement is denied, the WCD will provide the landowner with information on what is required to improve the BMP to meet specifications needed to sign off as complete and to be approved for reimbursement. The County will reimburse WCD for eligible cost-share expenses as specified in Exhibit B of this Agreement and landowner/operator cost-share agreement contract.
Deliverables:

- Progress will be tracked through quarterly reports summarizing the location, type of pollution sources identified, and type and number of BMPs installed. These statistics will be summarized on a quarterly basis by PIC focus area.
- Final cost-share report including approved applications, installed BMPs, date and findings of site visit, and cost-share reimbursement (with background invoices) by November 30, 2016. Requests from the WCD to the County for reimbursement for cost-share on qualified projects must be submitted with all necessary documentation no later than December 30, 2016.
EXHIBIT B- BUDGET
Pollution Identification and Correction (PIC) Program
Livestock Best Management Practices Outreach and Cost-Share

As consideration for the services provided pursuant to the Scope of Work, the total budget is not to exceed $80,000 with additional details provided below. Requests for payment and reimbursement by the County will coincide and be based on the successful completion of services described in Exhibit A.

Requests for reimbursement of expenses must be accompanied by copies of paid invoices itemizing costs incurred. The County does not reimburse the cost of alcoholic beverages. Any work performed prior to the effective date of this contract or continuing after the completion date of the same unless otherwise agreed upon in writing, will be at the contractor’s expense.

<table>
<thead>
<tr>
<th>Personnel*</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Admin</td>
<td>$ 41.88/hr</td>
</tr>
<tr>
<td>Mgmt/Admin/Engineer</td>
<td>$ 67.23/hr</td>
</tr>
<tr>
<td>Planner</td>
<td>$ 30.84/hr</td>
</tr>
<tr>
<td>GIS Specialist</td>
<td>$ 42.80/hr</td>
</tr>
<tr>
<td>Outreach Specialist</td>
<td>$ 39.04/hr</td>
</tr>
<tr>
<td>Planner</td>
<td>$ 40.44/hr</td>
</tr>
<tr>
<td>Overhead (25% of salaries/benefits)</td>
<td>$ 9,000</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Supplies/Materials</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Temporary BMPs (e.g. electrical fencing, hog fuel, etc.)</td>
<td>Actual costs</td>
</tr>
</tbody>
</table>

Cost-Share (see rates below)* application must be approved by WCPW prior to implementation $ 32,000

<table>
<thead>
<tr>
<th>Totals</th>
<th></th>
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<tbody>
<tr>
<td></td>
<td>Not to exceed $ 80,000.00</td>
</tr>
</tbody>
</table>

* These are 2014 rates and are subject to changes with annual WCD adjustments.

Non-Dairy Livestock Cost-Share Reimbursement Description:
Eligible landowners with applications that are approved by the WCD and WCPW will receive the designated percentage cost-share towards a maximum project cost of $3,000. Approved BMPs will be reimbursed through the cost-share program utilizing actual costs and the established rate table. Landowners have the option to do labor themselves. The reimbursable rate for owner/operator services are based upon the established rate sheet (Exhibit C). Whatcom Conservation District will submit invoices to the County which for each project shall include the landowner cost-share approval form, field inspection sign off, maintenance agreement, landowner reimbursement form, and copies of all receipts.
EXHIBIT C - RATE SHEET
Pollution Identification and Correction (PIC) Program
Livestock Best Management Practices Outreach and Cost-Share

Reimbursement Rates for Producer Labor and Producer Owned Machinery/Equipment

<table>
<thead>
<tr>
<th>Description</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual labor/operator labor</td>
<td>$22.00/hr</td>
</tr>
</tbody>
</table>

Equipment Only, without operator

<table>
<thead>
<tr>
<th>Description</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Small tractor (20Hp – 59Hp)</td>
<td>$17.00/hr</td>
</tr>
<tr>
<td>Medium Tractor (60Hp – 99Hp)</td>
<td>$28.00/hr</td>
</tr>
<tr>
<td>Large Tractor (100+Hp)</td>
<td>$55.00/hr</td>
</tr>
<tr>
<td>Tractor Bucket, front end loading—add to tractor rate</td>
<td>$17.00/hr</td>
</tr>
<tr>
<td>Excavator, Light</td>
<td>$50.00/hr</td>
</tr>
<tr>
<td>Excavator, Med</td>
<td>$88.00/hr</td>
</tr>
<tr>
<td>Excavator, heavy</td>
<td>$132.00/hr</td>
</tr>
<tr>
<td>Chain saw</td>
<td>$11.00/day</td>
</tr>
<tr>
<td>4 Strand Barb wire fence (includes labor &amp; materials)</td>
<td>$3.00/ft</td>
</tr>
</tbody>
</table>

Landowners eligible for cost-share assistance through the PIC Non-Dairy Livestock BMP cost-share program can utilize this rate sheet if they choose to do their own labor. Rates will be reimbursed at 75%. Landowner pays 25% of the project costs (labor and materials).
Grant Agreement No. N20989 between the State of Washington Department of Health and Whatcom County

**ATTACHMENTS:**
- Memo
- Contract Information Sheet
- Interagency Agreement

**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 interagency agreement will be used to enhance and support elements of Whatcom County's Pollution Identification and Correction (PIC) Program. The grant will support activities such as program coordination and tracking, technical assistance to landowners with livestock, and compliance through a regulatory backstop.
MEMORANDUM

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

THROUGH: Frank M. Abart, Public Works Director

FROM: Gary Stoyka, Natural Resources Manager
       Erika Douglas, Senior Planner-Marine Resources

RE: State of Washington Department of Health Interagency Agreement # N20989
    Whatcom County Pollution Identification and Correction (PIC) Program

DATE: November 21, 2014

Please find enclosed for your review and signature two (2) originals of Interagency Agreement No. N20989, between the Washington State Department of Health and Whatcom County, in the amount of $300,000 to enhance Whatcom County’s PIC Program.

Requested Action
Public Works respectfully requests that the County Council authorize the County Executive to sign the attached interagency agreement.

Background and Purpose
On September 30, 2014, the Whatcom County Council adopted a resolution supporting the Whatcom County PIC Program. This program was identified by the Portage Bay Shellfish Protection District Advisory Committee as the highest priority in the update of the Shellfish Recovery Plan. Several other committees and local organizations have also identified this strategic approach as a solid option for addressing water quality issues in the county.

This interagency agreement will provide funding to enhance and support several elements of Whatcom County’s PIC Program. This agreement provides funding for program coordination and tracking, a partnership with the Conservation District to provide technical assistance to landowners to address livestock sources through an incentive-based program, compliance staff for a regulatory backstop, and a review and adaptation of the program if elements are not effective.

Funding Amount and Source
This interagency agreement with the Washington State Department of Health will provide the County with $300,000 to enhance the County’s PIC Program. The County’s existing program will provide approximately $251,000 in match over a two year period through program staff funded through the proposed 2015 Public Works Natural Resources and Environmental Health budgets. Please contact Erika Douglas at extension 50692 if you have any questions or concerns regarding the terms of this agreement.

Enclosures

284
## WHATCOM COUNTY CONTRACT INFORMATION SHEET

<table>
<thead>
<tr>
<th>Originating Department:</th>
<th>Public Works- Natural Resources</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract or Grant Administrator:</td>
<td>Erika Douglas</td>
</tr>
<tr>
<td>Contractor’s / Agency Name:</td>
<td>Washington State Department of Health</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 [x]

**If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #:**

**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 [x] No [ ]

If yes, grantor agency contract number(s):
N20989 CFDA#: 66.123

**Is this contract grant funded?**
- Yes [x] No [ ]

If yes, Whatcom County grant contract number(s):

**Is this contract the result of a RFP or Bid process?**
- Yes [ ] No [x]

If yes, RFP and Bid number(s):

**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 $100,000.
- Contract work is for less than 120 days.
- Interlocal Agreement (between Governments).
- Contract for Commercial off the shelf items (COTS).
- Work related subcontract less than $25,000.
- Public Works - Local Agency/Federally Funded FHWA.

**Contract Amount:**
- Sum of original contract amount and any prior amendments:
  - $ 300,000

**This Amendment Amount:**

**Total Amended Amount:**

**Summary of Scope:**
This interagency agreement will provide funding to enhance and support several elements of Whatcom County’s PIC Program. This agreement provides funding for program coordination and tracking, a partnership with the Conservation District to provide technical assistance to landowners to address livestock sources through an incentive-based program, compliance staff for a regulatory backstop, and a review and adaptation of the program if elements are not effective.

<table>
<thead>
<tr>
<th>Term of Contract</th>
<th>Date of execution-October 31, 2016</th>
<th>Expiration Date</th>
<th>October 31, 2016</th>
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<tbody>
<tr>
<td>Contract Routing</td>
<td>1. Prepared by: E. Douglas</td>
<td>Date: 11/21/14</td>
<td>Date: 11/21/14</td>
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<tr>
<td></td>
<td>2. Attorney signoff: Daniel L. Gibson</td>
<td>Date: 11/25/14</td>
<td>Date: 11/25/14</td>
</tr>
<tr>
<td></td>
<td>3. AS Finance reviewed:</td>
<td>Date:</td>
<td>Date:</td>
</tr>
<tr>
<td></td>
<td>4. IT reviewed (if IT related):</td>
<td>Date:</td>
<td>Date:</td>
</tr>
<tr>
<td></td>
<td>5. Contractor signed:</td>
<td>Date: 11/25/14</td>
<td>Date: 11/25/14</td>
</tr>
<tr>
<td></td>
<td>6. Submitted to Exec.:</td>
<td>Date:</td>
<td>Date:</td>
</tr>
<tr>
<td></td>
<td>7. Council approved (if necessary):</td>
<td>Date:</td>
<td>Date:</td>
</tr>
<tr>
<td></td>
<td>8. Executive signed:</td>
<td>Date:</td>
<td>Date:</td>
</tr>
<tr>
<td></td>
<td>9. Original to Council:</td>
<td>Date:</td>
<td>Date:</td>
</tr>
</tbody>
</table>

Last Edited 060414
INTERAGENCY AGREEMENT
between
STATE OF WASHINGTON
DEPARTMENT OF HEALTH
and
WHATCOM COUNTY

THIS AGREEMENT is made and entered into by and between the DEPARTMENT OF HEALTH, hereinafter referred to as DOH, and WHATCOM COUNTY, hereinafter referred to as the Contractor pursuant to the authority granted by Chapter 39.34 RCW.

IT IS THE PURPOSE OF THIS AGREEMENT TO provide Federal funding to address pollution problems in three Whatcom County Shellfish Protection Districts in support of the county's Pollution Identification and Correction (PIC) program.

THEREFORE, IT IS MUTUALLY AGREED THAT:

SPECIAL TERMS AND CONDITIONS:

- **EPA ADMINISTRATIVE & PROGRAMMATIC CONDITIONS:**
  EPA Administrative & Programmatic Conditions: specific to this contract (page 24); incorporated by reference: EXHIBIT A, Sub-recipient Statement of Work header.

**STATEMENT OF WORK & BUDGET:** The Contractor shall furnish the necessary personnel, equipment, material and/or services and otherwise do all things necessary for or incidental to the performance of the work set forth in Exhibit A, attached hereto and incorporated herein.

**PERIOD OF PERFORMANCE:** Subject to its other provisions, the period of performance of this Agreement shall commence on Date of Execution and be completed on October 31, 2016, unless terminated sooner as provided herein.

**FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA):** If checked above, this contract is supported by federal funds that require compliance with the Federal Funding
Accountability and Transparency Act (FFATA or the Transparency Act). The purpose of the Transparency Act is to make information available online so the public can see how federal funds are spent.

To comply with the act and be eligible to enter into this contract, your organization must have a Data Universal Numbering System (DUNS®) number. A DUNS® number provides a method to verify data about your organization. If you do not already have one, you may receive a DUNS® number free of charge by contacting Dun and Bradstreet at www.dnb.com.

Information about your organization and this contract will be made available on www.USASpending.gov by DOH as required by P.L. 109-282. DOH's form, Federal Funding Accountability and Transparency Act Data Collection Form, is considered part of this contract and must be completed and returned along with the contract.

PAYMENT: Compensation for the work provided in accordance with this agreement has been established under the terms of RCW 39.34.130. The parties have estimated that the cost of accomplishing the work herein will not exceed $300,000.00 in accordance with Exhibit A, attached hereto and incorporated herein. Payment will not exceed this amount without a prior written amendment. DOH will authorize payment only upon satisfactory completion and acceptance of deliverables and for allowable costs as outlined in the statement of work and/or budget.

Source of Funds: (FED) $300,000.00; (ST) $0; (Other) $0; Total $300,000.00

Contractor agrees to comply with applicable rules and regulations associated with these federal funds.

BILLING PROCEDURE: Payment to the Contractor for approved and completed work will be made by warrant or account transfer by DOH within 30 days of receipt of the invoice. Upon expiration of the contract, any claim for payment not already made shall be submitted within 60 days after the expiration date or the end of the fiscal year, whichever is earlier.

AGREEMENT ALTERATIONS AND AMENDMENTS: This agreement may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

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

CONFIDENTIALITY/SAFEGUARDING OF INFORMATION: The use or disclosure by any party of any information concerning a client obtained in providing service under this agreement shall be subject to Chapter 42.56 RCW and Chapter 70.02 RCW, as well as any other applicable federal and state statutes and regulations.

Any unauthorized access or use of confidential information must be reported to the DOH IT Security Officer at (360) 236-4432. The notification must be made in the most expedient time.
possible (usually within 24 hours of discovery) and without unreasonable delay, consistent with the legitimate needs of law enforcement, or any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

**CONTRACT MANAGEMENT:** The contract manager for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Agreement.

The Contract Manager for DOH is:
Megan Schell  
EPH, Office of Shellfish & Water Protection  
Department of Health  
PO Box 47824  
Olympia, WA 98504-7824  
Phone: (360) 236-3307

The Contract Manager for the Contractor is:
Erika Douglas  
Whatcom County Public Works  
322 North Commercial, Suite 110  
Bellingham, WA 98225  
(360) 676-6876, extension: 50692

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

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

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

- Applicable state and federal statutes and rules;
- Special Terms and Conditions: EPA Administrative & Programmatic Conditions;
- Attachment 1, Federal Compliance, and Standard Federal Certifications and Assurances;
- Statement of work, and;
- Any other provisions of the agreement, including materials incorporated by reference.

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

DOH Contract N20989
PRIVACY: Personal information collected, used or acquired in connection with this contract shall be used solely for the purposes of this contract. Contractor and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the agency or as provided by law. Contractor agrees to implement physical, electronic and managerial safeguards to prevent unauthorized access to personal information.

The Department reserves the right to monitor, audit or investigate the use of personal information collected, used or acquired by the contractor through this contract. The monitoring, auditing, or investigating may include but is not limited to "salting" by the department. Contractor shall certify the return or destruction of all personal information upon expiration of this contract. Salting is the act of placing a record containing unique but false information in a database that can be used later to identify inappropriate disclosure of data contained in the database.

Any breach of this provision may result in termination of the contract and the demand for return of all personal information. The contractor agrees to indemnify and hold harmless the department for any damages related to the contractor's unauthorized use of personal information.

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

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

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

SEVERABILITY: If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder
conforms to the requirements of applicable law and the fundamental purpose of this agreement, and to this end the provisions of this Agreement are declared to be severable.

**SUBCONTRACTING:** Neither the Contractor, nor any subcontractors, shall enter into subcontracts for any of the work contemplated under this agreement without prior written approval of DOH. In no event shall the existence of the subcontract operate to release or reduce the liability of the contractor to the Department for any breach in the performance of the contractor's duties. This clause does not include contracts of employment between the contractor and personnel assigned to work under this contract.

Additionally, the Contractor is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this agreement are carried forward to any subcontracts. Contractor and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of DOH or as provided by law.

If, at any time during the progress of the work, the Department determines in its sole judgment that any subcontractor is incompetent, the Department shall notify the Contractor, and the Contractor shall take immediate steps to terminate the subcontractor's involvement in the work. The rejection or approval by the Department of any subcontractor or the termination of a subcontractor shall not relieve the Contractor of any of its responsibilities under the Contract, nor be the basis for additional charges to the Department.

**SUSPENSION OF PERFORMANCE AND RESUMPTION OF PERFORMANCE:** In the event contract 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, DOH may give notice to Contractor to suspend performance as an alternative to termination. DOH may elect to give written notice to Contractor to suspend performance when DOH determines that there is a reasonable likelihood that the funding insufficiency may be resolved in a timeframe that would allow performance to be resumed prior to the end date of this contract. Notice may include notice by facsimile or email to Contractor's representative. Contractor shall suspend performance on the date stated in the written notice to suspend. During the period of suspension of performance each party may inform the other of any conditions that may reasonably affect the potential for resumption of performance.

When DOH determines that the funding insufficiency is resolved, DOH may give Contractor written notice to resume performance and a proposed date to resume performance. Upon receipt of written notice to resume performance, Contractor will give written notice to DOH as to whether it can resume performance, and, if so, the date upon which it agrees to resume performance. If Contractor gives notice to DOH that it cannot resume performance, the parties agree that the Contract will be terminated retroactive to the original date of termination. If the date Contractor gives notice it can resume performance is not acceptable to DOH, the parties agree to discuss an alternative acceptable date. If an alternative date is not acceptable to DOH, the parties agree that the Contract will be terminated retroactive to the original date of termination.
**TERMINATION:** Either party may terminate this Agreement upon 30 days prior written notification to the other party. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

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

**WAIVER:** A failure by either party to exercise its rights under this agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of the party and attached to the original Agreement.

**ALL WRITINGS CONTAINED HEREBIN:** This Agreement, and Attachment 1, Federal Compliance, and Standard Federal Certifications and Assurances, contain all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

**IN WITNESS WHEREOF,** the parties have executed this Agreement.

State of Washington  
Department of Health  

Contracting Officer  

Contractor  

(please also print/type name & title)  

Date  

APPROVED AS TO FORM ONLY:  
Attorney General  
May 1997  

**NOTE:** THE CONTRACTOR'S SIGNATURE IS ALSO REQUIRED ON ATTACHMENT 1, FEDERAL CERTIFICATIONS AND ASSURANCE (see pages 21 & 24)
WHATCOM COUNTY:
Recommended for Approval:

Frank M. Abart, Public Works Director  Date

Approved as to form:

Daniel L. Gibson  Date
Whatcom County Prosecuting Attorney

Approved:
Accepted for Whatcom County:

By:
Jack Louws, Whatcom County Executive

STATE OF WASHINGTON  )
COUNTY OF WHATCOM  ) ss

On this ______ day of ________, 20__, before me personally appeared Jack Louws, to me known to be the Executive of Whatcom County, who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

NOTARY PUBLIC in and for the State of Washington, residing at __________________________________________. My commission expires ________________________________.
EXHIBIT A
DOH CONTRACT N20989
Sub-recipient Statement of Work

<table>
<thead>
<tr>
<th>CFDA #:</th>
<th>CFDA TITLE:</th>
<th>Federal Grant Award #:</th>
<th>Federal Grant Award Name:</th>
<th>Federal Agency Name:</th>
<th>Amount of Funding:</th>
</tr>
</thead>
<tbody>
<tr>
<td>66.123</td>
<td>Puget Sound Action Agenda: Technical Investigations and Implementation Assistance Program</td>
<td>PC-00J88801</td>
<td>DOH Puget Sound Restoration</td>
<td>US Environmental Protection Agency (EPA)</td>
<td>$300,000</td>
</tr>
</tbody>
</table>

PURPOSE:
In the three Whatcom County Shellfish Protection Districts, the majority of creeks and tributaries are not meeting water quality standards for fecal coliform bacteria. Fecal bacteria pollution is similarly reflected in the marine waters where there are year-round and seasonal shellfish harvesting closures areas. To address these pollution problems, the Department of Health will provide $300,000 to Whatcom County to support the county’s Pollution Identification and Correction (PIC) program. Whatcom County Public Works (WCPW) and Whatcom Conservation District (WCD) will work directly with landowners with livestock to raise awareness of water quality issues and provide technical and financial assistance to facilitate voluntary landowner actions to correct livestock-related fecal pollution sources. As a component of the larger Whatcom Clean Water Program, this project will maintain established partnerships and coordination with tribal and other partner agencies. The project will formalize response and follow-up procedures for confirmed bacteria sources, including enforcement of regulations to ensure that corrections are made. When landowners do not voluntarily correct pollution sources, WCPW will work with the relevant regulatory department or agency to ensure implementation of a compliance/enforcement backstop. WCPW will coordinate regulatory referrals to Whatcom County Health Department (WCHD) for on-site sewage systems (OSS); Whatcom County Planning & Development Services (PDS) for Critical Areas Ordinance violations; Washington Department of Agriculture for dairies; and Washington Department of Ecology for water quality violations not involving a county-regulated critical area.

Work will initially be prioritized in focus areas of the Drayton Harbor and Portage Bay drainages. In the Drayton Harbor watershed, fecal pollution reduction work will be carried out in the lower Dakota, Loomis Trail, and Brown Malloy drainages. WCPW will consult with the Portage Bay Shellfish Protection District Advisory Committee and partners of the Whatcom Clean Water Program to select a priority drainage in the Nooksack watershed. County departments will coordinate efforts with ongoing Whatcom Clean Water Program work and focus areas. As county-led PIC work is completed in priority drainages, the program will move into other priority coastal drainages as identified in the county’s annual water quality review. Over the two-year period of this project, WCPW will work with partners to create a plan to transition from a state led fecal pollution reduction program to a locally led, sustainable PIC program.

<table>
<thead>
<tr>
<th>Task</th>
<th>Task/Activity Description</th>
<th>Deliverables/ Outcomes</th>
<th>Due Date/ Time Frame</th>
<th>Payment Information and/or Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Project Coordination/Data Management, Tracking and Reporting</td>
<td>a) Quarterly progress reports to</td>
<td>a) Quarterly reports due</td>
<td>Reimbursement</td>
</tr>
<tr>
<td></td>
<td>Whatcom County Public Works (WCPW) will</td>
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<tr>
<td>Create a 0.5 FTE position to assist with conducting reconnaissance studies of focus areas, contacting landowners, providing notifications and referrals to other departments and agencies, and tracking the progress of follow up actions.</td>
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<tr>
<td>Create a 0.5 FTE position to assist with conducting reconnaissance studies of focus areas, contacting landowners, providing notifications and referrals to other departments and agencies, and tracking the progress of follow up actions.</td>
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<tr>
<td>Within focus areas, WCPW will use water quality monitoring data generated by county and partner sampling efforts, pictometry and other satellite imagery, drainage and topographic data and windshield reconnaissance to identify and prioritize parcels with potentially polluting OSS and/or agricultural operations in need of individual landowner contact. WCPW will offer rebates and incentives to landowners participating in outreach programs to assist with implementation of best management practices.</td>
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<tr>
<td>DOH/WCWP</td>
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<tr>
<td>a) Semi-annual federal FEATS and annual Women/Minority-Owned Business Reports.</td>
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<tr>
<td>b) FEATS Reports:</td>
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<td></td>
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<tr>
<td>• April 15, 2015</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>• October 15, 2015</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>• April 15, 2016</td>
<td></td>
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<tr>
<td>c) Consult with National Estuary Program Quality Assurance Coordinator to complete and submit Quality Assurance Project Plan (QAPP), revision of existing QAPP or QAPP waiver.</td>
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<td>c) QAPP by December 31, 2014</td>
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<td>d) Maps and/or GIS data layers and/or database that characterize priority</td>
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<tr>
<td>e) Transition Plan</td>
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<tr>
<td>f) Input data into STORET</td>
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<tr>
<td>Final Reports: October 15, 2016</td>
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<tr>
<td>Women/Minority Owned Business Reports: October 15, 2015</td>
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<td>up to $61,000 based on actual costs.</td>
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### EXHIBIT A
DOH CONTRACT N20989
Sub-recipient Statement of Work

<p>| | | |</p>
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</table>
| sources voluntarily corrected;  
- number, type and cost of rebates and incentives provided;  
- number, location and type of pollution source referred for enforcement to Whatcom County Planning and Development Services (PDS) for a Critical Areas Ordinance violation or to the Department of Ecology or Washington State Department of Agriculture (WSDA);  
- number, location, and type of pollution sources corrected through enforcement;  
- number, location and type of pollution sources unresolved with description of status/ progress in compliance process.  
WCPW will work with partners to create a plan to transition from a state led fecal pollution reduction program to a locally led, sustainable PIC program.  
| g) System to track and report on WCPWWCD contacts, landowner responses, and follow up activities  
| g) Ongoing Reporting schedule outlined in task 1.a.  
|   |   |   |
|   |   |   |
| 2 | **Landowner Contact to Correct Agricultural Sources**  
WCPW will develop an interlocal agreement with WCD to offer and deliver pollution risk assessment and technical and financial assistance as needed to properties with agricultural activities.  
After WCPW identifies parcels with potentially polluting onsite sewage systems and/or agricultural operations, WCPW will generate a property list. The list will prioritize parcels based on proximity to creeks and ditches, water quality hot spots, and status of OSS evaluation and agricultural activities (dairy and  
| a) Interlocal agreement with WCD  
| b) 75 landowners with livestock in the Drayton Harbor focus area and 75 landowners in the Portage Bay focus areas will be contacted each year of the two year project (300 total contacts)  
| c) 50% of contacted landowners will receive site risk  
| a) Interlocal agreement completed by December 31, 2014  
| b) Landowner contacts initiated by January 31, 2015  
| c) Technical assistance initiated by March 31,  
| Reimbursement up to $180,000 based on actual costs.  
|   |   |   |
non-dairy). For parcels with suspected or confirmed agricultural operations, WCPW will send a letter to landowners providing background and a timeline for contacting the WCD to schedule technical assistance in evaluating non-dairy parcels for bacteria pollution sources.

Within one week of the WCPW letter, WCD will follow up with landowners through phone calls and door knocking to offer a pollution risk assessment. WCD will offer and provide to willing landowners technical and financial assistance to implement best management practices (BMPs) to correct identified pollution problems and to complete a farm plan checklist to meet the designated timelines. WCPW will provide supplies, such as temporary electric fencing, to the WCD to help landowners install temporary fixes for pollution sources needing immediate attention. WCD will work with willing landowners to develop and implement long-term pollution prevention through a farm plan.

WCPW will receive monthly updates from WCD on parcel contacts and corrective action progress made voluntarily by landowners. Landowners referred to WCD by WCPW who are not actively working with WCD to identify and remediate livestock pollution problems within two months of the initial referral will be contacted by WCPW through a letter or door knocking to remind the landowner of regulations.

assessments, technical assistance and financial assistance as funding allows (150 total).

d) Implementation of BMPs within 6 months (may be delayed up to 3 months depending on seasonal or design requirements of some BMPs).

e) Egregious pollution problems addressed immediately with temporary emergency actions.

2015

d & e) BMPs and temporary emergency actions initiated by June 30, 2015
WCPW will offer these landowners a final opportunity to participate in the voluntary program provided by WCD. If there is no response within two weeks and a non-dairy livestock related pollution violation has become apparent (e.g. water quality data, field observation, etc.), WCPW will refer the property to the appropriate regulatory agency (see Task 3):

<table>
<thead>
<tr>
<th>3</th>
<th><strong>Violation Management</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>PDS will create a .5 FTE Planner1/Code Compliance position to carry out compliance actions based on WCPW referrals.</td>
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<tr>
<td></td>
<td>WCPW will refer uncooperative landowners who choose not to voluntarily correct the pollution source within the specified timeline to the appropriate department of agency for compliance/enforcement action.</td>
</tr>
<tr>
<td></td>
<td>Departments and agencies include:</td>
</tr>
<tr>
<td></td>
<td>• PDS - After three contact attempts to encourage cooperative compliance on a property found to be in violation of the Critical Areas Ordinance (CAO) and with documented water quality impacts, WCPW will refer the property to PDS. PDS will initiate contact with the landowner to inform the landowner of the CAO regulations and the observed violations and water quality impacts. PDS will provide a two-week period for the landowner to contact PDS and initiate remedial actions.</td>
</tr>
<tr>
<td></td>
<td>Quarterly and final reports summarizing compliance actions and corrected discharges/violations will include: number of contacts, description and date of enforcement, and emergency actions taken.</td>
</tr>
<tr>
<td></td>
<td>90% of compliance actions will result in remedial actions to address bacteria sources entering water bodies.</td>
</tr>
<tr>
<td></td>
<td>100% of parcels with completed compliance actions will have a farm plan certified as implemented and filed with the county by the landowner.</td>
</tr>
<tr>
<td></td>
<td>Reporting schedule outlined in task 1.</td>
</tr>
<tr>
<td></td>
<td>Compliance actions will be initiated by June 1, 2015.</td>
</tr>
<tr>
<td></td>
<td>Reimbursement up to $58,000 based on actual costs.</td>
</tr>
</tbody>
</table>
### Remedial Action

Remedial action may include requiring landowners to move agricultural activities out of the critical area buffer or implement a temporary fix to protect water quality. If the landowner chooses to continue agricultural activities within the critical area buffer, PDS will require the landowner to develop and implement a certified farm plan according to a prescribed timeline. If the landowner does not contact PDS within two weeks, the CAO enforcement and penalties process will be initiated (WCC 16.16.285);

- Washington Department of Ecology - for non-dairy livestock related water quality violations not involving a county-regulated critical area;
- Washington Department of Agriculture - for water quality concerns from dairies;
- Whatcom County Health Department (WCHD) - for out-of-date OSS inspections; WCHD will follow its standard process and timeline for OSS evaluations in Marine Recovery Areas.

### Adaptive Management

Adaptive Management

WCPW will track progress through analyzing workshop evaluations, coordinating with county departments and state agencies to review county and WCD landowner contacts and results, and reviewing county compliance referrals. The county will also track progress through use of its PIC flow chart, which describes the process for landowner contacts and corrective actions. WCPW will evaluate water quality patterns through routine and

- a) Meeting with identified WCWP partners to assess resource allocation (staff and otherwise) and effectiveness of processes. Summary report of recommended changes.
- b) Final report of program evaluation with recommendations included in

- a) July 1, 2015
- b) October 15, 2016

Reimbursement up to $1,000 based on actual costs.
EXHIBIT A
DOH CONTRACT N20989
Sub-recipient Statement of Work

focus area monitoring.

Within six months of the start of the project, WCPW, WCD, PDS, and WCHD will meet with Department of Health and other state agencies and tribes to assess progress. If deficiencies are found, WCPW will work with partners to improve the project protocols with existing resources and will work with partners to seek further resources to fill gaps if needed.

A program evaluation will track long-term BMP maintenance, continued outreach in focus areas, seasonal reminders of activities and measures to reduce bacterial pollution, and feedback from landowners.

<table>
<thead>
<tr>
<th>Budget</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salaries</td>
<td>$73,170</td>
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<tr>
<td>Benefits</td>
<td>$46,830</td>
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<tr>
<td>Travel and training</td>
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<tr>
<td>Laboratory Services</td>
<td>$0</td>
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<tr>
<td>Supplies</td>
<td>$0</td>
</tr>
<tr>
<td>Onsite sewage system inspection incentives</td>
<td>$20,000</td>
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<tr>
<td>Contracts</td>
<td>$160,000</td>
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<tr>
<td>Subtotal</td>
<td>$300,000</td>
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<tr>
<td>Indirect 25%</td>
<td>$0</td>
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<tr>
<td>Total</td>
<td>$300,000</td>
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</table>

*Voluntary County Matches: $251,000 (0.25 FTE WCPW, 60% 0.5 FTE WCPW for two years, and 1.0 FTE Health for 18 months)
ATTACHMENT 1

FEDERAL COMPLIANCE
AND STANDARD FEDERAL CERTIFICATIONS AND ASSURANCES

In the event federal funds are included in this agreement, added by future amendment(s), or redistributed between fund sources resulting in the provision of federal funds, the following sections apply: I. Federal Compliance and II. Standard Federal Assurances and Certifications. In the instance of inclusion of federal funds as a result of an amendment, the Contractor may be designated as a subrecipient and the effective date of the amendment shall also be the date at which these requirements go into effect.

I. FEDERAL COMPLIANCE - The use of federal funds requires additional compliance and control mechanisms to be in place. The following represents the majority of compliance elements that may apply to any federal funds provided under this contract. (Refer to Catalog of Domestic Assistance number(s) cited in the “Payment” section of this contract for requirements specific to that fund source.) For clarification regarding any of these elements or details specific to the federal funds in this contract, contact:

Compliance and Internal Control Officer
Office of Financial Services
Department of Health
Post Office Box 47901
Olympia, Washington 98504-7901

1. CIRCULARS ‘COMPLIANCE MATRIX’ - The following compliance matrix identifies the OMB Circulars that contain the requirements which govern expenditure of federal funds. These requirements apply to the Department of Health, as the primary recipient of federal funds, and then follow the funds to the subrecipient. The federal Circulars which provide the applicable administrative requirements, cost principles and audit requirements are identified by subrecipient organization type.

<table>
<thead>
<tr>
<th>ENTITY TYPE</th>
<th>ADMINISTRATIVE REQUIREMENTS</th>
<th>COST PRINCIPLES</th>
<th>AUDIT REQUIREMENTS</th>
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<td>State. Local and Indian Tribal Governments &amp; Governmental Hospitals</td>
<td>A-102 &amp; Common Rule</td>
<td>A-87</td>
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<td>Non-Profit Organizations &amp; Non-Profit Hospitals</td>
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<td>Colleges or Universities &amp; Affiliated Hospitals</td>
<td>A-110</td>
<td>A-21</td>
<td>A-133</td>
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</table>
2. **CITIZENSHIP/ALIEN VERIFICATION/DETERMINATION** - The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 (PL 104-193) states that federal public benefits should be made available only to U.S. citizens and qualified aliens. Entities that offer a service defined as a "federal public benefit" must make a citizenship/qualified alien determination/verification of applicants at the time of application as part of the eligibility criteria. Non-US citizens and unqualified aliens are not eligible to receive the services. PL 104-193 also includes specific reporting requirements. Exemptions from the determination/verification requirement is afforded the following programs offered by the Department of Health: Family Planning, Breast & Cervical Health Program (BCHP), Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), WIC Farmers Market Program, Immunization Programs, and Ryan White CARE Act programs and other communicable disease treatment and diagnostic programs.

3. **CIVIL RIGHTS AND NONDISCRIMINATION** - During the performance of this agreement, the Contractor shall comply with all current and future federal statutes relating to nondiscrimination. These include but are not limited to: Title VI of the Civil Rights Act of 1964 (PL 88-352), Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681-1683 and 1685-1686), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-6107), the Drug Abuse Office and Treatment Act of 1972 (PL 92-255), the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290dd-3 and 290ee-3), Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), and the Americans with Disability Act (42 U.S.C., Section 12101 et seq.).

4. **SINGLE AUDIT ACT** - A subrecipient (including private, for-profit hospitals and non-profit institutions) shall adhere to the federal Office of Management and Budget (OMB) Circular A-133, as well as all applicable federal and state statutes and regulations. A subrecipient who expends $500,000 or more in federal awards during a given fiscal year shall have a single or program-specific audit for that year in accordance with the provisions of OMB Circular A-133.

**II. STANDARD FEDERAL CERTIFICATIONS AND ASSURANCES** - Following are the Assurances, Certifications, and Special Conditions that apply to all federally funded (in whole or in part) agreements administered by the Washington State Department of Health.

**CERTIFICATIONS**

1. **CERTIFICATION REGARDING DEBARMENT AND SUSPENSION**

The undersigned (authorized official signing for the contracting organization) certifies to the best of his or her knowledge and belief, that the contractor, defined as the primary participant in accordance with 45 CFR Part 76, and its principals:
A. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

B. have not within a 3-year period preceding this contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

C. are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and

D. have not within a 3-year period preceding this contract had one or more public transactions (Federal, State, or local) terminated for cause or default.

Should the contractor not be able to provide this certification, an explanation as to why should be placed after the assurances page in the contract.

The contractor agrees by signing this contract that it will include, without modification, the clause titled Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions in all lower tier covered transactions (i.e., transactions with subgrantees and/or contractors) and in all solicitations for lower tier covered transactions in accordance with 45 CFR Part 76.

2. CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

The undersigned (authorized official signing for the contracting organization) certifies that the contractor will, or will continue to, provide a drug-free workplace in accordance with 45 CFR Part 76 by:

A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

B. Establishing an ongoing drug-free awareness program to inform employees about

   i. The dangers of drug abuse in the workplace;
   ii. The contractor's policy of maintaining a drug-free workplace;
   iii. Any available drug counseling, rehabilitation, and employee assistance programs; and
   iv. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
C. Making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by paragraph (a) above;

D. Notifying the employee in the statement required by paragraph (a), above, that, as a condition of employment under the contract, the employee will—

   i. Abide by the terms of the statement; and

   ii. Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

E. Notifying the agency in writing within ten calendar days after receiving notice under paragraph (d) (2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every contract officer or other designee on whose contract activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

F. Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d) (ii), with respect to any employee who is so convicted—

   i. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

   ii. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

G. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (A), (B), (C), (D), (E), and (F).

For purposes of paragraph (e) regarding agency notification of criminal drug convictions, DOH has designated the following central point for receipt of such notices:

Compliance and Internal Control Officer
Office of Grants Management
WA State Department of Health
PO Box 47905
Olympia, WA 98504-7905
3. CERTIFICATION REGARDING LOBBYING

Title 31, United States Code, Section 1352, entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," generally prohibits recipients of Federal grants and cooperative agreements from using Federal (appropriated) funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a SPECIFIC grant or cooperative agreement. Section 1352 also requires that each person who requests or receives a Federal grant or cooperative agreement must disclose lobbying undertaken with non-Federal (nonappropriated) funds. These requirements apply to grants and cooperative agreements EXCEEDING $100,000 in total costs (45 CFR Part 93).

The undersigned (authorized official signing for the contracting organization) certifies, to the best of his or her knowledge and belief, that:

A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

B. If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions. (If needed, Standard Form-LLL, "Disclosure of Lobbying Activities," its instructions, and continuation sheet are included at the end of this application form.)

C. The undersigned shall require that the language of this certification be included in the award documents for all subcontracts at all tiers (including subcontracts, subcontracts, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

4. CERTIFICATION REGARDING PROGRAM FRAUD CIVIL REMEDIES ACT (PFCRA)

The undersigned (authorized official signing for the contracting organization) certifies that the statements herein are true, complete, and accurate to the best of his or her knowledge, and that he
or she is aware that any false, fictitious, or fraudulent statements or claims may subject him or her to criminal, civil, or administrative penalties. The undersigned agrees that the contracting organization will comply with the Public Health Service terms and conditions of award if a contract is awarded.

5. CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE

Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law also applies to children’s services that are provided in indoor facilities that are constructed, operated, or maintained with such Federal funds. The law does not apply to children’s services provided in private residence, portions of facilities used for inpatient drug or alcohol treatment, service providers whose sole source of applicable Federal funds is Medicare or Medicaid, or facilities where WIC coupons are redeemed.

Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity.

By signing the certification, the undersigned certifies that the contracting organization will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act.

The contracting organization agrees that it will require that the language of this certification be included in any subcontracts which contain provisions for children’s services and that all subrecipients shall certify accordingly.

The Public Health Services strongly encourages all recipients to provide a smoke-free workplace and promote the non-use of tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

6. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS INSTRUCTIONS FOR CERTIFICATION

By signing and submitting this proposal, the prospective contractor is providing the certification set out below.

A. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective contractor shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency’s determination whether to enter into this transaction. However, failure of the prospective contractor to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
B. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

C. The prospective contractor shall provide immediate written notice to the department or agency to whom this contract is submitted if at any time the prospective contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

D. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the person to whom this contract is submitted for assistance in obtaining a copy of those regulations.

E. The prospective contractor agrees by submitting this contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by DOH.

F. The prospective contractor further agrees by submitting this contract that it will include the clause titled Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transaction, provided by HHS, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

G. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (of excluded parties).

H. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

I. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, DOH may terminate this transaction for cause or default.
7. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS -- PRIMARY COVERED TRANSACTIONS

A. The prospective contractor certifies to the best of its knowledge and belief, that it and its principals:

i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

ii. Have not within a three-year period preceding this contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

iii. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

iv. Have not within a three-year period preceding this contract had one or more public transactions (Federal, State or local) terminated for cause or default.

B. Where the prospective contractor is unable to certify to any of the statements in this certification, such prospective contractor shall attach an explanation to this contract.

CONTRACTOR'S SIGNATURE IS REQUIRED

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<th>SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL</th>
<th>TITLE</th>
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<td>County Executive</td>
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</table>

Please also print or type name:

Jack Louws

ORGANIZATION NAME: (if applicable)

Whatcom County

DATE
FEDERAL ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the contractor, I certify that the contractor:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management, and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age
Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 cdd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.


10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§ 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1721 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, Audits of States, Local Governments, and Non-Profit Organizations.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

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<td>Whatcom County</td>
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Administrative Conditions

1. Hotel-Motel Fire Safety Act

Pursuant to 40 CFR 30.18, if applicable, and 15 USC 2225a, the recipient agrees to ensure that all space for conferences, meetings, conventions, or training seminars funded in whole or in part with federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (PL 101-391, as amended). Recipients may search the Hotel-Motel National Master List at http://www.usfa.dhs.gov/applications/hotel to see if a property is in compliance (FEMA ID is currently not required), or to find other information about the Act.

2. Recycled Paper

INSTITUTIONS OF HIGHER EDUCATION HOSPITALS AND NON-PROFIT ORGANIZATIONS:
In accordance with 40 CFR 30.16, the recipient agrees to use recycled paper and double sided printing for all reports which are prepared as a part of this agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration.

STATE AGENCIES AND POLITICAL SUBDIVISIONS:
In accordance with Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962) any State agency or agency of a political subdivision of a State which is using appropriated Federal funds shall comply with the requirements set forth. Regulations issued under RCRA Section 6002 apply to any acquisition of an item where the purchase price exceeds $10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was $10,000 or more. RCRA Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by EPA. These guidelines are listed in 40 CFR 247.

STATE AND LOCAL INSTITUTIONS OF HIGHER EDUCATION AND NON-PROFIT ORGANIZATIONS:
In accordance with 40 CFR 30.16, State and local institutions of higher education, hospitals, and non-profit organizations that receive direct Federal funds shall give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to EPA’s guidelines.

STATE TRIBAL AND LOCAL GOVERNMENT RECIPIENTS:
In accordance with the polices set forth in EPA Order 1000.25 and Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management (January 24, 2007), the recipient agrees to use recycled paper and double sided printing for all reports which are prepared as a part of this agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration.

3. Lobbying

ALL RECIPIENTS:
The recipient agrees to comply with Title 40 CFR Part 34, New Restrictions on Lobbying. The recipient shall include the language of this provision in award documents for all subawards exceeding $100,000, and require that subrecipients submit certification and disclosure forms accordingly.

In accordance with the Byrd Anti-Lobbying Amendment, any recipient who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such expenditure.
PART 30 RECIPIENTS:
All contracts awarded by a recipient shall contain, when applicable, the anti-lobbying provision as stipulated in the Appendix at Title 40 CFR Part 30.

Pursuant to Section 18 of the Lobbying Disclosure Act, the recipient affirms that it is not a nonprofit organization described in Section 501(c) (4) of the Internal Revenue Code of 1986; or that it is a nonprofit organization described in Section 501(c) (4) of the Code but does not and will not engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act.

4. Lobbying and Litigation

ALL RECIPIENTS:
The chief executive officer of this recipient agency shall ensure that no grant funds awarded under this assistance agreement are used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. The recipient shall abide by its respective OMB Circular (A-21, A-87, or A-122), which prohibits the use of Federal grant funds for litigation against the United States or for lobbying or other political activities.

5. Suspension and Debarment

Recipient shall fully comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532, entitled “Responsibilities of Participants Regarding Transactions (Doing Business with Other Persons).” Recipient is responsible for ensuring that any lower tier covered transaction as described in Subpart B of 2 CFR Part 180 and 2 CFR Part 1532, entitled “Covered Transactions,” includes a term or condition requiring compliance with Subpart C. Recipient is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. Recipient acknowledges that failing to disclose the information as required at 2 CFR 180.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment.

Recipient may access the Excluded Parties List System at www.epis.gov. This term and condition supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."

6. Drug-Free Workplace Certification for all EPA Recipients

The recipient organization of this EPA assistance agreement must make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in Title 2 CFR Part 1536 Subpart B. Additionally, in accordance with these regulations, the recipient organization must identify all known workplaces under its federal awards, and keep this information on file during the performance of the award.

Those recipients who are individuals must comply with the drug-free provisions set forth in Title 2 CFR Part 1536 Subpart C.

The consequences for violating this condition are detailed under Title 2 CFR Part 1536 Subpart E. Recipients can access the Code of Federal Regulations (CFR) Title 2 Part 1536 at http://ecfr.gpoaccess.gov.

7. Management Fees

Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term “management fees or similar charges” refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs which are not allowable under this assistance agreement. Management fees or similar
8. Reimbursement Limitation

If the recipient expends more than the amount of federal funding in its EPA approved budget in anticipation of receiving additional funds from EPA, it does so at its own risk. EPA is not legally obligated to reimburse the recipient for costs incurred in excess of the EPA approved budget.

9. Trafficking in Persons

a. Provisions applicable to a recipient that is a private entity.
   1. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not—
      i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
      ii. Procure a commercial sex act during the period of time that the award is in effect; or
      iii. Use forced labor in the performance of the award or subawards under the award.
   2. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity —
      i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or
      ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either—
         A. Associated with performance under this award; or
         B. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our Agency at 2 CFR 1532.

b. Provision applicable to a recipient other than a private entity. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—
   1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or
   2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—
      i. Associated with performance under this award; or
      ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 2 CFR 1532.

c. Provisions applicable to any recipient.
   1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
   2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:
      i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
      ii. Is in addition to all other remedies for noncompliance that are available to us under this award.
   3. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

d. Definitions. For purposes of this award term:
   1. “Employee” means either:
      i. An individual employed by you or a subrecipient who is engaged in the performance of
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the project or program under this award; or

ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.

10. Trafficking Victim Protection Act of 2000 (TVPA) as Amended.

To implement requirements of Section 106 of the Trafficking Victims Protection Act of 2000, as amended, the following provisions apply to this award:

a. We, as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity: (1) is determined to have violated an applicable prohibition in the Prohibition Statement below; or (2) has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in the Prohibition Statement below through conduct that is either: (a) associated with performance under this award; or (b) imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 2 CFR part 1532. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in the Prohibition Statement below.

b. Our right to terminate unilaterally that is described in paragraph a of this award term: (1) implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and (2) is in addition to all other remedies for noncompliance that are available to us under this award.

c. You must include the requirements of the Prohibition Statement below in any subaward you make to a private entity.

Prohibition Statement - You as the recipient, your employees, subrecipients under this award, and subrecipients’ employees may not engage in severe forms of trafficking in persons during the period of time that the award is in effect; procure a commercial sex act during the period of time that the award is in effect; or use forced labor in the performance of the award or subawards under the award.

11. DUNS and CCR Requirements (Updated 8/1/12)

A. Requirement for Central Contractor Registration (CCR)/System for Award Management (SAM).

Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain the currency of your information in the SAM until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.

B. Requirement for Data Universal Numbering System (DUNS) numbers. If you are authorized to make subawards under this award, you:

1. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its DUNS number to you.

2. May not make a subaward to an entity unless the entity has provided its DUNS number to you.

C. Definitions. For purposes of this award term:

1. Central Contractor Registration (CCR)/System for Award Management (SAM) means the Federal repository into which an entity must provide information required for the conduct of business as a
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recipient. Additional information about registration procedures may be found at the System for Award Management (SAM) Internet site http://www.sam.gov.

2. Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at http://fedgov.dnb.com/webform).

3. Entity, as it is used in this award term, means all of the following, as defined at 2 CFR part 25, subpart C:
   a. A Governmental organization, which is a State, local government, or Indian tribe;
   b. A foreign public entity;
   c. A domestic or foreign nonprofit organization;
   d. A domestic or foreign for-profit organization; and
   e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

4. Subaward:
   a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
   b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. --210 of the attachment to OMB Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations”).
   c. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.

5. Subrecipient means an entity that:
   a. Receives a subaward from you under this award; and
   b. Is accountable to you for the use of the Federal funds provided by the subaward.

12. Subawards
   a. The recipient agrees to:
      (1) Establish all subaward agreements in writing;
      (2) Maintain primary responsibility for ensuring successful completion of the EPA-approved project (this responsibility cannot be delegated or transferred to a subrecipient);
      (3) Ensure that any subawards comply with the standards in Section 210(a)-(d) of OMB Circular A-133 and are not used to acquire commercial goods or services for the recipient;
      (4) Ensure that any subawards are awarded to eligible subrecipients and that proposed subaward costs are necessary, reasonable, and allocable;
      (5) Ensure that any subawards to 501(c)(4) organizations do not involve lobbying activities;
      (6) Monitor the performance of their recipients and ensure that they comply with all applicable regulations, statutes, and terms and conditions which flow down in the subaward;
      (7) Obtain EPA's consent before making a subaward to a foreign or international organization, or a subaward to be performed in a foreign country; and
      (8) Obtain approval from EPA for any new subaward work that is not outlined in the approved work plan in accordance with 40 CFR Parts 30.25 and 31.30, as applicable.

   b. Any questions about subrecipient eligibility or other issues pertaining to subawards should be addressed to the recipient's EPA Project Officer. Additional information regarding subawards may be

c. The recipient is responsible for selecting its subrecipients and, if applicable, for conducting subaward competitions.

13. CIVIL RIGHTS OBLIGATIONS

GENERAL

This term and condition incorporates by reference the signed assurance provided by the recipient’s authorized representative on: 1) EPA Form 4700-4, “Preaward Compliance Review Report for All Applicants and Recipients Requesting EPA Financial Assistance”; and 2) Standard Form 424B or Standard Form 424D, as applicable. These assurances and this term and condition obligate the recipient to comply fully with applicable civil rights statutes and implementing EPA regulations.

STATUTORY REQUIREMENTS

In carrying out this agreement, the recipient must comply with:

- Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP), by entities receiving Federal financial assistance.
- Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities by entities receiving Federal financial assistance; and
- The Age Discrimination Act of 1975, which prohibits age discrimination by entities receiving Federal financial assistance.

If the recipient is conducting an education program under this agreement, it must also comply with:

- Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in education programs and activities operated by entities receiving Federal financial assistance.

If this agreement is funded with financial assistance under the Clean Water Act (CWA), the recipient must also comply with:

- Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex in CWA-funded programs or activities.

REGULATORY REQUIREMENTS

The recipient agrees to comply with all applicable EPA civil rights regulations, including:

- For Title IX obligations, 40 C.F.R. Part 5; and
- For Title VI, Section 504, Age Discrimination Act, and Section 13 obligations, 40 C.F.R. Part 7.
- As noted on the EPA Form 4700-4 signed by the recipient’s authorized representative, these regulations establish specific requirements including maintaining compliance information, establishing grievance procedures, designating a Civil Rights Coordinator, and providing notices of non-discrimination.

TITLE VI – LEP, Public Participation and Affirmative Compliance Obligation

- As a recipient of EPA financial assistance, you are required by Title VI of the Civil Rights Act to provide meaningful access to LEP individuals. In implementing that requirement, the recipient agrees to use as a guide the Office of Civil Rights (OCR) document entitled “Guidance to
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- If the recipient is administering permitting programs under this agreement, the recipient agrees to use as a guide OCR's Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permits. The Guidance can be found at http://edocket.access.gpo.gov/2008/pdf/06-2691.pdf.
- In accepting this assistance agreement, the recipient acknowledges it has an affirmative obligation to implement effective Title VI compliance programs and ensure that its actions do not involve discriminatory treatment and do not have discriminatory effects even when facially neutral. The recipient must be prepared to demonstrate to EPA that such compliance programs exist and are being implemented or to otherwise demonstrate how it is meeting its Title VI obligations.

14. Disadvantaged Business Enterprise Requirements

General Compliance, 40 CFR, Part 33

The recipient agrees to comply with the requirements of EPA's Program for Utilization of Small, Minority and Women's Business Enterprises in procurement under assistance agreements, contained in 40 CFR, Part 33.

15. Payment to Consultants

EPA participation in the salary rate (excluding overhead) paid to individual consultants retained by recipients or by a recipient's contractors or subcontractors shall be limited to the maximum daily rate for Level IV of the Executive Schedule (formerly GS-18), to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. This rate does not include transportation and subsistence costs for travel performed (the recipient will pay these in accordance with their normal travel reimbursement practices).

Subagreements with firms for services which are awarded using the procurement requirements in 40 CFR Parts 30 or 31, are not affected by this limitation unless the terms of the contract provide the recipient with responsibility for the selection, direction, and control of the individuals who will be providing services under the contract at an hourly or daily rate of compensation. See 40 CFR 30.27(b) or 40 CFR 31.36(j), as applicable, for additional information.

As of January 1, 2014, the limit is $602.24 per day $75.28 per hour.

NOTE: For future years' limits, the recipient may find the annual salary for Level IV of the Executive Schedule on the following Internet site: http://www.opm.gov/oca. Select "Salary and Wages", and select "Rates of Pay for the Executive Schedule." The annual salary is divided by 2087 hours to determine the maximum hourly rate, which is then multiplied by 8 to determine the maximum daily rate.

Programmatic Conditions

1. Electronic and Information Technology Accessibility

Recipients and subrecipients are subject to the program accessibility provisions of Section 504 of the Rehabilitation Act, codified in 40 CFR Part 7, which includes an obligation to provide individuals with disabilities reasonable accommodations and an equal and effective opportunity to benefit from or participate in a program, including those offered through electronic and information technology ("EIT"). In
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compliance with Section 504, EIT systems or products funded by this award must be designed to meet the diverse needs of users (e.g., U.S. public, recipient personnel) without barriers or diminished function or quality. Systems shall include usability features or functions that accommodate the needs of persons with disabilities, including those who use assistive technology. At this time, the EPA will consider a recipient’s websites, interactive tools, and other EIT as being in compliance with Section 504 if such technologies meet standards established under Section 508 of the Rehabilitation Act, codified at 36 CFR Part 1194. While Section 508 does not apply directly to grant recipients, we encourage recipients to follow either the 508 guidelines or other comparable guidelines that concern accessibility to EIT for individuals with disabilities. Recipients may wish to consult the latest Section 508 guidelines issued by the US Access Board or W3C’s Web Content Accessibility Guidelines (WCAG) 2.0 (see http://www.access-board.gov/sec508/guide/index.htm).

2. Competency of Organizations Generating and/or Using Environmental Measurement Data

In accordance with Agency Policy Directive Number FEM-2012-02, Policy to Assure the Competency of Organizations Generating Environmental Measurement Data under Agency-Funded Assistance Agreements, recipient shall maintain competency for the duration of the project period of this agreement and this will be documented during the annual reporting process. A copy of the Policy is available online at http://www.epa.gov/fem/lab_comp.htm or a copy may also be requested by contacting the EPA Project Officer for this award.

Federal Assistance Agreement Funds Up To $200,000

Recipient agrees that if the total federal funding obligated on this award exceeds $200,000 (resulting from subsequent amendments to this agreement) and will involve the use or generation of environmental data it will (unless it has otherwise done so) demonstrate competency prior to carrying out any activities involving the generation or use of environmental data under this agreement.

Federal Assistance Agreement Funds Exceed or Expect to Exceed $200,000

Recipient agrees, by entering into this agreement, that it has demonstrated competency prior to award, or alternatively, where a pre-award demonstration of competency is not practicable. Recipient agrees to submit documentation and demonstrate competency prior to carrying out any activities under the award involving the generation or use of environmental data.

R10 Quality Assurance Team Contact: Gina Grepo-Grove, Quality Assurance Manager, at (206) 553-1632 or email: Grepo-Grove.Gina@epa.gov.

3. Sufficient Progress

DOH may terminate the assistance agreement for failure of the sub-recipient to make sufficient progress so as to reasonably ensure completion of the project within the project period, including any extensions. DOH will measure sufficient progress by examining the performance required under the workplan in conjunction with the milestone schedule, the time remaining for performance within the project period, and/or the availability of funds necessary to complete the project.

4. Semi-Annual Performance Reports

Sub-recipients will submit performance reports to the DOH Grant Manager every six (6) months, unless a different reporting frequency is outlined in the Scope of Work, during the life of the project. DOH will provide the Financial and Ecosystem Accounting Tracking System (FEATS) reporting forms. Reports are due 15 calendar days after the end of each reporting period. The reporting periods shall end March 31st and September 30th of each calendar year. Reports shall be submitted electronically. The sub-recipient agrees to submit performance reports that include brief information on each of the following areas:

(a) a comparison of actual accomplishments to the outputs/outcomes established in the assistance agreement work plan for the period;
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(b) the reasons for slippages if established outputs/outcomes were not met;
(c) additional pertinent information, including when appropriate, analysis and information of cost
overruns or high unit costs.

In addition to the semi-annual performance reports, the sub-recipient shall immediately notify the DOH
Grant Manager of developments that have a significant impact on the award-supported activities. As
appropriate, the sub-recipient agrees to inform the DOH Grant Manager as soon as problems, delays or
adverse conditions become known which will materially impair the ability to meet the outputs/outcomes
specified in the assistance agreement work plan. This notification shall include a statement of the action
taken or contemplated, and any assistance needed to resolve the situation.

5. Final Performance Report

In addition to the periodic performance reports, the sub-recipient shall submit a final performance report
through FEATS, which is due 90 calendar days after the expiration or termination of the award. The report
shall be submitted to the EPA Project Officer and must be provided electronically. The report shall
generally contain the same information as in the periodic reports, but should cover the entire project
period. After completion of the project, the EPA Project Officer may waive the requirement for a final
performance report if the EPA Project Officer deems such a report is inappropriate or unnecessary.

6. Recognition of EPA Funding

Reports, documents, signage, videos, or other media, developed as part of projects funded by this
assistance agreement shall contain the following statement:

"This project has been funded wholly or in part by the United States Environmental Protection Agency
under assistance agreement PC-00J88801 to Washington Department of Health. The contents of this
document do not necessarily reflect the views and policies of the Environmental Protection Agency, nor
does mention of trade names or commercial products constitute endorsement or recommendation for
use."

7. Copyrighted Material

In accordance with 40 CFR 31.34 for State, local and Indian Tribal governments or 40 CFR 30.36 for
other recipients, EPA has the right to reproduce, publish, use, and authorize others to use copyrighted
works or other data developed under this assistance agreement for Federal purposes.

Examples of a Federal purpose include but are not limited to: (1) Use by EPA and other Federal
employees for official Government purposes; (2) Use by Federal contractors performing specific tasks for
the Government; (3) Publication in EPA documents provided the document does not disclose trade
secrets (e.g. software codes) and the work is properly attributed to the recipient through citation or
otherwise; (4) Reproduction of documents for inclusion in Federal depositories; (5) Use by State, tribal
and local governments that carry out delegated Federal environmental programs as "co-regulators" or act
as official partners with EPA to carry out a national environmental program within their jurisdiction and; (6)
Limited use by other grantees to carry out Federal grants provided the use is consistent with the terms of
EPA's authorization to the other grantee to use the copyrighted works or other data.

Under Item 5, the grantee acknowledges that EPA may authorize another grantee(s) to use the
copyrighted works or other data developed under this grant as a result of:

a. the selection of another grantee by EPA to perform a project that will involve the use of the
copyrighted works or other data or;
b. termination or expiration of this agreement.
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In addition, EPA may authorize another grantee to use copyrighted works or other data developed with Agency funds provided under this grant to perform another grant when such use promotes efficient and effective use of Federal grant funds.

8. Quality Assurance Requirements

Acceptable Quality Assurance documentation must be submitted to the DOH within 30 days of the acceptance of this agreement or another date as negotiated with the DOH Grant Coordinator. Please refer to The Department of Ecology’s website at http://www.ecy.wa.gov/programs/eap/qa/docs/NEPQAPP/index.html for guidance and templates. Submit the Acceptable Quality Assurance documentation to Tom Gries at tgr1461@ecy.wa.gov for review with a cc to mary.knackstedt@doh.wa.gov and megan.schell@doh.wa.gov. No work involving direct measurements or data generation, environmental modeling, compilation of data from literature or electronic media, and data supporting the design, construction, and operation of environmental technology shall be initiated under this project until the Department of Ecology Quality Coordinator has approved the quality assurance document and a copy has been provided to DOH.

9. Environmental Data and Information Technology

Subrecipients are required to institute standardized reporting requirements into their work plans and include such costs in their budgets. All environmental data will be required to be entered into the Agency’s Storage and Retrieval data system (STORET). The best method (local or state consolidated) for reporting will be determined on a project-by-project basis between the DOH Grant Coordinator, Ecology’s NEP Quality Coordinator, and the subrecipient. STORET is a repository for water quality, biological, and other physical data used by state environmental agencies, EPA and other federal agencies, universities, private citizens, and many other organizations. It is highly recommended that the grant recipient attend EPA sponsored STORET training as soon as practical and as training is available. Information regarding training sessions sponsored by EPA will be provided by the EPA Project Officer. More information about STORET can be found at http://www.epa.gov/STORET.

Region 10 STORET Contact
Ted Enderle, STORET Coordinator
(206) 553-6703 or email: enderle.ted@epa.gov

10. Peer Review

The results of this project may affect management decisions relating to Puget Sound. Prior to finalizing any significant technical products the Principal Investigator (PI) of this project must solicit advice, review and feedback from a technical review or advisory group consisting of relevant subject matter specialists. A record of comments and a brief description of how respective comments are addressed by the PI will be provided to the Project Monitor prior to releasing any final reports or products resulting from the funded study.

11. Program Income

If program income is generated, the recipient is required to account for program income related to this project. Program income earned during the project period shall be retained by the recipient and shall be added to funds committed to the project by EPA and the recipient, and shall be used to further eligible project objectives.

12. Minority and Women-Owned Business Enterprise (MBE/WBE) Fair Share Objectives and Reporting

Sub-recipients are held to the same requirements as the recipient of the EPA Grant and must accept the MBE/WBE fair share objectives/goals negotiated with EPA by the Washington Office of Minority and Women's Business Enterprises as follows:
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MBE: PURCHASED GOODS 8%, PURCHASED SERVICES 10%, PROFESSIONAL SERVICES 10%  
WBE: PURCHASED GOODS 4%, PURCHASED SERVICES 4%, PROFESSIONAL SERVICES 4%

By accepting this financial assistance the sub-recipient is accepting the fair share objectives/goals stated above and attests to the fact that it is purchasing the same or similar construction, supplies, services and equipment, in the same or similar relevant geographic buying market as, Washington Office of Minority and Women's Business Enterprises.

Sub-recipients are required to submit MBE/WBE utilization reports annually. Reports will be in the following format and will include all qualifying purchases. Reporting period is from October 1 to September 30, and upon contract completion. Reports are due to DOH 15 calendar days after the end of each reporting period.

<table>
<thead>
<tr>
<th>1. Procurement Made By</th>
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</thead>
<tbody>
<tr>
<td>(check box)</td>
</tr>
<tr>
<td>Recipient</td>
</tr>
<tr>
<td>Subrecipient</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>2. Business Enterprise</th>
</tr>
</thead>
<tbody>
<tr>
<td>(check box)</td>
</tr>
<tr>
<td>Prime</td>
</tr>
<tr>
<td>Minority</td>
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<tr>
<td>Women</td>
</tr>
</tbody>
</table>

| 3. $ Value of Procurement |

| 4. Date of Purchase MM/DD/YY |

| 5. Type of Product or Services * (Enter Code) |

| 6. Name/Address/Phone Number of MBE/WBE Contractor or Vendor |

*Type of product or service codes: 1 = Construction 2 = Supplies 3 = Services 4 = Equipment

DOH Program Contact (Name, Program Title, Mailing Address, Email Address, Phone & Fax Number)
Mary Knackstedt, Office of Shellfish and Water Protection  
PO Box 47824  
Olympia WA 98504-7824  
360.236.3319; mary.knackstedt@doh.wa.gov

Megan Schell, Office of Shellfish and Water Protection  
PO Box 47824  
Olympia, WA 98504-7824  
360.236.3307; megan.schell@doh.wa.gov

13. Riparian Buffers

Riparian buffer restoration projects in agricultural areas shall be consistent with the interim riparian buffer recommendations provided to EPA and the Natural Resource Conservation Service by National Marine Fisheries Service letters of February 4, 2013 and April 9, 2013, or the October 28, 2013 guidance previously agreed to by Lead Organizations (LOs) (see attachments). LOs shall confirm in writing projects' consistency with the recommendations referenced above. When evaluating project proposals, LOs also should consider the extent to which proposals include appropriate riparian buffers or otherwise address pollution sources on other water courses on the properties in the project area to support water quality and salmon recovery. Deviations can only be obtained through an exception approved by EPA. In order for EPA to evaluate a request for an exception, the LO must submit the scientific rationale demonstrating adequacy of buffers for supporting water quality and salmon recovery. The request must summarize tribal input on the scientific rationale or other relevant issues. The scientific rationale could be developed from sources such as site-specific assessment data, salmon recovery plans, Total Maximum Daily Loads (TMDLs) and the state nonpoint plan. EPA will confer with the National Oceanic and Atmospheric Administration (NOAA) and the Washington Department of Ecology and provide the opportunity for affected tribes to consult with EPA before making a final decision on a deviation request.
<table>
<thead>
<tr>
<th>NMFS Channel Type</th>
<th>Channel Types</th>
<th>Habitat Functions/Composition</th>
<th>Buffer – Minimum Default Width</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class I</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Constructed ditches; fishless streams.</td>
<td>1. Constructed Ditches, Intermittent Streams and Ephemeral Streams that are not identified as being accessed and were historically not accessed by anadromous or ESA listed fish species</td>
<td>Water quality protection; shade; sediment filtration</td>
<td>1. 35'</td>
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<td></td>
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<td></td>
<td>2. Perennial waters that are not identified as being accessed and were historically not accessed by anadromous or ESA listed fish species</td>
<td></td>
<td>2. 50'</td>
</tr>
<tr>
<td>Class II</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Fish bearing, modified natural channel, entrenched or spring fed watercourses that do not move</td>
<td>Modified or highly entrenched perennial, intermittent and ephemeral waters that are identified as being accessed or were historically accessed by anadromous or ESA listed fish species</td>
<td>Water quality, large wood debris (LWD) for cover, complexity and shade</td>
<td>100’ supporting site assessment recommended to increase buffer width</td>
</tr>
<tr>
<td>Class III</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fish bearing</td>
<td>Unconfined perennial, intermittent and ephemeral waters that are identified as being accessed or were historically accessed by anadromous or ESA listed fish species</td>
<td>Water quality, large wood debris (LWD) for cover, complexity and shade</td>
<td>100’ supporting site assessment recommended to increase buffer width</td>
</tr>
<tr>
<td>Class IV.</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Diked, permanently fixed</td>
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<td></td>
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<tr>
<td>Class V &quot;n&quot;</td>
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<td></td>
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</tr>
<tr>
<td>Fish bearing, intertidal/estuary</td>
<td>Perennial, intermittent and ephemeral waters that are identified as being accessed or were historically accessed by anadromous or ESA listed fish species in intertidal and estuarine streams and channels</td>
<td>Site potential vegetation (salt water) sedges, shrubs, etc.</td>
<td>35’ – 75’ Supporting site assessment of adjacent land use recommended to increase buffer protections needed to meet all applicable water quality standards.</td>
</tr>
</tbody>
</table>
Ms. Roylene Rides-at-the-Door  
USDA Natural Resources Conservation Service  
316 W. Boone Avenue, Suite 450  
Spokane, Washington 99201-2348  

Mr. Dennis McLerran, Regional Administrator  
EPA - Region 10  
1200 6th Ave., Suite 900  
Seattle, Washington 98101  

Dear Ms. Rides-at-the-Door and Mr. McLerran:

Our three agencies have been in very active discussions on opportunities to restore the health of our streams and nearshore areas as part and parcel of our collective effort to address the Treaty rights issues associated with the continuing loss of habitat productivity of importance to salmon and steelhead populations and other fishery resources in the Pacific Northwest. In particular, we have been examining the adequacy of our current approaches to describing those riparian buffers in lower elevation landscapes that may be necessary to protect and restore important aquatic functions.

NOAA Fisheries has recently reviewed the current scientific information associated with this topic in order to assist us in identifying approaches that might help protect aquatic functions important to fishery resources. In this context, I am writing to recommend that you use on an interim basis the enclosed matrix of riparian buffers in programs EPA or the NRCS support or fund. I would also couple this with our request to join with us and others to refine the matrix based on best available science over the coming months. For your information, I have enclosed a brief synopsis of existing scientific information about the relationship between riparian buffers and aquatic stream functions important to Pacific salmonids in the low elevation agricultural landscapes of western Washington which I believe will help provide some meaningful background for our recommendation.

Several factors provide context for our recommendation. Numerous populations of salmon and steelhead in the Pacific Northwest are at risk of extinction and as a consequence, federally-reserved treaty rights to harvest these fish are also at risk. Degradation and loss of freshwater and estuary habitat are significant factors in the decline of these populations. Salmon habitat ranges from the forested areas of the upper elevations to the lower-elevation floodplains to the estuarine and near-shore habitats of Puget Sound. All of these areas provide vital functions in...
the system as whole, particularly the lower-elevation and estuarine areas that are the focus of my recommendation. There are many ongoing efforts to rebuild Puget Sound salmon, including those of numerous state and federal agencies, tribal and local governments and the private sector. I am providing the enclosed matrix as NOAA Fisheries’ recommendation for minimum riparian buffers in lower-elevation agricultural landscapes. Our technical guidance is intended to help shape recovery and rebuilding efforts effectively and to offer our technical advice on what aquatic functions fish need.

In some cases, our recommendations are framed in terms of ranges of buffer widths rather than point estimates, and expressed as probabilities of achieving desired outcomes. Local conditions and local circumstances matter, and may affect the choice of the riparian buffer most effective at achieving salmon recovery. Nevertheless, the scientific information does support conclusions about the probability of differing buffer ranges to provide a range of aquatic functions that are essential for water quality and salmon needs, as depicted in the enclosures. We are ready to work with project proponents, landowners, agencies, departments and tribes to provide technical advice and find solutions that will support salmon recovery.

The enclosed matrix has its origins in the Washington Agriculture, Fish and Water process (AFW), which occurred from 1999 to 2003 and included participation by state and federal agencies, tribal governments and diverse agricultural interests. One of the efforts undertaken in the AFW process was to identify riparian buffers for agricultural landscapes that provide adequate salmon habitat and are implementable. Several options were developed by the AFW caucuses. For the sake of clarity, the enclosed matrix displays the proposal developed by the federal caucuses at the request of the AFW Executive Committee, Option 3. It was presented to the Executive Committee by NOAA Fisheries, along with several caveats which still hold true today: 1) there is a technical basis for the buffer table, supported by the refereed literature and other references; 2) it represents a coarse-scale classification; and 3) the goal of the matrix is to meet state and federal water quality standards and improve salmon habitat. NOAA Fisheries explained the numbers are within an advisable range, and stated there is flexibility to implement more complex approaches when looking at specific sites, so long as water quality protection and salmon habitat function are equivalent or better than that provided by our recommendations.

This history is relevant today as our view of the buffer table is unchanged. We supported its use in 2002, and we still support its use in 2012 as a guide for establishing interim minimum buffers for programs to promote good water quality and aquatic conditions important to salmon and other aquatic life. While the table identifies buffers as narrow as 35 feet for limited situations, in most settings buffers will need to be significantly wider than this to meet salmon habitat needs. We recommend protecting wider buffers where they exist and creating wider buffers where it is practicable and where local watershed conditions warrant. Further, we are convinced that any strategy to meaningfully increase the agricultural landscape’s contribution to salmon recovery, as well as any strategy to sufficiently protect water quality, should contain a robust riparian restoration program.
If you have any further questions about this letter, please feel free to call me directly or Mr. Steve Landino, the director of our Washington State Habitat Office.

Sincerely,

William W. Stella, Jr.
Regional Administrator

Enclosures

cc: Puget Sound Federal Caucus Agencies
    Northwest Indian Fisheries Commission
    Washington State Dept. of Ecology
    Washington State Department of Fish and Wildlife
    Washington State Department of Natural Resources
    Washington State Department of Agriculture
    Washington State Department of Health
    Washington State Conservation Commission
    Washington Recreation and Conservation Office
    Puget Sound Partnership
Ms. Roylene Rides-at-the-Door
Washington State Conservationist
USDA - Natural Resources Conservation Service
316 W. Boone Avenue, Suite 450
Spokane, Washington 99201-2348

Mr. Dennis McLerran, Regional Administrator
U.S. Environmental Protection Agency - Region 10
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

Dear Ms. Rides-at-the-Door and Mr. McLerran:

I am writing to convey my support for slight modifications to the riparian matrix that I distributed on January 30 of this year. As Natural Resources Conservation Service (NRCS) staff developed guidance for implementing riparian restoration actions consistent with the matrix, they discovered that internal agency issues prevented the use of a 100-year soil site index upon which the matrix is predicated. It is my understanding that the NRCS is required to use soils data that are available on line, and that only 50-year soil site index data are so available. Fortunately, NRCS and NMFS staff crafted a workaround that requires only minor modifications to the matrix while enabling the use of 50-year soil site index data.

Buffers for two of the channel types on the matrix were to be set at minimums equal to either two-thirds or three-fourths of a 100-year-old site potential tree. Using the same fractions of a 50-year site index potential tree height, at least where site potential trees are conifers, would result in much narrower buffers. However, a review of conifer growth rates across a range of western Washington soil types suggests that modifying the matrix to set minimums at three-fourths and 100 percent of a 50-year-old site potential tree height, respectively, would yield nearly identical minimum buffer widths as those in the original matrix. I support this modification as a practical accommodation to on-the-ground implementation.

In addition, I understand there are concerns that the matrix is too vague regarding type 1 channels. The intent is that type 1 channels not contribute to water quality problems downstream. Reference to the Field Office Technical Guide is intended to convey that the necessary width and composition of buffers on type 1 channels will vary depending on the adjacent land use and geomorphic setting.
To implement the recommendations in the matrix, when surface waters are present, water quality must be identified as a resource concern and appropriate combinations of best management practices (BMPs)\(^1\) must be applied to ensure the associated farm operation will comply with water quality standards. For example, when pathogens are of concern, there is no support in the literature for buffers narrower than 35 feet. Therefore, we expect that type 1 channels on lands occupied by livestock or where manure is being applied will be treated with a combination of BMPs that will result in a buffer width of 35 feet or greater, e.g., a 15-foot wide hedgerow and a 20-foot or wider filter strip.

Lastly, I agree that channel type 4, leved channels, should be removed from the list, as these features are managed according to Corps of Engineers’ requirements.

I look forward to working with each of you in applying our shared authorities and responsibilities to dramatically improve habitat and water quality in the Puget Sound basin. If you have any further questions about this letter, please feel free either to call me directly or to contact Mr. Steve Landino, the director of our Washington State Habitat Office.

Sincerely,

[Signature]

William W. Stelle, Jr.
Regional Administrator

cc: Washington State Dept. of Ecology
    Washington State Conservation Commission
    Mike Grayum, Northwest Indian Fisheries Commission
    Thomas Eaton, Environmental Protection Agency
    Linda Anderson Carnahan, Environmental Protection Agency
    Sherre Copeland, Natural Resources Conservation Service

---

\(^1\) BMPs may include conservation practices found in the Field Office Technical Guide applied in manner that results in compliance with water quality standards.
DOH CONTRACT N20989
SPECIAL TERMS AND CONDITIONS
EPA Administrative & Programmatic Conditions

Fish presence based on Washington's Integrated Fish Distribution database. Fish presence includes all classes of presence of anadromous or ESA listed fish. Where no fish distribution data is available, fish presence must be determined by contacting local WDFW or Tribal biologist.

Buffer widths are required minimums, however, if a landowner believes that the buffers called for by the table significantly interfere with his/her ability to reasonably use their property, there is a process to identify alternative buffers that are smaller. Please see FAQs for more information.

Generally, buffer vegetation is required between the watercourse and dike, based upon the criteria of the corresponding channel type. However, levee vegetation requirements are subject to U.S. Army Corps of Engineers (Corps) guidance which can be found in Engineering Technical Letter No. 1110-2-571, "Engineering and Design: Guidelines for Landscape Planting and Vegetation Management at Levees, Floodwalls, Embankment Dams, and Appurtenant Structures", as well as in the USACE Levee Owner's Manual for Non-Federal Flood Control Works.

Estuarine channels are defined as stream channels having direct, daily tidal influence such that the vegetation is adapted to saltwater or intertidal conditions.
Amendment No. 2 to Kulshan Services, LLC Contract for Services

ATTACHMENTS:
- Cover Memorandum
- Scope of Work
- Compensation Schedule

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

Should Clerk schedule a hearing? ( ) Yes ( X ) NO
Requested Date:

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE: (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)

The proposed amendment allows for the continuation of consulting services implementing a stakeholder involvement process and facilitating stakeholder meetings for the development of a System-wide Improvement Framework for the Nooksack River levee system.

COMMITTEE ACTION:

COUNCIL ACTION:

Related County Contract #: Related File Numbers: Ordinance or Resolution Number:

Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County's website at: www.co.whatcom.wa.us/council.
MEMORANDUM

TO: The Honorable Jack Louws, Whatcom County Executive for the
Whatcom County Flood Control Zone District Board of Supervisors

THROUGH: Frank Abart, Public Works Director

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

RE: Amendment No. 2 to Kulshan Services, LLC Contract for Services
    Nooksack System-wide Improvement Framework

DATE: November 21, 2014

Enclosed are two (2) originals of Amendment No. 2 to the Contract for Services between the
Whatcom County Flood Control Zone District and Kulshan Services, LLC for your review and
signature.

- Requested Action
Public Works respectfully requests that the County Executive, acting for the Whatcom County Flood
Control Zone District (FCZD) Board of Supervisors, execute the proposed amendment with Kulshan
Services, LLC to provide supplementary scope and budget to the Contract for Services.

- Background and Purpose
Kulshan Services was retained to develop and implement a stakeholder involvement process and
provide facilitation services for the Nooksack River System-Wide Improvement Framework (SWIF)
process. The FCZD initiated the development of a SWIF to address the deficiencies identified for
the Nooksack River levees by the US Army Corps of Engineers (USACE). The SWIF was initially
due to the USACE by June of 2015; however, a one year extension was granted by USACE because
they modified the criteria used to determine whether levees are eligible in the PL84-99 system.

As part of the SWIF process, interagency coordination is required. A team consisting of
representatives from federal, state, and local resource agencies, USACE, diking districts and
subzones has been established to support the SWIF development process. Due to the large breadth
of interests of the stakeholder group and the USACE levee policy modifications, additional time and
additional facilitated meetings are required to complete the SWIF process.

The proposed amendment increases the contract scope and budget for the completion of sixteen
additional meetings. The amendment also extends the termination date of the agreement to June
30, 2016.
- **Funding Amount and Source**

  The increase in agreement amount proposed in this amendment is $30,000 resulting in a total contract amount of $74,640. This work is being funded using FCZD and existing Puget Sound Partnership grant funding. The 2014 FCZD budget has adequate budget authority for this contract amendment.

  Please contact Paula Cooper at extension 50625, if you have any questions or concerns regarding the terms of this amendment.

  Encl.
<table>
<thead>
<tr>
<th>Originating Department:</th>
<th>Public Works</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract or Grant Administrator:</td>
<td>Paula J. Cooper</td>
</tr>
<tr>
<td>Contractor’s / Agency Name:</td>
<td>Kulshan Services, LLC</td>
</tr>
</tbody>
</table>

| Is this a New Contract? | Yes ☑ No ☐ |
| Is this a grant agreement? | Yes ☑ No ☐ |
| Is this contract grant funded? | Yes ☑ No ☐ |

If Yes, Whatcom County grant contract number(s): 201310010

| Is this the result of a RFP or Bid process? | Yes ☑ No ☐ |
| Is this agreement excluded from E-Verify? | No ☑ Yes ☑ |

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

| Contract Amount: | $44,460 |
| This Amendment Amount: | $30,000 |
| Total Amended Amount: | $74,460 |

Summary of Scope: The proposed amendment allows for the continuation of consulting services implementing a stakeholder involvement process and facilitating stakeholder meetings for the development of a System-wide Improvement Framework for the Nooksack River levee system.

| Term of Contract: | Fixed |
| Expiration Date: | June 30, 2016 |

Contract Routing:
1. Prepared by: Ben Floyd  Date: 11/20/2014
2. Attorney signoff: Daniel L. Gibson  Date: 11/21/2014
3. AS Finance reviewed: bbennett  Date: 11/20/14
4. IT reviewed (if IT related):  Date: 11/24/14
5. Contractor signed:  Date: 11/25/14
6. Submitted to Exec.:  Date: 
7. Council approved (if necessary):  Date: 
8. Executive signed:  Date: 
9. Original to Council:  Date: 

Last Edited 060414
Amendment No. 2
CONTRACT BETWEEN WHATCOM
COUNTY FLOOD CONTROL ZONE DISTRICT
AND KULSHAN SERVICES, LLC
for FACILITATION SERVICES FOR SYSTEM-WIDE
IMPROVEMENT FRAMEWORK

THIS AMENDMENT is to the Contract between the Whatcom County Flood Control Zone District, hereinafter referred to as the "County", and Kulshan Services, LLC, a consulting company hereinafter referred to as the "Contractor", dated October 9, 2013 and designated "Whatcom County Contract No. 201309026". In consideration of the mutual benefits to be derived, the parties agree to the following:

WITNESSETH

WHEREAS, the County has entered into an agreement with the Contractor, dated October 9, 2013, to provide professional services to develop and implement a stakeholder involvement process and provide facilitation services for development of the Nooksack River System-Wide Improvement Framework (SWIF); and

WHEREAS, the US Army Corps of Engineers allows deficient levees to remain eligible for rehabilitation in the Public Law (PL) 84-99 program while the levee sponsors are engaged in the Nooksack SWIF process; and

WHEREAS, during the SWIF process, the US Army Corps of Engineers modified policies related to levee systems and their eligibility in the program; and

WHEREAS, the US Army Corps of Engineers granted a one year extension to the Nooksack SWIF process in order for the County to better understand implications of policy modifications and to better engage the agricultural community; and

WHEREAS, the large breadth of interests of the stakeholder group is requiring more effort and time than initially anticipated; and

WHEREAS, additional time and facilitated meetings are required to complete the SWIF process; and

WHEREAS, to date, the Contractor continues to successfully complete the scope of work and deliver an acceptable product; and

NOW, THEREFORE, the County, and the Contractor agree to modify the Agreement as follows:

1. SCOPE OF CONTRACTOR'S SERVICES

The Scope of Contractor's Services is amended to include the additional Scope of Services described in Exhibit A-2, attached hereto and incorporated herein by reference.

2. PERFORMANCE

As consideration for the additional services to be provided by the Contractor, the County agrees to reimburse the Contractor for services rendered under this amendment at a total sum not to exceed THIRTY THOUSAND DOLLARS ($30,000) based on the cost breakdown detailed in Exhibit B-2, which is attached hereto and incorporated herein by reference. The revised contract amount is $74,460.
3. CONTRACT TERMINATION DATE

The contract termination date is extended to June 30, 2016.

This Amendment shall be made part of W.C. Contract No. 201309026 by and between Whatcom County and Kulshan Services, LLC, formerly known as Kulshan Environmental Services. Unless specifically stated herein, all other terms and conditions of the original agreement shall remain in full force and effect.

IN WITNESS WHEREOF, Whatcom County and Kulshan Services LLC have executed this Amendment on the date and year below written.

DATED this __________ day of ______________, 20___.

CONTRACTOR INFORMATION:

Kulshan Services LLC

David Roberts, Principal

Address:
1229 Cornwall Ave, Suite 309
Bellingham, WA 98225

Contact Name: David Roberts
Contact Phone: (360) 483-7341
Contact FAX: N/A
Contact Email: David@kulshanservices.com

CONTRACTOR:

Kulshan Services LLC

__________________________
David Roberts, Principal

STATE OF WASHINGTON )
COUNTY OF WHATCOM ) ss.

On this 24th day of November 2014, before me personally appeared David Roberts to me known to be the Principal of the Kulshan Services LLC and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

__________________________
BEN FLOYD
WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT:
Recommended for Approval:

[Signature] 11/24/2014
Frank Abart, Public Works Director  Date

Approved as to form:

[Signature] 11/25/14
Daniel L. Gibson, Prosecuting Attorney  Date

Approved:
Accepted for Whatcom County Flood Control Zone District:

By: _________________________________
   Jack Louws, Whatcom County Executive, acting on behalf of the Whatcom County Flood Control Zone District
   Board of Supervisors

STATE OF WASHINGTON  )
                     ) ss
COUNTY OF WHATCOM   )

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
______________________________
Kulshan Services, LLC will continue providing the following services to Whatcom County in support of the development of the System Wide Infrastructure Framework Plan development:

Task 4: Facilitate SWIF Meetings
Task 4b: SWIF regular meetings (up to 5 meetings assumed)

1) Meeting facilitation – Provide meeting facilitation services to implement the project plan. Assist consultants with the development of the SWIF plan. Coordinate meeting schedules and deliverables with County staff, SWIF Team and Support Teams. Develop products and documents as appropriate as result of Team discussions.

2) Meeting notes – Record agreements and outcomes of the SWIF Team meetings. Coordinate review of notes with County staff. Circulate draft and final notes to SWIF team.

(Kulshan Environmental Services)

Task 5: Facilitate Support Team Meetings (16 meetings assumed)

1) Meeting facilitation – Provide Support Teams with meeting facilitation services to complete specific project elements. Assist consultants with the development of the SWIF plan. Coordinate meeting schedules and deliverables with County staff, Support Teams and consultants. Develop products and documents as appropriate as result of Team discussions.

Task 6: Coordination with County and Consultants (Monthly)

1) Support for the Contract administrator including additional strategy meetings, research, and document preparation other than notes, or other services deemed appropriate.

2) Coordinate with County and consultants to ensure a high level of communication, transfer of information, and smooth completion of the project.

3) Update and manage the SWIF and SWIF Support Teams websites each month with notes, maps, reports and presentations as well as meeting announcements.

Contingency: The contingency task and budget are provided to address unanticipated needs as they arise throughout the project. Any work proposed under the contingency task must be authorized by e-mail by the County project manager prior to initiating the work. The request for authorization should include a description of the scope of services to be performed and the amount of the contingency budget allocated.
# Exhibit "B-2"
## (COMPENSATION)

### Estimated Costs for Facilitation and Process Support
#### December 1, 2014 - June 30, 2016

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**Note 1:** There is adequate funding for Allison’s work in the current budget for 10 months
TITLE OF DOCUMENT:
Bellingham Whatcom County Tourism

ATTACHMENTS: Contract Memo
Contract

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

Should Clerk schedule a hearing? ( ) Yes ( ) NO
Requested Date:

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE: (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)

Request authorization for the County Executive to enter into a contract between Bellingham Whatcom County Tourism and Whatcom County to authorize funding to promote tourism in Whatcom County, in the amount of $250,000 as recommended by the Lodging Tax Advisory Committee.

COMMITTEE ACTION: 

COUNCIL ACTION:

Related County Contract #: Related File Numbers: Ordinance or Resolution Number:

Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: www.co.whatcom.wa.us/council.
WHATCOM COUNTY CONTRACT INFORMATION SHEET

Originating Department: Contract or Grant Administrator: Executive
Contractor’s / Agency Name: Tawni Helms/Linda Salas
Bellingham Whatcom County Tourism

Is this a New Contract? Yes ☒ No ☐ If not, is this an Amendment or Renewal to an Existing Contract? Yes ☐ No ☐

If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: 

Does contract require Council Approval? Yes ☒ No ☐ If No, include WCC: 

(see Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)

Is this a grant agreement? Yes ☐ No ☒ If yes, grantor agency contract number(s): CFDA#: 

Is this contract grant funded? Yes ☐ No ☒ If yes, Whatcom County grant contract number(s): 

Is this contract the result of a RFP or Bid process? Yes ☒ No ☐ If yes, RFP and Bid number(s): 

Contract
Cost Center: 14100.6610

Is this agreement excluded from E-Verify? No ☐ Yes ☒ If no, include Attachment D Contractor Declaration form.

If YES, indicate exclusion(s) below:
☐ Professional services agreement for certified/licensed professional.
☒ Contract work is for less than $100,000.
☐ Contract work is for less than 120 days.
☐ Interlocal Agreement (between Governments).

☐ Contract for Commercial off the shelf items (COTS).
☐ Work related subcontract less than $25,000.
☐ Public Works - Local Agency/Federally Funded FHWA.

Contract Amount:(sum of original contract amount and any prior amendments): $ 250,000

This Amendment Amount: $ 

Total Amended Amount: $ 

Contracts that require Council Approval (incl. agenda bill & memo)

- Professional Services Agreement above $20,000.
- Bid is more than $50,000.
- Amendments that have either an increase greater than 10% or provide a $10,000 increase in amount (whichever is greater)

RENEWALS: Council approval is not required when exercising an option to renew that is provided in the original contract.

Summary of Scope: To promote tourism in Whatcom County, thereby generating additional revenues to our community.

Term of Contract: January 1, 2015 Expiration Date: December 31, 2015

Contract Routing:
1. Prepared by: L. Salas Date: 11/17/14
2. Attorney signoff:
3. AS Finance reviewed: 1/24/14
4. IT reviewed (if IT related):
5. Contractor signed: 11-25-14
6. Submitted to Exec.: 
7. Council approved (if necessary):
8. Executive signed: 
9. Original to Council:

Last Edited 060414
MEMORANDUM

TO: Jack Louws, County Executive

FROM: Linda Salas

RE: Bellingham Whatcom County Tourism

DATE: November 17, 2014

Enclosed are two (2) originals of a contract for services agreement between Whatcom County and Bellingham Whatcom County Tourism for your review and signature.

- **Background and Purpose**
  As allowed in RCW 67.28, Whatcom County will provide funding to the Bellingham Whatcom County Tourism for staffing, rent and utilities, advertising and tourism promotion of Whatcom County.

- **Funding Amount and Source**
  Funding for this contract comes from Convention Center Funds and was recommended for approval by the Lodging Tax Advisory Committee at their November 14, 2014 meeting.
CONTRACT FOR SERVICES AGREEMENT
BELLINGHAM WHATCOM COUNTY TOURISM

Bellingham Whatcom County Tourism, 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 9,
Exhibit A (Scope of Work), pp. 10,
Exhibit B (Compensation), pp. 11,
Exhibit C (Certificate of Insurance), pp. 12

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 1st day of January, 2015, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 31st day of December 2015.

The general purpose or objective of this Agreement is to provide funding to promote tourism in Whatcom County. Bellingham Whatcom County Tourism will be responsible for sustaining and increasing a competitive tourism program that attracts more visitors who stay longer, thereby improving the local economy, as more fully and definitively described in Exhibit A herefore. 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 $250,000. The Contract Number shall be included on all billings or correspondence in connection therewith.

Contractor acknowledges and by signing this contract agrees that the Indemnities 32.1, 34.2, and 34.3, if included, are totally and fully part of this contract and

IN WITNESS WHEREOF, the parties have executed this Agreement this ______ day of __________, 20____ before me personally appeared Loni Rahm, to me known to be the President of Bellingham Whatcom County Tourism and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

LONI RAHM
PRESIDENT

STATE OF WASHINGTON  )
 ) ss.
COUNTY OF WHATCOM  )

On this ______ day of __________, 20____ before me personally appeared Loni Rahm, to me known to be the President of Bellingham Whatcom County Tourism and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

NOTARY PUBLIC in and for the State of Washington, residing at _______________. My commission expires ______________.
WHATCOM COUNTY:

Approved as to form:

Prosecuting Attorney 11/27/14
Date

Approved:
Accepted for Whatcom County:

By: __________________________
Jack Louws, Whatcom County Executive

STATE OF WASHINGTON  
) ss

COUNTY OF WHATCOM  

On this __________ day of __________, 20_____, before me personally appeared Jack Louws, to me known to be the Executive of Whatcom County, who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

NOTARY PUBLIC in and for the State of Washington, residing at __________________. My commission expires ____________________.

CONTRACTOR INFORMATION:

BELLEIHAM WHATCOM COUNTY TOURISM
Loni Rahm, President

Address:
904 Potter Street
Bellingham, WA 98229

Contact Name:  Loni Rahm, President
Contact Phone:  360-671-3990
Contact FAX:  360-647-7873
Contact Email:  loni@bellingham.org

Contract for Services Agreement
BELLEIHAM WHATCOM COUNTY TOURISM

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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 insolvent 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. 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

Contract for Services Agreement
BELLINGHAM WHATCOM COUNTY TOURISM

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

31.1 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:
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:

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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.

a. Professional Liability - $1,000,000 per occurrence:
If the professional liability insurance is a claims made policy, and should the contractor discontinue coverage either during the term of this contract or within three years of completion, the contractor agrees to purchase tail coverage for a minimum of three years from the completion date of this contract or any amendment to this contract.

Professional Liability - $1,000,000. per occurrence (this amount may vary with circumstances)

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 officials, 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 officials, 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 subcontracts for standard commercial supplies or raw materials, or to sole proprietorships with no employees.

35.2 Non-Discrimination in Client Services:
The Contractor shall not discriminate on the grounds of race, color, creed, religion, national origin, sex, age, marital status, sexual orientation, disability, or veteran status; or deny an individual or business any service or benefits under this Agreement; or subject an
individual or business to segregation or separate treatment in any manner related to his/her/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:
Contractor irrevocably waives any existing rights which it may have, by contract or otherwise, to require another person or corporation to refrain from submitting a proposal to or performing work or providing supplies to the County, and contractor further promises that it will not in the future, directly or indirectly, induce or solicit any person or corporation to refrain from submitting a bid or proposal to or from performing work or providing supplies to the County.

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

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

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

Linda Salas, Executive Secretary
Whatcom County Executive’s Office
311 Grand Avenue, Suite 108
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.

38.1 Certification of Public Works Contractor's Status under State Law:
Contractor certifies that it has fully met the responsibility criteria required of public works contractors under RCW 39.04.350 (1), which include: (a) having a certificate of registration in compliance with RCW 18.27; (b) having a current state unified business identifier number; (c) if applicable, having industrial insurance coverage for its employees working in Washington as required in Title 51 RCW, an employment security department number as required in Title 50 RCW, and a state excise tax registration number as required in Title 82 RCW; and (d) not being disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065 (3).

38.2 Certification Regarding Federal Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions:
The Contractor further certifies, by executing this contract, that neither it nor its principles is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or Agency.

The Contractor also agrees that it shall not knowingly enter into any lower tier covered transactions (a transaction between the Contractor and any other person) with a person who is proposed for debarment, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, and the Contractor agrees to include this clause titled "Certification Regarding Federal Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction" without modification, in all lower tier covered transactions and in all solicitations for lower tier transactions.

The "General Service Administration List of Parties Excluded from Federal Procurement or Non-procurement Programs" is available to research this information at http://epis.amer.gov/.

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38.3 **E-Verify:**

The E-Verify contractor program for Whatcom County applies to contracts of $100,000 or more and sub contracts for $25,000 or more if the primary contract is for $100,000 or more. Contractor represents and warrants that it will, for at least the duration of this contract, register and participate in the status verification system for all newly hired employees. The term “employee” as used herein means any person that is hired to perform work for Whatcom County. As used herein, “status verification system” means theIllegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor/Seller agrees to maintain records of such compliance and, upon request of the County, to provide a copy of each such verification to the County. Contractor/Seller further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Washington. Contractor/Seller understands and agrees that any breach of these warranties may subject Contractor/Seller to the following: (a) termination of this Agreement and Ineligibility for any Whatcom County contract for up to three (3) years, with notice of such cancellation/termination being made public. In the event of such termination/cancellation, Contractor/Seller would also be liable for any additional costs incurred by the County due to contract cancellation or loss of license or permit.” Contractor will review and enroll in the E-Verify program through this website: www.uscis.gov

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

40.1 **Modifications:**

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

40.2 **Contractor Commitments, Warranties and Representations:**

Any written commitment received from the Contractor concerning this Agreement shall be binding upon the Contractor, unless otherwise specifically provided herein with reference to this paragraph. Failure of the Contractor to fulfill such a commitment shall render the Contractor liable to damages to the County. A commitment includes, but is not limited to, any representation made prior to execution of this Agreement, whether or not incorporated elsewhere herein by reference, as to performance of services or equipment, prices or options for future acquisition to remain in effect for a fixed period, or warranties.

41.1 **Severability:**

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

41.2 **Waiver:**

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

42.1 **Disputes:**

a. **General:**

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

b. **Notice of Potential Claims:**

The Contractor shall not be entitled to additional compensation which otherwise may be payable, or to extension of time for (1) any act or failure to act by the Administrative Officer or the County, or (2) the happening of any event or occurrence, unless the Contractor has given the County a written Notice of Potential Claim within ten (10) days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the County. The written Notice of Potential Claim shall set forth the reasons for which the Contractor believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. Contractor shall keep full and complete daily records of the work performed, labor and material used, and all costs and additional time claimed to be additional.

**Contract for Services Agreement**

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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:
Other than claims for injunctive relief brought by a party hereto (which may be brought either in court or pursuant to this arbitration provision), and consistent with the provisions hereinabove, any claim, dispute or controversy between the parties under, arising out of, or related to this Agreement or otherwise, including issues of specific performance, shall be determined by arbitration in Bellingham, Washington, under the applicable American Arbitration Association (AAA) rules in effect on the date hereof, as modified by this Agreement. There shall be one arbitrator selected by the parties within ten (10) days of the arbitration demand, or if not, by the AAA or any other group having similar credentials. Any issue about whether a claim is covered by this Agreement shall be determined by the arbitrator. The arbitrator shall apply substantive law and may award injunctive relief, equitable relief (including specific performance), or any other remedy available from a judge, including expenses, costs and attorney fees to the prevailing party and pre-award interest, but shall not have the power to award punitive damages. The decision of the arbitrator shall be final and binding and an order confirming the award or judgment upon the award may be entered in any court having jurisdiction. The parties agree that the decision of the arbitrator shall be the sole and exclusive remedy between them regarding any dispute presented or pled before the arbitrator. At the request of either party made not later than forty-five (45) days after the arbitration demand, the parties agree to submit the dispute to nonbinding mediation, which shall not delay the arbitration hearing date; provided, that either party may decline to mediate and proceed with arbitration.

Unless otherwise specified herein, this Agreement shall be governed by the laws of Whatcom County and the State of Washington.

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

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

45.1 Entire Agreement:
This written Agreement, comprised of the writings signed or otherwise identified and attached hereto, represents the entire Agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.
EXHIBIT "A"
(SCOPE OF WORK)

Funding provided by Whatcom County is used to provide year-round services to promote tourism in Whatcom County. This includes staffing and operating information centers that serve and/or interact with more than one million existing and potential visitors each year, referrals to local agencies and businesses plus the publication and distribution of community information in an effort to promote tourism.

Maximum consideration for this agreement is $250,000.

Allowable expenses under RCW 67.28.210, tourism promotion includes:

- Daily tourism operations. Facilities will be open to the public seven days a week, 9:00 a.m. to 5:00 p.m. (except holidays).
- Advertising, promotional brochures and marketing of special events and festivals designed to attract visitors and encourage tourist expansion.

Deliverables include a monthly report specifically detailing the services and programs provided, periodic e-mail updates, an annual report, and will be available to present progress reports in person to the County staff and council.

Pursuant to RCW 67.28.1816, recipients of lodging tax funds must provide the following information:

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

Maximum consideration for this contract shall be $250,000. The Contract Number shall be included on all billings or correspondence in connection therewith.

Contractor will submit invoices quarterly.

Bellingham Whatcom County Tourism will provide the County with a monthly report specifically detailing the services and programs provided, periodic e-mail updates, an annual report, and will be available to present progress reports in person to the County staff and council.
Mt. Baker Foothills Chamber of Commerce Contract

Request authorization for the County Executive to enter into a contract between Mt. Baker Foothills Chamber of Commerce and Whatcom County to authorize funding for the Chamber’s operations to promote tourism in Whatcom County, in the amount of $61,167 as recommended by the Lodging Tax Advisory Committee.

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: Linda Salas
RE: Mount Baker Foothills Chamber of Commerce
DATE: November 17, 2014

Enclosed are two (2) originals of a contract for services agreement between Whatcom County and Mt. Baker Foothills Chamber of Commerce for your review and signature.

- **Background and Purpose**
  As allowed in RCW 67.28, Whatcom County will provide funding to the Mount Baker Foothills Chamber of Commerce for staffing, rent and utilities, advertising and tourism promotion of the Mount Baker corridor.

- **Funding Amount and Source**
  Funding for this contract comes from Convention Center Funds and was recommended for approval by the Lodging Tax Advisory Committee at their November 14, 2014 meeting.
**WHATCOM COUNTY CONTRACT INFORMATION SHEET**

**Executive**
- Tawni Helms/Linda Salas

**Contractor’s / Agency Name:**
- Mt. Baker Foothills Chamber of Commerce

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**Is this a New Contract?** Yes ☒ No ☐
**If not, is this an Amendment or Renewal to an Existing Contract?**
- Yes ☐ No ☒

**Does contract require Council Approval?**
- Yes ☒ 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 ☒
**If yes, grantor agency contract number(s):**
- CFDA#:

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**Is this contract grant funded?**
- Yes ☐ No ☒
**If yes, Whatcom County grant contract number(s):**

**Is this contract the result of a RFP or Bid process?**
- Contract
**Cost Center:** 14100.6610.907
**Yes ☐ No ☒ If yes, RFP and Bid number(s):**

**Is this agreement excluded from E-Verify?**
- No ☐ Yes ☒
**If no, include Attachment D Contractor Declaration form.**

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

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**Contract Amount (sum of original contract amount and any prior amendments):**
- $ 61,167

**This Amendment Amount:**
- $

**Total Amended Amount:**
- $

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**Summary of Scope:** To promote tourism in Whatcom County, thereby generating additional revenues to our community.

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**Term of Contract:** January 1, 2015  
**Expiration Date:** December 31, 2015

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**Contract Routing:**
1. Prepared by: L. Salas  
   Date: 11/17/14
2. Attorney signoff: [Signature]  
   Date: 11/21/14
3. AS Finance reviewed: [Signature]  
   Date: 11/21/14
4. IT reviewed (if IT related):  
   Date:  
5. Contractor signed:  
   Date: 11-25-14
6. Submitted to Exec.:  
   Date:  
7. Council approved (if necessary):  
   Date:  
8. Executive signed:  
   Date:  
9. Original to Council:  
   Date:

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Last Edited 060414
CONTRACT FOR SERVICES AGREEMENT
MT. BAKER FOOTHILLS CHAMBER OF COMMERCE

Mt. Baker Foothills Chamber of Commerce, 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 9,
Exhibit A (Scope of Work), pp. 10,
Exhibit B (Compensation), pp. 11,
Exhibit C (Certificate of Insurance), pp. 12

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 ___day of January 2015, regardless the date of signature and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the ___day of December 2015.

The general purpose or objective of this Agreement is to: support the Mt. Baker Foothills Chamber for expenses incurred in the operation of their Visitor Information Center, 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, shall be included on all billings or correspondence hereunder.

Contractor acknowledges and by signing this contract agrees that the Indemnity, 32.1, 34.2, and 34.3, if included, are totally and fully part of this contract and

IN WITNESS WHEREOF, the parties have executed this Agreement this ___

CONTRACTOR:
Mt. Baker Foothills Chamber of Commerce

Bret VanLant, President

STATE OF WASHINGTON
) ss.
COUNTY OF ______________________

On this ___day of __________, 20___, before me personally appeared Bret VanLant to me known to be the President of Mt. Baker Foothills Chamber of Commerce and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

NOTARY PUBLIC in and for the State of Washington, residing at ______________________. My commission expires ____________________.
WHATCOM COUNTY:
Recommended for Approval:

__________________________________  
Department Director  Date

Approved as to form:

[Signature]  11/21/14
Prosecuting Attorney  Date

Approved:
Accepted for Whatcom County:

By: _____________________________
Jack Louws, Whatcom County Executive

STATE OF WASHINGTON  
COUNTY OF WHATCOM  ss

On this _____ day of __________, 20___, before me personally appeared Jack Louws, to me known to be the Executive of Whatcom County, who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

__________________________________
NOTARY PUBLIC in and for the State of Washington, residing at  
______________________________  My commission expires ____________________.

CONTRACTOR INFORMATION:

Mt. Baker Foothills Chamber of Commerce

Bret VanLant
Address:
P.O. Box 866
Maple Falls, WA 98266

Contact Phone: 360-599-2200
Contact FAX: 360-599-3000
Contact Email: bret@mistymtrealty.com
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 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. 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

Contract for Services Agreement
Mt. Baker Foothills Chamber of Commerce
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 laws, 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 obligations 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:
All writings, programs, data, public records or other materials prepared by the Contractor and/or its consultants or subcontractors, in connection with performance of this Agreement, shall be the sole and absolute property of the County.

31.2 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:
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:

Contract for Services Agreement
Mt. Baker Foothills Chamber of Commerce
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.

a. Professional Liability - $1,000,000 per occurrence:
If the professional liability insurance is a claims made policy, and should the contractor discontinue coverage either during the term of this contract or within three years of completion, the contractor agrees to purchase tail coverage for a minimum of three years from the completion date of this contract or any amendment to this contract.

Professional Liability - $1,000,000 per occurrence (this amount may vary with circumstances)

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 subcontracts for standard commercial supplies or raw materials, or to sole proprietorships with no employees.

35.2 Non-Discrimination in Client Services:
The Contractor shall not discriminate on the grounds of race, color, creed, religion, national origin, sex, age, marital status, sexual orientation, disability, or veteran status; or deny an individual or business any service or benefits under this Agreement; or subject an
individual or business to segregation or separate treatment in any manner related to his/her/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:
Contractor irrevocably waives any existing rights which it may have, by contract or otherwise, to require another person or corporation to refrain from submitting a proposal to or performing work or providing supplies to the County, and contractor further promises that it will not in the future, directly or indirectly, induce or solicit any person or corporation to refrain from submitting a bid or proposal to or from performing work or providing supplies to the County.

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

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

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

Linda Salas, Executive Secretary
Whatcom County Executive's Office
311 Grand Avenue, Suite 108
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.

38.1 Certification of Public Works Contractor's Status under State Law:
Contractor certifies that it has fully met the responsibility criteria required of public works contractors under RCW 39.04.350 (1), which include: (a) having a certificate of registration in compliance with RCW 18.27; (b) having a current state unified business identifier number; (c) if applicable, having industrial insurance coverage for its employees working in Washington as required in Title 51 RCW, an employment security department number as required in Title 50 RCW, and a state excise tax registration number as required in Title 82 RCW; and (d) not being disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065 (3).

38.2 Certification Regarding Federal Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions:
The Contractor further certifies, by executing this contract, that neither it nor its principles is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or Agency.

The Contractor also agrees that it shall not knowingly enter into any lower tier covered transactions (a transaction between the Contractor and any other person) with a person who is proposed for debarment, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, and the Contractor agrees to include this clause titled "Certification Regarding Federal Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction" without modification, in all lower tier covered transactions and in all solicitations for lower tier transactions.

The "General Service Administration List of Parties Excluded from Federal Procurement or Non-procurement Programs" is available to research this information at http://epis.arne.gov/.
38.3 E-Verify:
The E-Verify contractor program for Whatcom County applies to contracts of $100,000 or more and sub contracts for $25,000 or more if the primary contract is for $100,000 or more. Contractor represents and warrants that it will, for at least the duration of this contract, register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work for Whatcom County. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor/Seller agrees to maintain records of such compliance and, upon request of the County, to provide a copy of each such verification to the County. Contractor/Seller further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Washington. Contractor/Seller understands and agrees that any breach of these warranties may subject Contractor/Seller to the following: (a) termination of this Agreement and ineligibility for any Whatcom County contract for up to three (3) years, with notice of such cancellation/termination being made public. In the event of such termination/cancellation, Contractor/Seller would also be liable for any additional costs incurred by the County due to contract cancellation or loss of license or permit." Contractor will review and enroll in the E-Verify program through this website: www.uscis.gov

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

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

40.2 Contractor Commitments, Warranties and Representations:
Any written commitment received from the Contractor concerning this Agreement shall be binding upon the Contractor, unless otherwise specifically provided herein with reference to this paragraph. Failure of the Contractor to fulfill such a commitment shall render the Contractor liable for damages to the County. A commitment includes, but is not limited to, any representation made prior to execution of this Agreement, whether or not incorporated elsewhere herein by reference, as to performance of services or equipment, prices or options for future acquisition to remain in effect for a fixed period, or warranties.

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

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

42.1 Disputes:

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

b. Notice of Potential Claims:
The Contractor shall not be entitled to additional compensation which otherwise may be payable, or to extension of time for (1) any act or failure to act by the Administrative Officer or the County, or (2) the happening of any event or occurrence, unless the Contractor has given the County a written Notice of Potential Claim within ten (10) days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the County. The written Notice of Potential Claim shall set forth the reasons for which the Contractor believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. Contractor shall keep full and complete daily records of the work performed, labor and material used, and all costs and additional time claimed to be additional.
c. Detailed Claim:  
The Contractor shall not be entitled to claim any such additional compensation, or extension of time, unless within thirty (30) days of the accomplishment of the portion of the work from which the claim arose, and before final payment by the County, the Contractor has given the County a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or the extension of time claimed to be due.

d. Arbitration:  
Other than claims for injunctive relief brought by a party hereto (which may be brought either in court or pursuant to this arbitration provision), and consistent with the provisions hereinabove, any claim, dispute or controversy between the parties under, arising out of, or related to this Agreement or otherwise, including issues of specific performance, shall be determined by arbitration in Bellingham, Washington, under the applicable American Arbitration Association (AAA) rules in effect on the date hereof, as modified by this Agreement. There shall be one arbitrator selected by the parties within ten (10) days of the arbitration demand, or if not, by the AAA or any other group having similar credentials. Any issue about whether a claim is covered by this Agreement shall be determined by the arbitrator. The arbitrator shall apply substantive law and may award injunctive relief, equitable relief (including specific performance), or any other remedy available from a judge, including expenses, costs and attorney fees to the prevailing party and pre-award interest, but shall not have the power to award punitive damages. The decision of the arbitrator shall be final and binding and an order confirming the award or judgment upon the award may be entered in any court having jurisdiction. The parties agree that the decision of the arbitrator shall be the sole and exclusive remedy between them regarding any dispute presented or pled before the arbitrator. At the request of either party made not later than forty-five (45) days after the arbitration demand, the parties agree to submit the dispute to nonbinding mediation, which shall not delay the arbitration hearing date; provided, that either party may decline to mediate and proceed with arbitration.

Unless otherwise specified herein, this Agreement shall be governed by the laws of Whatcom County and the State of Washington.

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.
Whatcom County will provide support to Mt. Baker Foothills Chamber of Commerce for expenses incurred in the operation of their Visitor Information Center and their mission to promote tourism and overnight stays in Whatcom County. Funds will be used to support the Mt. Baker Foothills Chamber of Commerce in their daily operations of their Visitors Center. Facilities will be open on average 35-40 hours per week.

Allowable expenses include but are not limited to:

- Rent
- Utilities
- Salaries
- Payroll taxes
- Health Insurance
- Telephone service
- Design, printing and distribution of promotional materials including the newsletter, Foothills Visitors guide & Foothills Business Guide
- Promotions, marketing and advertising
- Office supplies and maintenance
- Bookkeeping expenses for Visitor Center activities
- Postage costs
- Email and Internet costs
- Web Site Design and IT maintenance

Pursuant to RCW 67.28.210, all funding will be used for costs associated with the operation of the Mt. Baker Foothills Visitors Center for the promotion of tourism in Whatcom County.

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

The estimated number of tourists, persons traveling over fifty miles to the destination, persons remaining at the destination overnight, and lodging stays generated per festival, special event or tourism-related facility owned or sponsored by a nonprofit organization or local jurisdiction.
The Contract Number, set forth above, shall be included on all billings. The Mt Baker Foothills Chamber will provide Whatcom County with an invoice detailing expenses as allowed in Exhibit A (including receipts). Payment will be made as reimbursement only.

Allowable expenses include but are not limited to:

Rent
Utilities
Salaries
Payroll taxes
Health Insurance
Telephone service
Design, printing and distribution of promotional materials including the newsletter, Foothills Visitors guide & Foothills Business Guide
Promotions, marketing and advertising
Office supplies and maintenance
Bookkeeping expenses for Visitor Center activities
Postage costs
Email and Internet costs
Website Design and IT maintenance

Budget:

Salaries & benefits $46,163
Administration: supplies, copies, rent, janitor, IT, phone, taxes, etc. $13,554
Marketing/Promotion: $1,450
$61,167

Maximum consideration for this contract shall be $61,167.
Non Profit Insurance Program

CERTIFICATE OF INSURANCE

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONQUERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain coverage may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<table>
<thead>
<tr>
<th>PRODUCER</th>
<th>COMPANIES AFFORDING COVERAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Canfield</td>
<td>American Alternative Insurance Corporation</td>
</tr>
<tr>
<td></td>
<td>AUTOMOBILE LIABILITY</td>
</tr>
<tr>
<td></td>
<td>American Alternative Insurance Corporation</td>
</tr>
<tr>
<td>Mt Baker Foothills Chamber of Commerce</td>
<td>PROPERTY</td>
</tr>
<tr>
<td>PO Box 866</td>
<td>American Alternative Insurance Corporation</td>
</tr>
<tr>
<td>Maple Falls, WA 98266</td>
<td>RSUI Group, Inc.</td>
</tr>
<tr>
<td></td>
<td>MISCELLANEOUS PROFESSIONAL LIABILITY</td>
</tr>
</tbody>
</table>

COVERAGE

This is to certify that the policies of insurance listed below have been issued to the Insured named above for the coverage period indicated, notwithstanding any requirement, term or condition of contract or other document with respect to which this certificate may be issued or may pertain. The insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies. Limits shown may have been reduced by paid claims.

<table>
<thead>
<tr>
<th>TYPE OF INSURANCE</th>
<th>POLICY NUMBER</th>
<th>POLICY EFF DATE</th>
<th>POLICY EXP DATE</th>
<th>DESCRIPTION</th>
<th>LIMITS</th>
</tr>
</thead>
<tbody>
<tr>
<td>GENERAL LIABILITY</td>
<td>N1-A2-RL-0000013-06</td>
<td>06/01/2014</td>
<td>06/01/2015</td>
<td>PER OCCURRENCE</td>
<td>$5,000,000</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>PER MEMBER AGGREGATE</td>
<td>$10,000,000</td>
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<tr>
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<td></td>
<td></td>
<td></td>
<td>PRODUCT-COMP/P</td>
<td>$5,000,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>PERSONAL &amp; ADV. INJURY</td>
<td>$5,000,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>ANNUAL POOL AGGREGATE</td>
<td>$50,000,000</td>
</tr>
<tr>
<td>AUTOMOBILE LIABILITY</td>
<td>ANY AUTO (LIABILITY IS SUBJECT TO A $50,000 SIR PAYABLE FROM PROGRAM FUNDS)</td>
<td>N1-A2-RL-0000013-06</td>
<td>06/01/2014</td>
<td>06/01/2015</td>
<td>COMBINED SINGLE LIMIT</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>ANNUAL POOL AGGREGATE</td>
<td>NONE</td>
</tr>
<tr>
<td>PROPERTY</td>
<td>N1-A2-RL-0000013-06</td>
<td>06/01/2014</td>
<td>06/01/2015</td>
<td>ALL RISK PER OCC EXCL. EQ &amp; FL EARTHQUAKE PER OCC</td>
<td>$55,000,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>FLOOD PER OCC</td>
<td>EXCLUDED</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>ANNUAL POOL AGGREGATE</td>
<td>EXCLUDED</td>
</tr>
<tr>
<td>MISCELLANEOUS PROFESSIONAL LIABILITY</td>
<td>(PROPERTY IS SUBJECT TO A $50,000 SIR PAYABLE FROM PROGRAM FUNDS)</td>
<td>N1-A2-RL-0000013-06</td>
<td>06/01/2014</td>
<td>06/01/2015</td>
<td>PER CLAIM</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>ANNUAL POOL AGGREGATE</td>
<td></td>
</tr>
</tbody>
</table>

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / SPECIAL ITEMS

Regarding Visitor's Center Contract. Whatcom County is named as Additional Insured regarding this contract only and is subject to policy terms, conditions, and exclusions. NPIP policy is primary and non-contributory. Waiver of Subrogation endorsement is attached.

CANCELLATION

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

<table>
<thead>
<tr>
<th>CERTIFICATE HOLDER</th>
<th>AUTHORIZED REPRESENTATIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Whatcom County</td>
<td>Montgomery</td>
</tr>
</tbody>
</table>
AMERICAN ALTERNATIVE
INSURANCE COMPANY

ADDITIONAL INSURED – DESIGNATED PERSON OR ORGANIZATION
(GENERAL LIABILITY)

<table>
<thead>
<tr>
<th>Named Insured Non Profit Insurance Program (NPIP)</th>
<th>Endorsement Effective</th>
</tr>
</thead>
<tbody>
<tr>
<td>Policy Number N1-A2-RL-0000013-06</td>
<td>06/01/2014</td>
</tr>
</tbody>
</table>

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

This endorsement modifies insurance provided under the following:

GENERAL LIABILITY COVERAGE PART

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated above.

Schedule

Person or Organization (Additional Insured): As Per Schedule on file with Canfield, Underwriting Administrator

Whatcom County
311 Grand Ave
Bellingham, WA 98225

Regarding Visitor’s Center Contract. Whatcom County is named as Additional Insured regarding this contract only and is subject to policy terms, conditions, and exclusions. NPIP policy is primary and non-contributory. Waiver of Subrogation endorsement is attached.

A. With respects to the General Liability Coverage Part only, the definition of Insured in the Liability Conditions, Definitions and Exclusions section of this policy is amended to include as an Insured the Person or Organization shown in the above Schedule. Such Person or Organization is an Insured only with respect to liability for Bodily Injury, Property Damage, or Personal and Advertising Injury caused in whole or in part by your acts or omissions or the acts or omissions of those acting on your behalf:

1. In performance of your ongoing operations; or
2. In connection with your premises owned or rented to you.

B. The Limits of Insurance applicable to the additional Insured are those specified in either the:

1. Written contract or written agreement; or
2. Declarations for this policy,

whichever is less. These Limits of Insurance are inclusive and not in addition to the Limits Of Insurance shown in the Declarations.

All other terms and conditions remain unchanged.

Includes copyrighted material of the Insurance Services Office, Inc., with its permission.

RL 2163 12/12
2904109
AMERICAN ALTERNATIVE
INSURANCE COMPANY

WAIVER OF TRANSFER OR RIGHTS AND RECOVERY
AGAINST OTHERS TO US

<table>
<thead>
<tr>
<th>Named Insured</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Non Profit Insurance Program (NPIP)</td>
<td></td>
</tr>
<tr>
<td>Policy Number</td>
<td></td>
</tr>
<tr>
<td>N1-A2-RL-0000013-06</td>
<td></td>
</tr>
<tr>
<td>Endorsement Effective</td>
<td>06/01/2014</td>
</tr>
</tbody>
</table>

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

This endorsement modifies insurance provided under the following:

GENERAL LIABILITY COVERAGE PART

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated above.

Schedule

Name of Person or Organization: As Per Schedule on file with Canfield, Underwriting Administrator

2904110

The Our Right To Recovery Condition in the Liability Conditions, Definitions and Exclusions form is amended by addition of the following:

We waive any rights of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or Your Work done under contract with that person or organization. This waiver only applies to the person or organization shown in the Schedule above; however, this waiver does not apply if the injury or damage is due to the sole negligence of such scheduled person or organization.

All other terms and conditions remain unchanged.

Includes copyrighted material of the Insurance Services Office, Inc., with its permission.
**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>LS</td>
<td>11/24/14</td>
<td></td>
<td>12/9/14</td>
<td>Finance/ Council</td>
</tr>
<tr>
<td>Division Head:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dept. Head:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prosecutor:</td>
<td></td>
<td>11/25/14</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Purchasing/Budget:</td>
<td>11/22/14</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Executive:</td>
<td></td>
<td>12/2/14</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**TITLE OF DOCUMENT:**
Birch Bay Chamber of Commerce

**ATTACHMENTS:** Contract Memo
Contract

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

Request authorization for the County Executive to enter into a contract between Birch Bay Chamber of Commerce and Whatcom County to authorize funding to promote tourism in Whatcom County, in the amount of $40,000 as recommended by the Lodging Tax Advisory Committee.

**COMMITTEE ACTION:**

<table>
<thead>
<tr>
<th>COUNCIL ACTION:</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Related County Contract #:</th>
<th>Related File Numbers:</th>
<th>Ordinance or Resolution Number:</th>
</tr>
</thead>
</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.
**WHATCOM COUNTY CONTRACT INFORMATION SHEET**

<table>
<thead>
<tr>
<th>Originating Department:</th>
<th>Executive</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract or Grant Administrator:</td>
<td>Tawni Helms/Linda Salas</td>
</tr>
<tr>
<td>Contractor's / Agency Name:</td>
<td>Birch Bay Chamber of Commerce</td>
</tr>
</tbody>
</table>

**Is this a New Contract?**
- Yes ☒
- No ☐
If not, is this an Amendment or Renewal to an Existing Contract?

Yes ☐
No ☒ If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #:

Does contract require Council Approval?
- Yes ☒
- No ☐
If No, include WCC:

(see Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)

**Is this a grant agreement?**
- Yes ☐
- No ☒
If yes, grantor agency contract number(s): __________ CFDA#:

**Is this contract grant funded?**
- Yes ☐
- No ☒
If yes, Whatcom County grant contract number(s):

**Is this contract the result of a RFP or Bid process?**
- Yes ☐
- No ☒
If yes, RFP and Bid number(s):

Contract:
Cost Center: 14100.6610

**Is this agreement excluded from E-Verify?**
- No ☐
- Yes ☒ If no, include Attachment D Contractor Declaration form.

If YES, indicate exclusion(s) below:
- ☐ Professional services agreement for certified/licensed professional.
- ☒ Contract work is for less than $100,000.
- ☐ Contract work is for less than 120 days.
- ☐ Interlocal Agreement (between Governments).
- ☐ Contract for Commercial off the shelf items (COTS).
- ☐ Work related subcontract less than $25,000.
- ☐ Public Works - Local Agency/Federally Funded FHWA.

**Contract Amount:** (sum of original contract amount and any prior amendments):

- $ 40,000

**This Amendment Amount:**

- $ __________

**Total Amended Amount:**

- $ __________

**Summary of Scope:** To promote tourism in Whatcom County, thereby generating additional revenues to our community.

**Term of Contract:** January 1, 2015

**Expiration Date:** December 31, 2015

**Contract Routing:**
1. Prepared by: L. Salas
2. Attorney signoff:
3. AS Finance reviewed:
4. IT reviewed (if IT related):
5. Contractor signed:
6. Submitted to Exec.:
7. Council approved (if necessary):
8. Executive signed:
9. Original to Council:

**Date:**
- 11/17/14
- 11/21/14
- 11-25-14

Last Edited 060414
CONTRACT FOR SERVICES AGREEMENT
BIRCH BAY CHAMBER OF COMMERCE

Birch Bay Chamber of Commerce, hereinafter called Contractor, and Whatcom County, hereinafter referred to as County, agree and contract as set forth in this Agreement, including:

General Conditions, pp. 1 to 9,
Exhibit A (Scope of Work), pp. 10,
Exhibit B (Compensation), pp 11,
Exhibit C (Certificate of Insurance), pp. 12

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 1st day of January, 2015, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 31st day of December, 2015, regardless of the date of signature.

The general purpose or objective of this Agreement is to support the Birch Bay Chamber of Commerce for operational expenses incurred in the promotion of tourism in Whatcom County, 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 $40,000. 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 Indemnificati 32.1, 34.2, and 34.3, if included, are totally and fully part of this contract and have

IN WITNESS WHEREOF, the parties have executed this Agreement this Replace w/ Signed copies

CONTRACTOR:

BIRCH BAY CHAMBER OF COMMERCE

Jeff Carrington, Director

STATE OF WASHINGTON )
) ss.
COUNTY OF )

On this ___________ day of ____________, 20____ before me personally appeared Jeff Carrington, to me known to be the Director of Birch Bay Chamber of Commerce and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

NOTARY PUBLIC in and for the State of Washington, residing at _____________________________.

My commission expires _________________.

Contract for Services Agreement
Birch Bay Chamber of Commerce
WHATCOM COUNTY:
Recommended for Approval:

Department Director  Date

Approved as to form:

Prosecuting Attorney  Date

Approved:
Accepted for Whatcom County:

By:
Jack Louws, Whatcom County Executive

STATE OF WASHINGTON  
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 ____________________

CONTRACTOR INFORMATION:

BIRCH BAY CHAMBER OF COMMERCE

Jeff Carrington, Director
4550 Birch Bay Lynden Road #B119
Blaine, WA 98230

Contact Name: Jeff Carrington
Contact Phone: 360-220-3224
Contact Email: jdo4177@msn.com

Contract for Services Agreement
Birch Bay Chamber of Commerce
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 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. 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

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

31.2 Patent/Copyright Infringement:
Contractor will defend and indemnify the County from any claimed action, cause or demand brought against the County, to the extent such action is based on the claim that information supplied by the Contractor infringes any patent or copyright. The Contractor will pay those costs and damages attributable to any such claims that are finally awarded against the County in any action. Such defense and payments are conditioned upon the following:
A. The Contractor shall be notified promptly in writing by the County of any notice of such claim.
B. Contractor shall have the right, hereunder, at its option and expense, to obtain for the County the right to continue using the information, in the event such claim of infringement, is made, provided no reduction in performance or loss results to the County.

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

33.1 Right to Review:
This contract is subject to review by any Federal, State or County auditor. The County or its designee shall have the right to review and monitor the financial and service components of this program by whatever means are deemed expedient by the Administrative Officer or by the County Auditor's Office. Such review may occur with or without notice and may include, but is not limited to, on-site inspection by County agents or employees, inspection of all records or other materials which the County deems pertinent to the Agreement and its performance, and any 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:

Contract for Services Agreement
Birch Bay Chamber of Commerce
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.

a. Professional Liability - $1,000,000 per occurrence:
If the professional liability insurance is a claims made policy, and should the contractor discontinue coverage either during the term of this contract or within three years of completion, the contractor agrees to purchase tail coverage for a minimum of three years from the completion date of this contract or any amendment to this contract.

Professional Liability - $1,000,000 per occurrence (this amount may vary with circumstances)

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

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

35.2 Non-Discrimination in Client Services:
The Contractor shall not discriminate on the grounds of race, color, creed, religion, national origin, sex, age, marital status, sexual orientation, disability, or veteran status; or deny an individual or business any service or benefits under this Agreement; or subject an
individual or business to segregation or separate treatment in any manner related to his/her/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:
Contractor irrevocably waives any existing rights which it may have, by contract or otherwise, to require another person or corporation to refrain from submitting a proposal to or performing work or providing supplies to the County, and contractor further promises that it will not in the future, directly or indirectly, induce or solicit any person or corporation to refrain from submitting a bid or proposal to or from performing work or providing supplies to the County.

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

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

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

Linda Salas, Executive Secretary
Whatcom County Executive’s Office
311 Grand Avenue, Suite 108
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.

38.1 Certification of Public Works Contractor’s Status under State Law:
Contractor certifies that it has fully met the responsibility criteria required of public works contractors under RCW 39.04.350 (1), which include: (a) having a certificate of registration in compliance with RCW 18.27; (b) having a current state unified business identifier number; (c) if applicable, having industrial insurance coverage for its employees working in Washington as required in Title 51 RCW, an employment security department number as required in Title 50 RCW, and a state excise tax registration number as required in Title 82 RCW; and (d) not being disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065 (3).

38.2 Certification Regarding Federal Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions:
The Contractor further certifies, by executing this contract, that neither it nor its principles is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or Agency. The Contractor also agrees that it shall not knowingly enter into any lower tier covered transactions (a transaction between the Contractor and any other person) with a person who is proposed for debarment, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, and the Contractor agrees to include this clause titled “Certification Regarding Federal Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions” without modification, in all lower tier covered transactions and in all solicitations for lower tier transactions.

The “General Service Administration List of Parties Excluded from Federal Procurement or Non-procurement Programs” is available to research this information at http://epls.amer.gov/.

Contract for Services Agreement
Birch Bay Chamber of Commerce
38.3 E-Verify:
The E-Verify contractor program for Whatcom County applies to contracts of $100,000 or more and sub contracts for $25,000 or more if the primary contract is for $100,000 or more. Contractor represents and warrants that it will, for at least the duration of this contract, register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work for Whatcom County. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor/Seller agrees to maintain records of such compliance and, upon request of the County, to provide a copy of each such verification to the County. Contractor/Seller further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Washington. Contractor/Seller understands and agrees that any breach of these warranties may subject Contractor/Seller to the following: (a) termination of this Agreement and ineligibility for any Whatcom County contract for up to three (3) years, with notice of such cancellation/termination being made public. In the event of such termination/cancellation, Contractor/Seller would also be liable for any additional costs incurred by the County due to contract cancellation or loss of license or permit." Contractor will review and enroll in the E-Verify program through this website: www.uscis.gov

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

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

40.2 Contractor Commitments, Warranties and Representations:
Any written commitment received from the Contractor concerning this Agreement shall be binding upon the Contractor, unless otherwise specifically provided herein with reference to this paragraph. Failure of the Contractor to fulfill such a commitment shall render the Contractor liable for damages to the County. A commitment includes, but is not limited to, any representation made prior to execution of this Agreement, whether or not incorporated elsewhere herein by reference, as to performance of services or equipment, prices or options for future acquisition to remain in effect for a fixed period, or warranties.

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

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

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

b. Notice of Potential Claims:
The Contractor shall not be entitled to additional compensation which otherwise may be payable, or to extension of time for (1) any act or failure to act by the Administrative Officer or the County, or (2) the happening of any event or occurrence, unless the Contractor has given the County a written Notice of Potential Claim within ten (10) days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the County. The written Notice of Potential Claim shall set forth the reasons for which the Contractor believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. Contractor shall keep full and complete daily records of the work performed, labor and material used, and all costs and additional time claimed to be additional.
c. **Detailed Claim:**
The Contractor shall not be entitled to claim any such additional compensation, or extension of time, unless within thirty (30) days of the accomplishment of the portion of the work from which the claim arose, and before final payment by the County, the Contractor has given the County a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or the extension of time claimed to be due.

d. **Arbitration:**
Other than claims for injunctive relief brought by a party hereto (which may be brought either in court or pursuant to this arbitration provision), and consistent with the provisions hereinafore, any claim, dispute or controversy between the parties under, arising out of, or related to this Agreement or otherwise, including issues of specific performance, shall be determined by arbitration in Bellingham, Washington, under the applicable American Arbitration Association (AAA) rules in effect on the date hereof, as modified by this Agreement. There shall be one arbitrator selected by the parties within ten (10) days of the arbitration demand, or if not, by the AAA or any other group having similar credentials. Any issue about whether a claim is covered by this Agreement shall be determined by the arbitrator. The arbitrator shall apply substantive law and may award injunctive relief, equitable relief (including specific performance), or any other remedy available from a judge, including expenses, costs and attorney fees to the prevailing party and pre-award interest, but shall not have the power to award punitive damages. The decision of the arbitrator shall be final and binding and an order confirming the award or judgment upon the award may be entered in any court having jurisdiction. The parties agree that the decision of the arbitrator shall be the sole and exclusive remedy between them regarding any dispute presented or pled before the arbitrator. At the request of either party made not later than forty-five (45) days after the arbitration demand, the parties agree to submit the dispute to nonbinding mediation, which shall not delay the arbitration hearing date; provided, that either party may decline to mediate and proceed with arbitration.

Unless otherwise specified herein, this Agreement shall be governed by the laws of Whatcom County and the State of Washington.

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, 23.1, 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.
Whatcom County will provide support to Birch Bay Chamber of Commerce for expenses incurred in the operation of their Visitor Information Center and their mission to promote tourism and overnight stays in Whatcom County. Funds will be used to support the Birch Bay Chamber in their daily operations of their Visitors Center as well as promotion of current and new festivals, as well as the provision of portable restroom facilities during peak event schedule May through September. Pursuant to RCW 67.28.210, all funding will be used for costs associated with the operation of the Birch Bay Chamber of Commerce for the promotion of tourism in Whatcom County. Allowable expenses include but are not limited to:

**Operations - $40,000**
- Rent
- Utilities
- Salaries
- Payroll taxes
- Health insurance
- Telephone service
- Advertising
- Office Supplies and Maintenance
- Bookkeeping expenses for visitor center activities
- Postage costs
- Email and Internet costs

Pursuant to RCW 67.28.1816, recipients of lodging tax funds must provide the following information:

The estimated number of tourists, persons traveling over fifty miles to the destination, persons remaining at the destination overnight, and lodging stays generated per festival, special event or tourism-related facility owned or sponsored by a nonprofit organization or local jurisdiction.
The Contract Number, set forth above, shall be included on all billings.

Maximum consideration for this contract shall be $40,000.

Payment shall be made upon receipt of invoice detailing expenditures as outlined in Exhibit A and will also include copies of supporting receipts, reports and billings. Payment will be made as reimbursement only. Invoices should be sent to the Whatcom County Executive's Office.
**CERTIFICATE OF LIABILITY INSURANCE**

**THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFER NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.**

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

**PRODUCER**
Ottman Insurance Agency, Inc.
2417 Meridian Street, Suite 102
Bellingham, WA 98225

**CONTACT NAME**
Brad Nietling

**PHONE**
(360) 734-3960

**FAX**
(360) 671-4590

**EMAIL ADDRESS**
brad@ottmaninsurance.com

**INSURED**
Birch Bay Chamber of Commerce
7900 Birch Bay Dr
Blaine, WA 98230

**INSURER A**
American States Insurance Co.

**INSURER B**

**INSURER C**

**INSURER D**

**INSURER E**

**INSURER F**

**COVERAGES**

**CERTIFICATE NUMBER:**

**REVISION NUMBER:**

**THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.**

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**DESRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**

*Regarding Visitor's Center Contract. Whatcom County is named as Additional Insured regarding this contract only and is subject to policy terms, conditions, and exclusions. Coverage is Primary and Non Contributory. Waiver of Subrogation applies.  Per Form: CG 24 04 05 09 and CG 76 80 10 02 (attached)*

**CERTIFICATE HOLDER**
Whatcom County
311 Grand Ave.
Bellingham, WA 98225

**CANCELLATION**
Whatc11

**SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.**

**AUTHORIZED REPRESENTATIVE**
Brad Nietling

©1988-2014 ACORD CORPORATION. All rights reserved.
WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

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Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The following is added to Paragraph 8. Transfer Of Rights Of Recovery Against Others To Us of Section IV – Conditions:

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the Schedule above.
THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED PRIMARY COVERAGE

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization:

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

SECTION II — WHO IS AN INSURED is amended to include as an additional insured the person or organization shown in the Schedule subject to the following provisions:

1. The additional insured is an insured but only for liability directly resulting from:
   a. your ongoing operations for the additional insured whether the work is performed by you or for you; or
   b. the general supervision of your ongoing operations by the additional insured.

2. This insurance does not apply to:
   a. “Bodily injury” or “property damage” arising out of any act or omission of, or for defects in design furnished by or for, the additional insured or
   b. “Bodily injury” or “property damage” incurred within the “products-completed operations hazard.”

A person's or organization's status as an additional insured under this endorsement ends when your operations for that insured are completed.

No coverage will be provided if, in the absence of this endorsement, no liability would be imposed by law on you. Coverage shall be limited to the extent of your negligence or fault according to the applicable principles of comparative fault.

The insurance provided will not exceed the lesser of:

a. The coverage and/or limits of this policy, or
b. The coverage and/or limits required by the contract, agreement or permit.

With respect to the insurance afforded the additional insured, paragraph 4. of SECTION IV — COMMERCIAL GENERAL LIABILITY CONDITIONS is deleted and replaced by the following:

4. Other Insurance

a. This insurance is primary and noncontributory, and our obligations are not affected by any other insurance where the additional insured is the Named Insured, whether primary, excess, contingent, or on any other basis; however, the defense of any claim or “suit” must be tendered as soon as practicable to all other insurers which potentially provide insurance for such claim or “suit”.

b. This additional provision applies only to the additional insured shown in the Schedule and the coverage provided by this endorsement.
TITLE OF DOCUMENT:
Whatcom Events Contract

ATTACHMENTS: Contract Memo
Contract

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

Should Clerk schedule a hearing? ( ) Yes ( ) NO
Requested Date:

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE: (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)

Request authorization for the County Executive to enter into a contract between Whatcom Events and Whatcom County to authorize funding to promote tourism in Whatcom County, in the amount of $35,000 as recommended by the Lodging Tax Advisory Committee.

COMMITTEE ACTION:

COUNCIL ACTION:

Related County Contract #: Related File Numbers: Ordinance or Resolution Number:

Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: www.co.whatcom.wa.us/council.
**WHATCOM COUNTY CONTRACT INFORMATION SHEET**

<table>
<thead>
<tr>
<th>Originating Department:</th>
<th>Executive</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract or Grant Administrator:</td>
<td>Tawni Helms/Linda Salas</td>
</tr>
<tr>
<td>Contractor's / Agency Name:</td>
<td>Whatcom Events</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 [x] If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: [ ]

**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, Whatcom County grant contract number(s): [ ]

**Is this contract the result of a RFP or Bid process?** Yes [ ] No [x] If yes, RFP and Bid number(s): [ ]

**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.
- [x] Contract work is for less than $100,000.
- [ ] Contract work is for less than 120 days.
- [ ] Interlocal Agreement (between Governments).
- [ ] Contract for Commercial off the shelf items (COTS).
- [ ] Work related subcontract less than $25,000.
- [ ] Public Works - Local Agency/Federally Funded FHWA.

**Contract Amount:** (sum of original contract amount and any prior amendments):

$ 35,000

**This Amendment Amount:** $ [ ]

**Total Amended Amount:** $ [ ]

**Summary of Scope:** To promote tourism in Whatcom County, thereby generating additional revenues to our community.

**Term of Contract:** January 1, 2015

**Expiration Date:** December 31, 2015

**Contract Routing:**

1. Prepared by: L. Salas
2. Attorney signoff: [Signature]
3. AS Finance reviewed: [Signature]
4. IT reviewed (if IT related): [Signature]
5. Contractor signed: [Signature]
6. Submitted to Exec.: [Signature]
7. Council approved (if necessary): [Signature]
8. Executive signed: [Signature]
9. Original to Council: [Signature]

**Dates:**

- Date: 11/17/14
- Date: 1/24/14
- Date: [ ]
- Date: [ ]
- Date: [ ]
- Date: 11/25/14
- Date: [ ]
- Date: [ ]
- Date: [ ]
- Date: [ ]

**Last Edited:** 060414
MEMORANDUM

TO: Jack Louws, County Executive
FROM: Linda Salas
RE: Whatcom Events – Ski to Sea & Muds to Suds Race
DATE: November 17, 2014

Enclosed are two (2) originals of a contract for services agreement between Whatcom County and Whatcom Events for your review and signature.

- **Background and Purpose**
  As allowed in RCW 67.28, Whatcom County will provide funding to Whatcom Events advertising and tourism promotion in Whatcom County.

- **Funding Amount and Source**
  Funding for this contract comes from Convention Center Funds and was recommended for approval by the Lodging Tax Advisory Committee at their November 14, 2014 meeting.
CONTRACT FOR SERVICES AGREEMENT
WHATCOM EVENTS
SKI TO SEA/MUDS TO SUDS

Whatcom Events – Ski to Sea/Muds to Suds, 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 9
Exhibit A (Scope of Work), pp. 10
Exhibit B (Compensation), pp. 11
Exhibit C (Sample Survey), pp. 12
Exhibit D (Certificate of Insurance), pp. 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 1st day of January, 2015, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 31st day of December, 2015.

The general purpose or objective of this Agreement is to: promote tourism, and as allowed in RCW 67.28 Whatcom County will provide funding to Whatcom Events for advertising and promotion of the annual Ski to Sea Race, 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 $35,000. 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 1.1, 9.1, 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 agreed to.

IN WITNESS WHEREOF, the parties have executed this Agreement

CONTRACTOR:

WHATCOM EVENTS

________________________
Curtis Anson
Executive Director

STATE OF WASHINGTON

) ss.

COUNTY OF WHATCOM

On this _____ day of __________, 20____, before me personally appeared ______________, who is known to me to be the Executive Director of Whatcom Events and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

________________________
NOTARY PUBLIC in and for the State of Washington, residing at ______________. My commission expires ______________.
WHATCOM COUNTY:

Approved as to form:

Prosecuting Attorney  1-28-14
Date

Approved:
Accepted for Whatcom County:

By: __________________________
Jack Louws, Whatcom County Executive

STATE OF WASHINGTON ) ss
COUNTY OF WHATCOM )

On this ______ day of ____________, 20___, before me personally appeared Jack Louws, to me known to be the Executive of Whatcom County, who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

NOTARY PUBLIC in and for the State of Washington, residing at __________________. My commission expires ________________

CONTRACTOR INFORMATION:

WHATCOM EVENTS

Address:
2227 Queen Street, #6
Bellingham, WA 98229

Contact Name: Curtis Anson
Contact Phone: 360-746-8861
Contact FAX: 360-746-8862
Contact Email: Curtis@skitosea.com

Contract for Services Agreement
Whatcom Events
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 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. 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.

Contract for Services Agreement
Whatcom Events
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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.

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

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

30.3 No Guarantee of Employment:
The performance of all or part of this contract by the Contractor shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of the Contractor or any employee of the Contractor or any subcontractor or any employee of any subcontractor by the County at the present time or in the future.

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

31.1 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:
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 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.

a. Professional Liability - $1,000,000 per occurrence:
If the professional liability insurance is a claims made policy, and should the contractor discontinue coverage either during the term of this contract or within three years of completion, the contractor agrees to purchase tail coverage for a minimum of three years from the completion date of this contract or any amendment to this contract.

Professional Liability - $1,000,000. per occurrence (this amount may vary with circumstances)

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 assure 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:
Contractor irrevocably waives any existing rights which it may have, by contract or otherwise, to require another person or corporation to refrain from submitting a proposal to or performing work or providing supplies to the County, and contractor further promises that it will not in the future, directly or indirectly, induce or solicit any person or corporation to refrain from submitting a bid or proposal to or from performing work or providing supplies to the County.

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

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

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

Linda Salas, Executive Secretary
Whatcom County Executive's Office
311 Grand Avenue, Suite 108
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.

38.1 Certification of Public Works Contractor's Status under State Law:
Contractor certifies that it has fully met the responsibility criteria required of public works contractors under RCW 39.04.350 (1), which include: (a) having a certificate of registration in compliance with RCW 18.27; (b) having a current state unified business identifier number; (c) if applicable, having industrial insurance coverage for its employees working in Washington as required in Title 51 RCW, an employment security department number as required in Title 50 RCW, and a state excise tax registration number as required in Title 82 RCW; and (d) not being disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065 (3).

38.2 Certification Regarding Federal Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions:
The Contractor further certifies, by executing this contract, that neither it nor its principles is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or Agency.

The Contractor also agrees that it shall not knowingly enter into any lower tier covered transactions (a transaction between the Contractor and any other person) with a person who is proposed for debarment, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, and the Contractor agrees to include this clause titled "Certification Regarding Federal Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction" without modification, in all lower tier covered transactions and in all solicitations for lower tier transactions.

The “General Service Administration List of Parties Excluded from Federal Procurement or Non-procurement Programs” is available to research this information at http://epis.arin.gov/.

38.3 E-Verify:
The E-Verify contractor program for Whatcom County applies to contracts of $100,000 or more and sub contracts for $25,000 or more if the primary contract is for $100,000 or more. Contractor represents and warrants that it will, for at least the duration of this contract, register and participate in the status verification system for all newly hired employees. The term “employee” as used herein means any person that is hired to perform work for Whatcom County. As used herein, “status verification system” means the Illegal Immigration
Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor/Seller agrees to maintain records of such compliance and, upon request of the County, to provide a copy of each such verification to the County. Contractor/Seller further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Washington. Contractor/Seller understands and agrees that any breach of these warranties may subject Contractor/Seller to the following: (a) termination of this Agreement and ineligibility for any Whatcom County contract for up to three (3) years, with notice of such cancellation/termination being made public. In the event of such termination/cancellation, Contractor/Seller would also be liable for any additional costs incurred by the County due to contract cancellation or loss of license or permit. Contractor will review and enroll in the E-Verify program through this website: www.uscis.gov

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

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

40.2 **Contractor Commitments, Warranties and Representations:**
Any written commitment received from the Contractor concerning this Agreement shall be binding upon the Contractor, unless otherwise specifically provided herein with reference to this paragraph. Failure of the Contractor to fulfill such a commitment shall render the Contractor liable for damages to the County. A commitment includes, but is not limited to, any representation made prior to execution of this Agreement, whether or not incorporated elsewhere herein by reference, as to performance of services or equipment, prices or options for future acquisition to remain in effect for a fixed period, or warranties.

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

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

42.1 **Disputes:**

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

b. **Notice of Potential Claims:**
The Contractor shall not be entitled to additional compensation which otherwise may be payable, or to extension of time for (1) any act or failure to act by the Administrative Officer or the County, or (2) the happening of any event or occurrence, unless the Contractor has given the County a written Notice of Potential Claim within ten (10) days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the County. The written Notice of Potential Claim shall set forth the reasons for which the Contractor believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. Contractor shall keep full and complete daily records of the work performed, labor and material used, and all costs and additional time claimed to be additional.

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

d. **Arbitration:**

Contract for Services Agreement
Whatcom Events
Other than claims for injunctive relief brought by a party hereto (which may be brought either in court or pursuant to this arbitration provision), and consistent with the provisions hereinabove, any claim, dispute or controversy between the parties under, arising out of, or related to this Agreement or otherwise, including issues of specific performance, shall be determined by arbitration in Bellingham, Washington, under the applicable American Arbitration Association (AAA) rules in effect on the date hereof, as modified by this Agreement. There shall be one arbitrator selected by the parties within ten (10) days of the arbitration demand, or if not, by the AAA or any other group having similar credentials. Any issue about whether a claim is covered by this Agreement shall be determined by the arbitrator. The arbitrator shall apply substantive law and may award injunctive relief, equitable relief (including specific performance), or any other remedy available from a judge, including expenses, costs and attorney fees to the prevailing party and pre-award interest, but shall not have the power to award punitive damages. The decision of the arbitrator shall be final and binding and an order confirming the award or judgment upon the award may be entered in any court having jurisdiction. The parties agree that the decision of the arbitrator shall be the sole and exclusive remedy between them regarding any dispute presented or pled before the arbitrator. At the request of either party made not later than forty-five (45) days after the arbitration demand, the parties agree to submit the dispute to nonbinding mediation, which shall not delay the arbitration hearing date; provided, that either party may decline to mediate and proceed with arbitration.

Unless otherwise specified herein, this Agreement shall be governed by the laws of Whatcom County and the State of Washington.

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.
Funds received from Whatcom County will be used solely for advertising and promotion outside of Whatcom County of the annual Ski to Sea Race and Muds to Suds Races allowed in RCW 67.28 in an effort to attract overnight visitors. Funding will be used to promote the Ski to Sea and Muds to Suds Races with special focus on advertising in the Washington State counties of King, Pierce, Thurston, Snohomish, and Skagit along with British Columbia, Canada. Funding will provide for development of a major social media, internet and print advertising campaign. The social media campaign will utilize Facebook, YouTube, Twitter, and Google Ad Words and will focus on the personal connections between the 4,000 racers. The internet advertising campaign will focus on the aspects of the race and the geographical diversity that the course traverses.

The race consists of a 92 mile relay race of seven venues encompassing seven different sports. A Ski to Sea Race team consists of 8 racers (2 in the canoe leg) for the seven race legs (Cross Country Ski; Downhill Ski/Snowboard; Running; Road Bike; Canoe; Mountain Bike; Kayak).

It is the largest event in the region, attracting over 4,000 participants, of which over 50% were from outside Whatcom County. Thousands of spectators, participants and visitors contribute to the countywide economic impact to our region. Supported by over 1,000 volunteers, the Ski to Sea Race participants return each year for the positive community atmosphere and the fun of the race itself.

The Muds to Suds Race is a combination mud race and obstacle course that takes place at Hovander Park in Ferndale, WA. The 2015 race will represent the fourth time that this event will take place.

Allowable expenses include:

- Printing of promotional materials designed to attract overnight visitors.
- Mailing of promotional materials outside of Whatcom County in an effort to attract overnight visitors.
- Advertising of the event through media outlets outside of Whatcom County for the purpose of bringing visitors to Whatcom County year-round, including social media and internet advertising.
- Graphic art design used for promotional materials, i.e. poster, t-shirts, etc.

Promotional materials regarding your proposed activity must mention that it is made possible in part by a Tourism Promotion Grant from Whatcom County. The scale of this credit should be commensurate with the County’s level of financial support. It should include the name and logo of the County. It is not expected that this credit be displayed in all materials, but at a minimum it should be placed in such documents as programs and annual reports.

Within 30 days after signature execution of this Agreement, Recipient shall submit a concise plan for the collection of the required survey data (the “Survey Plan”) to the Whatcom County Executive Office. The Survey Plan shall outline statistically defensible methods of survey protocol that will provide data about the event attendees. The survey questions outlined in the Survey Plan shall be substantially similar to those illustrated in Exhibit C, which is attached hereto and incorporated herein. Within 30 days after the end of the contract term, recipients of promotional grants shall submit a final project report (the “Final Project Report”) detailing:

- How the evaluation criteria were met by this event.
- What elements worked well and which did not.
- Modifications, if any, planned for future activities.
- Survey results that were collected according to the Survey Plan.
- The number of out-of-County visitors that stayed in Whatcom County lodging establishments.

Failure to complete and deliver the Final Project Report and the Survey Plan in a timely manner may render recipient ineligible for future funding.

Pursuant to RCW 67.28.1816, recipients of lodging tax funds must provide the following information:

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

_The maximum consideration for this contract is $35,000._
Maximum consideration for this contract shall be $35,000. The Contract Number shall be included on all billings or correspondence in connection therewith.

Whatcom Events will submit invoices detailing allowable expenditures as outlined in Exhibit A to the Whatcom County Executive's Office. All receipts must be attached to the invoice as well as copies of brochures, advertisements, etc.

Payment is made as reimbursement only and will be made no more than one time per month.
Sample Survey Questions for Attractions, Festivals and Events

1. What is your zip code?

2. How did you hear about this event? (i.e. newspaper advertisement, radio, internet, magazine advertisement, word of mouth)

3. How many nights away from home, if any, are you spending in Whatcom County?

4. Will you stay overnight? If so, where?
   ___ Hotel or motel
   ___ Campground
   ___ Friend/Relative
   ___ Not staying overnight

5. How much money have you spent in Whatcom County as a visitor including any food, gas lodging, tickets, etc.?
   ___ $0-$25
   ___ $25-$50
   ___ $50-$100
   ___ $100-$200
   ___ $200 or over

Sample Survey Plan:

Your survey plan should answer the following questions regarding your survey methodology:

1. How do you intend to distribute your survey to your event participants?
2. What incentives or methods will you use to ensure you obtain sufficient data on your event participants?
3. Who will be responsible for collecting your data?
4. Any other details regarding your survey methods or alternative methods you may use to obtain relevant data regarding your event participants.
TITLE OF DOCUMENT: Sustainable Connections Contract

ATTACHMENTS: Contract Memo
Contract

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

Should Clerk schedule a hearing? ( ) Yes ( ) NO
Requested Date:

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE: (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)

Request authorization for the County Executive to enter into a contract between Sustainable Connections and Whatcom County to authorize funding to promote tourism in Whatcom County, in the amount of $25,000 as recommended by the Lodging Tax Advisory Committee.
MEMORANDUM

TO: Jack Louws, County Executive

FROM: Linda Salas

RE: Sustainable Connections/Savor Whatcom Food & Farms

DATE: November 17, 2014

Enclosed are two (2) originals of a contract for services agreement between Whatcom County and Sustainable Connection Sustainable Connections/Savor Whatcom Food & Farms for your review and signature.

- **Background and Purpose**
  As allowed in RCW 67.28, Whatcom County will provide funding to the Sustainable Connections/Savor Whatcom Food & Farms advertising and tourism promotion in Whatcom County.

- **Funding Amount and Source**
  Funding for this contract comes from Convention Center Funds and was recommended for approval by the Lodging Tax Advisory Committee at their November 14, 2014 meeting.
WHATCOM COUNTY CONTRACT INFORMATION SHEET

Originating Department: Executive
Contract or Grant Administrator: Tawni Helms/Linda Salas
Contractor’s / Agency Name: Sustainable Connections

Is this a New Contract? ☒ Yes ☐ No ☐
If not, is this an Amendment or Renewal to an Existing Contract? ☐ Yes ☒ No ☐
If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: ____________________________

Does contract require Council Approval? ☐ Yes ☒ No ☐
If No, include WCC: ____________________________
(see Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)

Is this a grant agreement? ☐ Yes ☒ No ☐
If yes, grantor agency contract number(s): ____________________________ CFDA#: ____________________________

Is this contract grant funded? ☐ Yes ☒ No ☐
If yes, Whatcom County grant contract number(s): ____________________________

Is this contract the result of a RFP or Bid process? ☐ Yes ☒ No ☐
If yes, RFP and Bid number(s): ____________________________
Cost Center: 14100.6610.910

Is this agreement excluded from E-Verify? ☐ No ☒ Yes ☐
If no, include Attachment D Contractor Declaration form.

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

Contract Amount: (sum of original contract amount and any prior amendments):
$ 25,000 ____________________________

This Amendment Amount: ____________________________

Total Amended Amount: ____________________________

Contracts that require Council Approval (incl. agenda bill & memo)
• Professional Services Agreement above $20,000.
• Bid is more than $50,000.
• Amendments that have either an increase greater than 10% or provide a $10,000 increase in amount (whichever is greater)

RENEWALS: Council approval is not required when exercising an option to renew that is provided in the original contract.

Summary of Scope: To promote tourism in Whatcom County, thereby generating additional revenues to our community.

Term of Contract: January 1, 2015
Expiration Date: December 31, 2015

Contract Routing:
1. Prepared by: L. Salas Date: 11/17/14
2. Attorney signoff: Date: 11/25/14
3. AS Finance reviewed: Date: 11/24/14
4. IT reviewed (if IT related):
5. Contractor signed:
6. Submitted to Exec.: Date: 11/25-14
7. Council approved (if necessary):
8. Executive signed:
9. Original to Council:

Last Edited 060414
CONTRACT FOR SERVICES AGREEMENT
SUSTAINABLE CONNECTIONS

Sustainable Connections, 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 9,
- Exhibit A (Scope of Work), pp. 10,
- Exhibit B (Compensation), pp. 11,
- Exhibit C (Sample Survey), pp. 12
- Exhibit D (Certificate of Insurance), pp. 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 1st day of January 2015, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 31st day of December, 2015.

The general purpose or objective of this Agreement is to support Sustainable Connections in their effort to promote tourism and overnight stays in Whatcom County, 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.

By entering this agreement the parties do not create any rights or expectations on behalf of any third parties and creates no causes of action for anyone who may be inadvertently omitted from the map.

The maximum consideration for the initial term of this agreement or for any renewal term shall not be included on all billing.

Contractor acknowledges and by signing this contract agrees that the 21.1, 30.1, 32.1, 32.2, 34.2, and 34.3, if included, are totally and fully paid.

IN WITNESS WHEREOF, the parties have executed this Agreement.

CONTRACTOR:

SUSTAINABLE CONNECTIONS

________________________________________
Derek M. Long
Program & Development Director

STATE OF WASHINGTON )
) ss.
COUNTY OF WHATCOM )

On this ________ day of ____________, 20____, before me personally appeared Derek Long, to me known to be the Program and Development Director of Sustainable Connections and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

________________________________________
NOTARY PUBLIC in and for the State of Washington, residing at __________________. My commission expires ________________.
WHATCOM COUNTY:
Approved as to form:

\[Name\] 11/21/14
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 ___________, 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 sealling thereof.

NOTARY PUBLIC in and for the State of Washington, residing at __________________. My commission expires __________________.

CONTRACTOR INFORMATION:
SUSTAINABLE CONNECTIONS

ADDRESS:
1701 Ellis Street #221
Bellingham, WA 98225

Contact Name: Derek M. Long
Contact Phone: 360-647-7093
Fax: 360-594-4373
Contact Email: derek@sconnect.org
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 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. 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 time 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:
All writings, programs, data, public records or other materials prepared by the Contractor and/or its consultants or subcontractors, in connection with performance of this Agreement, shall be the sole and absolute property of the County.

31.2 Patent/Copyright Infringement:
Contractor will defend and indemnify the County from any claimed action, cause or demand brought against the County, to the extent such action is based on the claim that information supplied by the Contractor infringes any patent or copyright. The Contractor will pay those costs and damages attributable to any such claims that are finally awarded against the County in any action. Such defense and payments are conditioned upon the following:
A. The Contractor shall be notified promptly in writing by the County of any notice of such claim.
B. Contractor shall have the right, hereunder, at its option and expense, to obtain for the County the right to continue using the information, in the event such claim of infringement, is made, provided no reduction in performance or loss results to the County.

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

33.1 Right to Review:
This contract is subject to review by any Federal, State or County auditor. The County or its designee shall have the right to review and monitor the financial and service components of this program by whatever means are deemed expedient by the Administrative Officer or by the County Auditor’s Office. Such review may occur with or without notice and may include, but is not limited to, on-site inspection by County agents or employees, inspection of all records or other materials which the County deems pertinent to the Agreement and its performance, and any 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.

   a. Professional Liability - $1,000,000 per occurrence:
   If the professional liability insurance is a claims made policy, and should the contractor discontinue coverage either during the term of this contract or within three years of completion, the contractor agrees to purchase tail coverage for a minimum of three years from the completion date of this contract or any amendment to this contract.

   Professional Liability - $1,000,000. per occurrence (this amount may vary with circumstances)

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:
Contractor irrevocably waives any existing rights which it may have, by contract or otherwise, to require another person or corporation to refrain from submitting a proposal to or performing work or providing supplies to the County, and contractor further promises that it will not in the future, directly or indirectly, induce or solicit any person or corporation to refrain from submitting a bid or proposal to or from performing work or providing supplies to the County.

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

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

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

Linda Salas, Executive Secretary
Whatcom County Executive’s Office
311 Grand Avenue, Suite 108
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.

38.1 Certification of Public Works Contractor’s Status under State Law:
Contractor certifies that it has fully met the responsibility criteria required of public works contractors under RCW 39.04.350 (1), which include: (a) having a certificate of registration in compliance with RCW 18.27; (b) having a current state unified business identifier number; (c) if applicable, having industrial insurance coverage for its employees working in Washington as required in Title 51 RCW, an employment security department number as required in Title 50 RCW, and a state excise tax registration number as required in Title 82 RCW; and (d) not being disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065 (3).
38.2 Certification Regarding Federal Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions:
The Contractor further certifies, by executing this contract, that neither it nor its principles is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or Agency.

The Contractor also agrees that it shall not knowingly enter into any lower tier covered transactions (a transaction between the Contractor and any other person) with a person who is proposed for debarment, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, and the Contractor agrees to include this clause titled "Certification Regarding Federal Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction" without modification, in all lower tier covered transactions and in all solicitations for lower tier transactions.

The "General Service Administration List of Parties Excluded from Federal Procurement or Non-procurement Programs" is available to research this information at http://epis.amnet.gov/.

38.3 E-Verify:
The E-Verify contractor program for Whatcom County applies to contracts of $100,000 or more and sub contracts for $25,000 or more if the primary contract is for $100,000 or more. Contractor represents and warrants that it will, for at least the duration of this contract, register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work for Whatcom County. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor/Seller agrees to maintain records of such compliance and, upon request of the County, to provide a copy of each such verification to the County.

Contractor/Seller further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Washington. Contractor/Seller understands and agrees that any breach of these warranties may subject Contractor/Seller to the following: (a) termination of this Agreement and ineligibility for any Whatcom County contract for up to three (3) years, with notice of such cancellation/termination being made public. In the event of such termination/cancellation, Contractor/Seller would also be liable for any additional costs incurred by the County due to contract cancellation or loss of license or permit. Contractor will review and enroll in the E-Verify program through this website: www.uscis.gov

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

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

40.2 Contractor Commitments, Warranties and Representations:
Any written commitment received from the Contractor concerning this Agreement shall be binding upon the Contractor, unless otherwise specifically provided herein with reference to this paragraph. Failure of the Contractor to fulfill such a commitment shall render the Contractor liable for damages to the County. A commitment includes, but is not limited to, any representation made prior to execution of this Agreement, whether or not incorporated elsewhere herein by reference, as to performance of services or equipment, prices or options for future acquisition to remain in effect for a fixed period, or warranties.

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

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

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

b. **Notice of Potential Claims:**
The Contractor shall not be entitled to additional compensation which otherwise may be payable, or to extension of time for (1) any act or failure to act by the Administrative Officer or the County, or (2) the happening of any event or occurrence, unless the Contractor has given the County a written Notice of Potential Claim within ten (10) days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the County. The written Notice of Potential Claim shall set forth the reasons for which the Contractor believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. Contractor shall keep full and complete daily records of the work performed, labor and material used, and all costs and additional time claimed to be additional.

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

d. **Arbitration:**
Other than claims for injunctive relief brought by a party hereto (which may be brought either in court or pursuant to this arbitration provision), and consistent with the provisions hereinabove, any claim, dispute or controversy between the parties under, arising out of, or related to this Agreement or otherwise, including issues of specific performance, shall be determined by arbitration in Bellingham, Washington, under the applicable American Arbitration Association (AAA) rules in effect on the date hereof, as modified by this Agreement. There shall be one arbitrator selected by the parties within ten (10) days of the arbitration demand, or if not, by the AAA or any other group having similar credentials. Any issue about whether a claim is covered by this Agreement shall be determined by the arbitrator. The arbitrator shall apply substantive law and may award injunctive relief, equitable relief (including specific performance), or any other remedy available from a judge, including expenses, costs and attorney fees to the prevailing party and pre-award interest, but shall not have the power to award punitive damages. The decision of the arbitrator shall be final and binding and an order confirming the award or judgment upon the award may be entered in any court having jurisdiction. The parties agree that the decision of the arbitrator shall be the sole and exclusive remedy between them regarding any dispute presented or pled before the arbitrator. At the request of either party made not later than forty-five (45) days after the arbitration demand, the parties agree to submit the dispute to nonbinding mediation, which shall not delay the arbitration hearing date; provided, that either party may decline to mediate and proceed with arbitration.

Unless otherwise specified herein, this Agreement shall be governed by the laws of Whatcom County and the State of Washington.

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.
Sustainable Connections is a non-profit educational organization in Whatcom County. The general purpose or objective of this Agreement is to support Sustainable Connections in their efforts to promote tourism and overnight stays in Whatcom County. Contractor will promote agritourism in Whatcom County through a marketing campaign for the Savor Whatcom Food & Farms program. Bellingham/Whatcom County is well positioned to capitalize on its reputation of being an enjoyable place to visit, and leverage Bellingham Whatcom County tourism’s new “Be in Bellingham Whatcom County” campaign along with Sustainable Connections’ successful Eat Local First campaign to fully brand itself as a food and farm experiences based destination. Savor Whatcom Food & Farms strategies target and encourage tourists from Seattle and Vancouver, B.C. metro areas to discover culinary and agritourism experiences in Whatcom County, generating positive economic activity through the purchase of meals, gifts and overnight accommodation.

Highlighting those opportunities with the greatest potential to sustain and increase regional agritourism, Savor Whatcom Food & Farms will maximize and leverage local tourism opportunities and resources to increase regional tourism while expanding culinary and agritourism opportunities.

Contractor will provide the following marketing tools for effective promotion of the following activities for the purpose of attracting visitors to Whatcom County:

- Culinary & Agritourism Road Map (fold up map placed in B.C. Ferries, SeaTac Airport, Seattle Pier 52, etc.)
- Whatcom Food & Farm Finder (copies distributed to businesses and visitor centers outside of Whatcom County)
- Eat Local Month & Farm Tour (radio, print and online advertisements to Seattle and Vancouver, B.C. metro)

Promotional materials regarding proposed activity must mention that it is made possible in part by a Tourism Promotion Grant from Whatcom County. The scale of this credit should be commensurate with the County’s level of financial support. It should include the name and logo of the County. It is not expected that this credit be displayed in all materials, but at a minimum it should be placed in such documents as programs and annual reports.

Within 30 days after signature execution of this Agreement, Recipient shall submit a concise plan for the collection of the required survey data (the “Survey Plan”) to the Whatcom County Executive Office. The Survey Plan shall outline statistically defensible methods of survey protocol that will provide data about the event attendees. The survey questions outlined in the Survey Plan shall be substantially similar to those illustrated in Exhibit C, which is attached hereto and incorporated herein. Within 30 days after the end of the contract term, recipients of promotional grants shall submit a final project report (the “Final Project Report”).

Pursuant to RCW 67.28.1816, recipients of lodging tax funds must provide the following information:

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

Within 30 days after the end of the contract term, recipients of promotional grants shall submit a Final Project Report detailing:

- How the evaluation criteria were met by this event.
- What elements worked well and which did not.
- Modifications, if any, planned for future activities.
- Survey results that were collected according to the Survey Plan.
- The number of out - of - County visitors that stayed in Whatcom County lodging establishments.

Failure to complete and deliver the Final Project Report and the Survey Plan in a timely manner may render the recipient ineligible for future funding.
The Contract Number, set forth above, shall be included on all billings.

Allowable expenses include:

- Printing costs for the promotional materials designed to attract overnight visitors to Whatcom County (Culinary & Agritourism Road Map, Whatcom Food & Farm Finder, Farm Tour posters, and Farm Tour sign.)
- Consultant fees associated with the design and layout of materials created for the purposes of attracting visitors to Whatcom County.
- Advertising expenses for media outlets outside of Whatcom County for the purposes of bringing visitors to Whatcom County.

Expenses will be billed at actual costs. Receipts are required for reimbursement. Additionally, documentation of the marketing campaign conducted outside of Whatcom County will be provided.

*Maximum consideration for this contract shall be $25,000.* Invoices shall be sent to the Whatcom County Executive’s Office. Sustainable Connections will provide Whatcom County with an invoice detailing expenses as allowed in Exhibit A (including receipts). Payment will be made as reimbursement only.
EXHIBIT “C”
(SAMPLE SURVEY)

Sample Survey Questions for Attractions, Festivals and Events

1. What is your zip code?

2. How did you hear about this event? (i.e. newspaper advertisement, radio, internet, magazine advertisement, word of mouth)

3. How many nights away from home, if any, are you spending in Whatcom County?

4. Will you stay overnight? If so, where?
   ___ Hotel or motel
   ___ Campground
   ___ Friend/Relative
   ___ Not staying overnight

5. How much money have you spent in Whatcom County as a visitor including any food, gas lodging, tickets, etc.? 
   ___ $0-$25
   ___ $25-$50
   ___ $50-$100
   ___ $100-$200
   ___ $200 or over

Sample Survey Plan:

Your survey plan should answer the following questions regarding your survey methodology:

1. How do you intend to distribute your survey to your event participants?
2. What incentives or methods will you use to ensure you obtain sufficient data on your event participants?
3. Who will be responsible for collecting your data?
4. Any other details regarding your survey methods or alternative methods you may use to obtain relevant data regarding your event participants.
Non Profit Insurance Program

CERTIFICATE OF INSURANCE

Issue Date: 05/23/2014

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONveys NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy certain coverage may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<table>
<thead>
<tr>
<th>PRODUCER</th>
<th>COMPANIES AFFORDING COVERAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Canfield</td>
<td>American Alternative Insurance Corporation</td>
</tr>
<tr>
<td>451 Diamond Drive</td>
<td></td>
</tr>
<tr>
<td>Ephrata, WA 98283</td>
<td></td>
</tr>
</tbody>
</table>

| INSURED | |
|---------| |
| Sustainable Connections | |
| 1701 Ellis Street #221 | |
| Bellingham, WA 98225 | |

| COVERAGES | |
|-----------| |
| THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE COVERAGE PERIOD INDICATED, NOT WITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS. |

<table>
<thead>
<tr>
<th>TYPE OF INSURANCE</th>
<th>POLICY NUMBER</th>
<th>POLICY EFF DATE</th>
<th>POLICY EXP DATE</th>
<th>DESCRIPTION</th>
<th>LIMITS</th>
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<tbody>
<tr>
<td>GENERAL LIABILITY</td>
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<td></td>
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<tr>
<td>COMMERCIAL GENERAL LIABILITY</td>
<td>N1-A2-RL-0000013-06</td>
<td>06/01/2014</td>
<td>06/01/2015</td>
<td>PER OCCURRENCE</td>
<td>$5,000,000</td>
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<tr>
<td>OCCURRENCE FORM</td>
<td>INCLUDES STOP GAP</td>
<td>(LIABILITY IS SUBJECT TO A $50,000 SIR PAYABLE FROM PROGRAM FUNDS)</td>
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<td></td>
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<tr>
<td>AUTOMOBILE LIABILITY</td>
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<tr>
<td>ANY AUTO</td>
<td>N1-A2-RL-0000013-06</td>
<td>06/01/2014</td>
<td>06/01/2015</td>
<td>COMBINED SINGLE LIMIT</td>
<td>$5,000,000</td>
</tr>
<tr>
<td>(LIABILITY IS SUBJECT TO A $50,000 SIR PAYABLE FROM PROGRAM FUNDS)</td>
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<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>PROPERTY</td>
<td>N1-A2-RL-0000013-06</td>
<td>06/01/2014</td>
<td>06/01/2015</td>
<td>ALL RISK PER OCC EXCL EQ &amp; FL EARTHQUAKE PER OCC FLOOD PER OCC ANNUAL POOL AGGREGATE</td>
<td>$55,000,000</td>
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<tr>
<td>(PROPERTY IS SUBJECT TO A $50,000 SIR PAYABLE FROM PROGRAM FUNDS)</td>
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<tr>
<td>MISCELLANEOUS PROFESSIONAL LIABILITY</td>
<td>N1-A2-RL-0000013-06</td>
<td>06/01/2014</td>
<td>06/01/2015</td>
<td>PER CLAIM ANNUAL POOL AGGREGATE</td>
<td>$1,000,000</td>
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<tr>
<td>(LIABILITY IS SUBJECT TO A SIR PAYABLE FROM PROGRAM FUNDS)</td>
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</table>

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / SPECIAL ITEMS:

Regarding ongoing contract work. Whatcom County is named as Additional Insured regarding this contract only and is subject to policy terms, conditions, and exclusions. Additional Insured endorsement is attached.

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

<table>
<thead>
<tr>
<th>CERTIFICATE HOLDER</th>
<th>AUTHORIZED REPRESENTATIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Whatcom County</td>
<td>311 Grand Ave</td>
</tr>
<tr>
<td>Bellingham, WA 98225</td>
<td></td>
</tr>
</tbody>
</table>

[Signature]

2940544

415
AMERICAN ALTERNATIVE
INSURANCE COMPANY

ADDITIONAL INSURED – DESIGNATED PERSON OR ORGANIZATION
(GENERAL LIABILITY)

<table>
<thead>
<tr>
<th>Named insured</th>
<th>Non Profit Insurance Program (NPIP)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Policy Number</td>
<td>Endorsement Effective</td>
</tr>
<tr>
<td>N1-A2-RL-0000013-06</td>
<td>06/01/2014</td>
</tr>
</tbody>
</table>

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

This endorsement modifies insurance provided under the following:

GENERAL LIABILITY COVERAGE PART

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated above.

Schedule

Person or Organization (Additional Insured): As Per Schedule on file with Canfield, Underwriting Administrator

2840545

A. With respects to the General Liability Coverage Part only, the definition of Insured in the Liability Conditions, Definitions and Exclusions section of this policy is amended to include as an Insured the Person or Organization shown in the above Schedule. Such Person or Organization is an Insured only with respect to liability for Bodily Injury, Property Damage, or Personal and Advertising Injury caused in whole or in part by your acts or omissions or the acts or omissions of those acting on your behalf:

1. In performance of your ongoing operations; or
2. In connection with your premises owned or rented to you.

B. The Limits of Insurance applicable to the additional Insured are those specified in either the:

1. Written contract or written agreement; or
2. Declarations for this policy,

whichever is less. These Limits of Insurance are inclusive and not in addition to the Limits Of Insurance shown in the Declarations.

All other terms and conditions remain unchanged.
**TITLE OF DOCUMENT:** Norstan Communications, Inc. d/b/a Black Box Network Services Master Agreement for Products & Services

**ATTACHMENTS:**
- Cover Memo
- Contract Information Sheet
- Master Agreement for Products and Services

**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:** (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)

Request authorization for the County Executive to enter into a Master Agreement for Products and Services from Norstan Communications, Inc. d/b/a Black Box Network Services in the amount of $0 for telecommunications and other technology products and services.

**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.
MEMORANDUM

TO: Jack Louws, County Executive
    Whatcom County Council

FROM: Perry Rice, IT Manager

RE: Black Box Master Agreement for Products and Services

DATE: November 4, 2014

Enclosed are two (2) originals of the Master Agreement for Products and Services between Norstan Communications, Inc. d/b/a Black Box Network Services (Black Box) and Whatcom County for your review and approval.

- **Background and Purpose**

  Black Box has been selected in RFP #14-37 to implement and support a new telecommunications system manufactured by ShoreTel Inc. This is an "umbrella" agreement that Black Box requires in order to purchase products and services in subsequent agreements.

- **Funding Amount and Source**

  This is a $0 agreement.

Please contact Perry Rice at x 52511 or Denise Toth Banyan at x 50639 if you have any questions or concerns regarding the terms of this agreement.

   Encl.
## Whatcom County Contract Information Sheet

**Originating Department:** AS - Information Technology  
**Contract or Grant Administrator:** Perry Rice, IT Manager  
**Contractor’s / Agency Name:** Norstan Communications, Inc. d/b/a Black Box Network Services

<table>
<thead>
<tr>
<th>Question</th>
<th>Yes</th>
<th>No</th>
<th>If applicable, include:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Is this a New Contract?</td>
<td>☑</td>
<td>☐</td>
<td>Original Contract #:</td>
</tr>
<tr>
<td>Does contract require Council Approval?</td>
<td>☑</td>
<td>☐</td>
<td>If No, include WCC:</td>
</tr>
<tr>
<td>Is this a grant agreement?</td>
<td>☑</td>
<td>☐</td>
<td>Grantor agency contract number(s):</td>
</tr>
<tr>
<td>Is this contract grant funded?</td>
<td>☑</td>
<td>☐</td>
<td>Whatcom County grant contract number(s):</td>
</tr>
<tr>
<td>Is this contract the result of a RFP or Bid process?</td>
<td>☑</td>
<td>☐</td>
<td>RFP #14-37</td>
</tr>
<tr>
<td>Is this agreement excluded from E-Verify?</td>
<td>☐</td>
<td>☑</td>
<td>If no, include Attachment D Contractor Declaration form.</td>
</tr>
</tbody>
</table>

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

### Contract Amount:
- **Sum of original contract amount and any prior amendments:** $ 0
- **This Amendment Amount:** $ 
- **Total Amended Amount:** $ 

### Summary of Scope:
Request authorization for the County Executive to enter into a Master Agreement for Products and Services from Norstan Communications, Inc. d/b/a Black Box Network Services in the amount of $0 for telecommunications and other technology products and services.

### Term of Contract:
<table>
<thead>
<tr>
<th>Ongoing</th>
<th>Expiration Date: Ongoing</th>
</tr>
</thead>
</table>

### Contract Routing:
1. Prepared by: Tami Gee-Hardy  
2. Attorney signoff:  
3. AS Finance reviewed:  
4. IT reviewed (if IT related):  
5. Contractor signed:  
6. Submitted to Exec.:  
7. Council approved (if necessary):  
8. Executive signed:  
9. Original to Council:  

Last Edited: 060414

Date: 10/30/2014  
Date: 1/5/14  
Date: 11/4/2014  
Date: 11/4/2014  
Date: 11/7/14
MASTER AGREEMENT FOR PRODUCTS AND SERVICES

Customer Name and Address:  
WHATCOM COUNTY  
311 Grand Ave., Suite #305  
Bellingham, WA 98225  

Norstan Communications, Inc. d/b/a Black Box Network Services (hereinafter referred to as "we," "us," "Contractor" or "Black Box") is pleased to offer this Agreement to you (hereinafter referred to as "you" or "Customer"). The parties intend that this Agreement, upon acceptance by us, shall constitute a master agreement for the sale and/or installation of our Products and Services in the United States within our established service territory, upon mutually agreed terms when installation is available outside our established service territory.

1. DEFINITIONS

"Corrective Maintenance" means repair or replacement services provided to remedy defects in a Product pursuant to manufacturer specifications and any applicable Service Plan, including labor and parts.

"Custom Software" means any Software or portion thereof written by us in whole or in part to your specifications.

"ICO" means an installation change order signed by you and us.

"Installation Date" is the beginning of a process when equipment is delivered and the installation is started. The installation is complete at the end of this process when the product is performing according to all manufacturers' specifications and as defined in the applicable "Schedule A".

"Cut over Date" means the date when a transition from one system to another occurs as described in the applicable "Schedule A" or a Product, or if a phased installation is intended, any portion of a Product, is installed by us and is substantially performing according to all manufacturer's specifications as verified by our standard test procedures; or b) we deliver a Product to you, if not to be installed by us, or c) performance of a MAC or Project Service is completed by us.

"MAC" means any moves, adds or changes to an installed Product (excluding Product Upgrades).

"Periodic Services" means renewable and ongoing services, for which there is a specified periodic charge, as described on a Schedule A and/or the applicable Service Plan (exclusive of Warranty Service).

"Promises" means your installation or service location as referenced on a Schedule A.

"Price" shall have the meaning set forth in Section 2 hereof.

"Product" or "Products" means equipment, Product Upgrades, or MAC purchased and/or Software or Custom Software licensed by you from us.

"Product Upgrade" includes, but is not limited to a new release, new functionality of a Product or Product enhancement, as noted on a Schedule A, to an installed Product.

"Project Services" means supplemental services, provided by us on a time and materials or project basis, as described on a Schedule A and/or the applicable Statement of Work.

"Schedule A" means the ordering document for Products or Services.

"Service Plan" means the features and specifications of Warranty Services or Periodic Services offered by us, which are described in an exhibit referenced on a Schedule A.

"Services" means Periodic Services and Project Services.

"Software" means any computer program supplied under this Agreement, or which constitutes part of any Product, on magnetic tape, disk, semiconductor device or other memory device, or Product memory including hardwired logic instructions, microcode and documentation used to describe, maintain and use the programs.

"Software Owner" means any party other than us, which may own the Software.

"T&M" means labor and/or parts provided by us on a time and materials basis.

"Warranty Services" means the services described in Section 10 of this Agreement and the Corrective Maintenance as described in our Warranty Services Policy.

2. PRICE

The Price for the Products and Services, MAC and T&M, shall be specified on a Schedule A and on any ICO’s.

Any additions, deletions or changes to the Products after acceptance of a Schedule A may only be made prior to the Installation Date by an ICO as mutually agreed by the parties. The amount of credit for any deletions shall be equal to the Price at which each deleted item was ordered originally less any applicable manufacturer restocking charge and any direct costs incurred.

You may order Periodic Services under one or more of our Service Plans or Project Services as described on a Schedule A and related Exhibit. For Periodic Services, there may be an annual rate increase during the term, and we will provide you sixty (60) days prior written notice of such increase.

3. TAXES

The Price does not include applicable taxes unless otherwise indicated, and you shall be responsible to pay when due or invoiced any sales, excise or other similar taxes with respect to any Products and/or Services, exclusive of taxes based on our net income.

4. PAYMENT TERMS

You agree to pay the Price in such amounts and at such times as described in the applicable Schedule A.

For amounts remaining unpaid after thirty (30) days from invoice date, an interest charge may be assessed equal to 1.5% per month or the highest amount allowed by law, whichever is lower.

5. FINANCING OPTION

You may assign this Agreement to a financing company for the sole purpose of financing the Price, provided you agree that any such assignment shall not delay or relieve you of your duty to perform any of your obligations under this Agreement. All payments made shall be promptly refunded to you upon our receipt of the same from the financing company.

6. SECURITY INTEREST; TITLE TO EQUIPMENT

Title to each Product purchased, except for Software, passes to you on its shipment date. We shall retain a purchase money security interest in the Products to secure payment of the Price. You agree to execute any document reasonably necessary to permit us to perfect our security interest.

7. 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.

This Agreement incorporates all provisions of the schedules, exhibits and other documents that are referenced herein. All of these documents taken together, including those effective in the future, shall constitute the entire agreement between you and us and replace any prior oral and/or written communications, negotiations and agreements relating to the subject matter hereof. Each party represents that the individual signing on its behalf has the power and authority to enter into this Agreement. This Agreement shall become valid and binding upon execution by you and us.
8. 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, 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 more than 14 hours per week and 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.

9. INSURANCE
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 non-contributory.

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.

10. RISK OF LOSS
We will bear the risk of loss of the Products while they are in transit to your Premises. After delivery of the Products to your Premises, you shall bear such risk of loss unless the loss is caused by our negligence or that of our agents or subcontractors.

11. INSTALLATION RESPONSIBILITIES
Site preparation and Product installation responsibilities of each of us shall be described on the Installation Responsibilities Policy, if applicable.

We will make all reasonable efforts to complete the installation by the intended installation Date specified on a Schedule A. Minor omissions or variances. You acknowledge that the performance of any Product that do not materially affect the operation of the Product as a whole shall not affect or postpone the Installation Date and shall be noted by you.

12. ACCEPTANCE OF PRODUCTS
Except as noted below, a Product will be deemed accepted by you five (5) business days after its Installation Date, unless you notify us in writing within such period of any non-conformities. Upon such notice, we will promptly correct any such non-conformities to the specifications of the Statement of Work. The Product will then be deemed accepted by you. MAC, T&M and Products not installed by us will be deemed accepted on their Installation Date.

13. PRODUCT WARRANTY
We agree to provide Warranty Service as set forth in this Section and in our Warranty Service Policy for the Product(s) indicated on a Schedule A.

We warrant that, commencing on the Installation Date, any Product shall be free from defects in material and workmanship and will substantially conform to manufacturer specifications under normal use for the warranty period indicated on a Schedule A. Upon notification of a defect during the warranty period, we shall have the option to repair or replace the defective part(s) of the Product. If, after reasonable efforts, we are unable to repair or replace the defective part(s) of the Product so that it operates as warranted, we may, at our option, issue a refund for the actual dollar amounts paid for the defective part(s) upon receipt of the defective part(s) by us.

We do not warrant that the operation of the Product will be uninterrupted or error-free. You acknowledge that the Products are by no means invulnerable to computer viruses, network interference or to fraudulent or unauthorized calls or access, and, consequently, no express or implied warranty is made by us against such occurrences. THE WARRANTIES SET FORTH HEREIN REPLACE ALL OTHER WARRANTIES, EXPRESS, STATUTORY, OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

14. SOFTWARE LICENSE
We grant to you a non-exclusive, fully paid, perpetual license to use the Software, but only in conjunction with the equipment or Product with which it is licensed and installed. You acknowledge and agree that you shall have no title or ownership rights to such Software.

You agree to abide by and/or execute any software license agreement required by us or the Software Owner, as noted on a Schedule A, or required by the Software Owner to receive a Product update, enhancement or new release and said provisions of the software license agreement shall be in addition to the terms and provisions contained in this Section 14.

You acknowledge and agree that the Software is a trade secret of the Software Owner and/or us. You agree to take all reasonable precautions to protect the trade secret nature of the Software and to prevent its disclosure to unauthorized personnel. You may make one back-up copy of the Software, but agree not to otherwise copy, modify, translate, reverse compile, decompile or reverse engineer the Software.

15. INDEMNIFICATION
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 Agreement, 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.

16. INFRINGEMENT INDEMNIFICATION
This Section sets forth our entire obligation to you regarding claims of patent, copyright or trademark infringement.

If a third party claims that a Product provided hereunder infringes a patent, copyright or trademark, we will indemnify and defend you against such claim and pay all costs, damages and reasonable attorneys’ fees, provided that you a) promptly notify us in writing of the claim, and b) allow us and/or the manufacturer to control, and cooperate with us in, the defense and any related settlement negotiations.

If such a claim is made or appears likely to be made, you agree to permit us to enable you to continue to use the Product or to modify or replace it. If neither of these alternatives is reasonably available in our judgment, you agree to return the Product to us upon our written request. We will then give you a credit equal to your net book value for the Product provided you have followed generally accepted accounting principles.

We will have no obligation regarding any claim of infringement based upon a Product which is a) modified; b) combined, operated or used with any product, data, apparatus, software or program not provided by us; c) a result of your design specifications; or d) located outside the United States or Puerto Rico. No costs or expenses shall be incurred for our account without our prior written consent.

17. LIABILITY
If either party is not substantially complying with the terms of this Agreement, the other party may give written notice of such failure to perform. The non-complying party will be in compliance if, within ten (10) days after receiving such notice, it either corrects its performance or commences a continuous good faith effort to correct its performance within a reasonable period of time.

Upon our default, we will only be liable for: a) liabilities referred to in Sections 15 and 16; and b) the amount of any other direct damage you incur, up to the Price (or twelve (12) months of recurring charges for Periodic Services) for the Product or Services that is in default. You are additionally reimbursed for the enforcement of any rights under this Agreement, the prevailing party shall be entitled to receive its reasonable legal fees and related expenses. The above limitations apply regardless of the legal theory upon which the claim is based.

Upon your default, you will only be liable for: a) damages arising under Section 14; and b) for Periodic Services, all sums owing for the remaining term of the Schedule A, not to exceed twelve (12) months of recurring charges; and c) the amount of any other direct damage we incur. In addition, we may immediately cease performance.

IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR CONSEQUENTIAL DAMAGES (INCLUDING LOSS PROFITS, DATA OR SAVINGS), INCIDENTAL DAMAGES OR PUNITIVE DAMAGES, EVEN IF THAT PARTY IS INFORMED OF THEIR POSSIBILITY.

18. 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 ground of race, color, creed, religion, national origin, sex, sexual orientation, age, marital status, disability, or veteran status, except where such constitutes a bona fide occupational qualification.

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

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

19. DISPUTES

Arbitration. Other than claims for injunctive relief brought by a party hereto (which may be brought either in court or pursuant to this arbitration provision), and consistent with the provisions hereinabove, any claim, dispute or controversy between the parties under, arising out of, or related to this Agreement or otherwise, including issues of specific performance, shall be determined by arbitration in Bellingham, Washington, under the applicable American Arbitration Association (AAA) rules in effect on the date hereof, as modified by this Agreement. There shall be one arbitrator selected by the parties within ten (10) days of the arbitration demand, or if not, by the AAA or any other group having similar credentials. Any issue about whether a claim is covered by this Agreement shall be determined by the arbitrator. The arbitrator shall apply substantive law and may award injunctive relief, equitable relief (including specific performance), or any other remedy available from a judge, including expenses, costs and attorney fees to the prevailing party and pre-award interest, but shall not have the power to award punitive damages. The decision of the arbitrator shall be final and binding and an order confirming the award or judgment upon the award may be entered in any court having jurisdiction. The parties agree that the decision of the arbitrator shall be the sole and exclusive remedy between them regarding any dispute presented or pled before the arbitrator. At the request of either party made not later than forty-five (45) days after the arbitration demand, the parties agree to submit the dispute to nonbinding mediation, which shall not delay the arbitration hearing date; provided, that either party may decline to mediate and proceed with arbitration.

Unless otherwise specified herein, this Agreement shall be governed by the laws of Whatcom County and the State of Washington.

20. GENERAL

Both parties may delegate any or all of their duties to subcontractors, subsidiaries, parent or affiliated companies, provided that both parties will remain liable for their respective duties. Except as noted in Section 5, neither party may assign this Agreement or any of their rights under this Agreement without the prior written consent of the other party. Any attempt to do so is void.

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. This Agreement may not be modified except in writing, signed by you and us. The terms and conditions contained on any other form, purchase order or other communication by either of us are deemed void.

Neither of us will be liable for our inability to perform to the extent caused by conditions beyond our reasonable control, including but not limited to environmental conditions at your Premises, your third-party telephone services provider or other contractors, labor disputes, perils, other hazards or manufacturer’s discontinuation of Product(s) and/or Services.

Black Box will request your approval to use your name in customer lists, SEC documentation and marketing materials. In the event we intend to disclose information other than your name, such as, but not limited to, dollar amount of sale, project timelines, project objectives and or use your logo, trade or service marks, we will obtain your approval.

If any portion of this Agreement is held invalid, such invalidity shall not affect the remaining provisions of this Agreement, and you and we agree to substitute for the invalid portion a valid provision that most closely approximates the economic effect and intent of the invalid provision.

Failure or delay by either of us to exercise any right, power, privilege or remedy will not constitute a waiver thereof. A waiver of default will not operate as a waiver of any other default or of the same type of default on a future occasion.

We shall observe our responsibilities under Executive Order 11246, as amended, and the regulations at 41 CFR Parts 60-1 through 60-60, and Sections 402/503 and the regulations at 41 CFR Parts 60-250 and 60-741.

Any provision contained herein that by its nature could reasonably be construed to survive expiration of this Agreement shall so survive.
IN WITNESS WHEREOF, the parties have executed this Agreement this ______ day of ________________, 2014.

Norstan Communications, Inc.
d/b/a Black Box Network Services

__________________________________________
Name

__________________________________________
Title
Norstan Communications, Inc.

STATE OF )
 ) ss
COUNTY OF )

On this ______ day of ________________, 2014, before me personally appeared ________________________, to me known to be the ________________________, 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 __________, residing at ________________. My commission expires ________________.

WHATCOM COUNTY:
Recommended for Approval:

__________________________________________ 11/4/2014
IT Manager  Date

Approved as to form:

__________________________________________ December 5, 2014
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 ____________, 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 ________________.
WHATCOM COUNTY COUNCIL AGENDA BILL

CLEARANCES

<table>
<thead>
<tr>
<th>Originator:</th>
<th>Initial</th>
<th>Date</th>
<th>Date Received in Council Office</th>
<th>Agenda Date</th>
<th>Assigned to:</th>
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<td>12/9/14</td>
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<td>Council</td>
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<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>12/9/14</td>
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<tr>
<td>Executive:</td>
<td></td>
<td>12/12/14</td>
<td>12/9/14</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

TITLE OF DOCUMENT: Telecommunications System Replacement

ATTACHMENTS:
- Cover Memo
- Contract Information Sheet
- Contract

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

Should Clerk schedule a hearing? ( ) Yes ( X ) NO
Requested Date:

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE: (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)

Request authorization for the County Executive to enter into a contract with Norstan Communications, Inc. d/b/a Black Box Network Services in the amount of $843,759.29 for the acquisition, implementation and maintenance of a replacement telecommunications system.

COMMITTEE ACTION:

COUNCIL ACTION:

Related County Contract #: Related File Numbers: Ordinance or Resolution Number:

Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: www.co.whatcom.wa.us/council.
**WHATCOM COUNTY CONTRACT INFORMATION SHEET**

<table>
<thead>
<tr>
<th>Originating Department:</th>
<th>AS - Information Technology</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract or Grant Administrator:</td>
<td>Perry Rice, IT Manager</td>
</tr>
<tr>
<td>Contractor's / Agency Name:</td>
<td>Norstan Communications, Inc. d/b/a Black Box Network Services</td>
</tr>
</tbody>
</table>

**Is this a New Contract?** Yes ☑ No ☐

**If not, is this an Amendment or Renewal to an Existing Contract?** Yes ☑ No ☐

**If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #:**

**Does contract require Council Approval?** Yes ☑ No ☐

**If No, include WCC:** (see Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)

**Is this a grant agreement?** Yes ☑ No ☐

**If yes, grantor agency contract number(s):**

**CFDA#:**

**Is this contract grant funded?** Yes ☑ No ☐

**If yes, Whatcom County grant contract number(s):**

**Is this contract the result of a RFP or Bid process?** Yes ☑ No ☐

**RFP and Bid number(s):** RFP 14-37

**Cost Center:** 351100

**Is this agreement excluded from E-Verify?** No ☐ Yes ☑

**If no, include Attachment D Contractor Declaration form.**

If YES, indicate exclusion(s) below:

- ☑ Professional services agreement for certified/licensed professional.
- Contract work is for less than $100,000.
- Contract work is for less than 120 days.
- Interlocal Agreement (between Governments).

**Contract Amount:** (sum of original contract amount and any prior amendments):

$ 843,759.29

**This Amendment Amount:**

$ ______________________

**Total Amended Amount:**

$ ______________________

**Contracts that require Council Approval (incl. agenda bill & memo)**

- Professional Services Agreement above $20,000.
- Bid is more than $50,000.
- Amendments that have either an increase greater than 10% or provide a $10,000 increase in amount (whichever is greater)

**RENEWALS:** Council approval is not required when exercising an option to renew that is provided in the original contract.

**Summary of Scope:** Request authorization for the County Executive to enter into a contract with Norstan Communications, Inc. d/b/a Black Box Network Services in the amount of $843,759.29 for the acquisition, implementation and maintenance of a replacement telecommunications system.

**Term of Contract:**

<table>
<thead>
<tr>
<th>Implementation:</th>
<th>13 Months</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maintenance:</td>
<td>39 Months</td>
</tr>
<tr>
<td>Expiration Date:</td>
<td>December 31, 2015</td>
</tr>
</tbody>
</table>

**Contract Routing:**

1. Prepared by: Tami Gee-Hardy

2. Attorney signoff:

3. AS Finance reviewed:

4. IT reviewed (if IT related):

5. Contractor signed:

6. Submitted to Exec.:

7. Council approved (if necessary):

8. Executive signed:

9. Original to Council:

**Date:**

- 11/13/2014
- 11/14/14
- 11/13/14
- 11/13/14
- 11/14/14

Last Ed: 2506414
MEMORANDUM

TO: Jack Louws, County Executive
Whatcom County Council

FROM: Perry Rice, IT Manager
Denise Toth Banyan, Associate Manager

RE: Contract for a Replacement Telecommunications System

DATE: November 13, 2014

Enclosed for your consideration is the proposed contract between Norstan Communications, Inc. d/b/a Black Box Network Services (Black Box) and Whatcom County for the acquisition, implementation and maintenance of a replacement telecommunications system.

• **Background and Purpose**

Whatcom County Government’s current Ericsson MD110 telecommunications system has been in place for approximately 22-years. The system is at the end of its useful life and support from the manufacturer will no longer be available after March 31, 2015. This system is used by all Whatcom County departments and is critical to ongoing government operations and public service.

An independent consulting firm (COMgroup) assisted Whatcom County with an organization wide needs assessment and the specifications for a Request for Proposal (RFP). Black Box has been selected in RFP #14-37 to acquire, implement and support a new telecommunications system manufactured by ShoreTel Inc.

• **Funding Amount and Source**

The amount of the contract is $843,759.29. The Telecommunications System Project Fund was established in Ordinance 2014-013 and amended in Ordinance 2014-037 to fund this project. A high-level breakdown of the contract costs is provided below.

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Telecommunications Equipment and Software</td>
<td>$516,151.62</td>
</tr>
<tr>
<td>Black Box Implementation Services</td>
<td>$159,256.37</td>
</tr>
<tr>
<td>3-Years of Annual Support</td>
<td>$168,351.30</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$843,759.29</strong></td>
</tr>
</tbody>
</table>

Please contact Perry Rice at x52511 or Denise Toth Banyan at x50639 if you have any questions or concerns regarding the terms of this agreement.
CONTRACT FOR PRODUCTS AND SERVICES AGREEMENT  
Telecommunications System Replacement

Norstan Communications, Inc. d/b/a Black Box Network Services ("Black Box"), hereinafter called Contractor, and Whatcom County, hereinafter referred to as County, agree and contract as set forth in this Agreement, including:

Contract for Products and Services Agreement .................................................. pp. 01 to 03  
Exhibit A (Scope of Work) .............................................................................. pp. 04 to 37  
   Schedule A Products and Services ............................................................. pp. 05 to 13  
   Schedule A - Equipment Listing............................................................... pp. 14  
   Whatcom County Government - ShoreTel System Design... pp. 15  
   Statement of Work .................................................................................. pp. 16 to 32  
   Installation Responsibilities Policy ............................................................. pp. 33  
   Warranty Services Policy ......................................................................... pp. 34  
   Periodic Services Policy .......................................................................... pp. 35  
   ShoreTel End User License Agreement .................................................... pp. 36  
   Black Box Comprehensive Service Plan .................................................. pp. 37  

Exhibit B (Compensation) ............................................................................... pp. 38  
Exhibit C (Certificate of Insurance) ............................................................... pp. 39

Copies of Exhibits A, B and C are attached hereto and incorporated herein by this reference as if fully set forth herein. The parties' signatures below constitute agreement to all documents contained in the above exhibits.

The terms and conditions of the Master Agreement for Products and Services (Black Box Agreement No. 16554) apply to this agreement. Contractor's response of July 1, 2014 to the Unified Communications System RFP # 14-73 is incorporated herein by reference.

The term of this Agreement, with the exception of maintenance services, shall commence on the date of execution, and shall, unless terminated or renewed as elsewhere provided in the Agreement, continue until December 31, 2015. Maintenance services has its own term of 39 months as identified in Exhibit A.

The general purpose or objective of this Agreement is to: acquire, install, and maintain a ShoreTel telecommunications system, 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 $843,759.29. This is a fixed price contract with payments by milestone as identified in Exhibit B. The Contract Number, set forth above, shall be included on all billings or correspondence in connection therewith.

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:

   Perry Rice, Information Technology Manager  
   311 Grand Ave, Suite 305  
   Bellingham, WA 98226  
   (360) 676-7684

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.
IN WITNESS WHEREOF, the parties have executed this Agreement this ___ day of _____________, 2014.

CONTRACTOR:
Norstan Communications, Inc. d/b/a Black Box Network Services

__________________________________________
Steve Kitchen, Director
5050 Lincoln Drive, Suite 300
Minnetonka, MN 55346

STATE OF MINNESOTA
)

COUNTY OF HENNEPIN
)

On this ___ day of __________, 2014, before me personally appeared _____________ to me known to be the _______________ (title) of _______________ (Company) and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

__________________________________________
NOTARY PUBLIC in and for the State of Minnesota, residing at _______________. My commission expires _______________.

WHATCOM COUNTY:

Recommended for Approval:

_________________________ 11/14/2014
IT Manager  Date

Approved as to form:

_________________________ 11/14/14
Prosecuting Attorney  Date

Approved:

Accepted for Whatcom County:

By: _______________________
Jack Louws, Whatcom County Executive

STATE OF WASHINGTON
)

COUNTY OF WHATCOM
)

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 _______________.

Contract for Products and Services Agreement
Telecommunications System Replacement
CONTRACTOR CONTACT NAME:

Jay Ivey
Black Box Network Services
432 N. 44th St., Suite 200
Phoenix, AZ 85008
Contact Phone: 602-267-3322
Contact FAX: 952-352-1779
Contact Email: jay.ivey@blackbox-vs.com
EXHIBIT "A"
(SCOPE OF WORK)
SCHEDULE A
PRODUCTS and SERVICES

Whatcom County Information Technology ("Customer") hereby orders, and Norstan Communications, Inc. d/b/a Black Box Network Services ("Black Box") agrees to provide, the Products and Services listed in this Schedule A.

SUMMARY OF PRODUCTS, SOFTWARE AND SERVICES
AS DETAILED ON THE FOLLOWING PAGES

<table>
<thead>
<tr>
<th>Job No.</th>
<th>Product Type</th>
<th>Installation Address (City, State)</th>
<th>Total Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>J077550</td>
<td>ShoreTel Enterprise</td>
<td>BELLINGHAM, WA</td>
<td>$417,059.50</td>
</tr>
<tr>
<td>J077551</td>
<td>ShoreTel Conferencing Unit</td>
<td>BELLINGHAM, WA</td>
<td>$8,041.00</td>
</tr>
<tr>
<td>J077552</td>
<td>ShoreTel Mobility Router</td>
<td>BELLINGHAM, WA</td>
<td>$9,620.00</td>
</tr>
<tr>
<td>J077553</td>
<td>Black Box Support Contract</td>
<td>BELLINGHAM, WA</td>
<td>$154,877.00</td>
</tr>
<tr>
<td>J077554</td>
<td>E911 Emergency App</td>
<td>BELLINGHAM, WA</td>
<td>$40,120.00</td>
</tr>
<tr>
<td>J077558</td>
<td>Black Box Implementation Services</td>
<td>BELLINGHAM, WA</td>
<td>$146,510.00</td>
</tr>
</tbody>
</table>

Total Price - All Jobs $776,227.50
Applicable Tax (8.7%) $67,531.79
Project Total $843,759.29

Attached Exhibits:
Schedule A – Equipment Listing
Whatcom County Government – ShoreTel System Design
Statement of Work
Warranty Service Policy
Installation Responsibilities Policy
ShoreTel End User License Agreement
Periodic Services Policy
Black Box / ShoreTel Comprehensive Service Plan

Quotation Expiration Date: December 12, 2014

By signing this Schedule A, Black Box and the Customer agree that the terms of the referenced Master Agreement for Products and Services and the referenced Exhibit(s) and Schedule(s) attached hereto apply to the Products, Software and Services listed in this Schedule A. In the event Customer cancels an Equipment Order prior to any installation activity, Customer agrees to pay Black Box reasonable costs incurred. This Schedule A is subject to acceptance by Black Box. The Prices in this Schedule A are valid until the Quotation Expiration Date specified above, except for discounted pricing identified under Other Terms Applicable to this Schedule.

The Products and their respective Prices are set forth in this Schedule A beginning on the next page.

Customer: Whatcom County Information Technology
Norstan Communications, Inc.
d/b/a/ Black Box Network Services

Signature   Title
Printed Name  Date

Customer: Whatcom County Information Technology
Norstan Communications, Inc.
d/b/a/ Black Box Network Services

Signature   Title
Printed Name  Date

Contract for Products and Services Agreement
Telecommunications System Replacement
**SCHEDULE A**

**PRODUCTS**

**Order Type:**
- [x] Product Order
- [ ] Product Upgrade Order

**Product Installation Responsibility:**
- [x] Black Box
- [ ] Customer

**Customer Billing Address:**
WHATCOM COUNTY
STE 305
311 GRAND AVE
BELLINGHAM, WA 98225

**Product Location Address (Premises):**
Whatcom County Information Technology
STE 305
311 GRAND AVE
BELLINGHAM, WA 98225-4038

**Payment Terms:**
Reference Contract for Products & Services:
- Exhibit A (Scope of Work) Schedule A – Equipment Listing
- Exhibit B (Compensation)

**Warranty Term:**
39 months from shipment

**Intended Installation Date:**

Unless otherwise noted, billings are issued on a site-by-site basis.

**Product Description:**

<table>
<thead>
<tr>
<th>Qty</th>
<th>Product</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>ShoreTel Enterprise BASE SYSTEM</td>
<td>ShoreGear 220T1 - 1U half width, Max Capacities: 1 T1, 220 IP Phones</td>
</tr>
<tr>
<td>14</td>
<td></td>
<td>ShoreGear 24A (24 Analog Extensions)</td>
</tr>
<tr>
<td>7</td>
<td></td>
<td>ShoreGear 50 (50 IP Phones, 2 Analog Phones, 4 Analog Trunks)</td>
</tr>
<tr>
<td>10</td>
<td></td>
<td>ShoreGear 90 (90 IP Phones, 8 Analog Trunk, 4 Analog Telephone)</td>
</tr>
<tr>
<td>7</td>
<td></td>
<td>ShoreGear T1k (1/2 Width 1U)</td>
</tr>
<tr>
<td>1</td>
<td>CALLCENTER</td>
<td>CC-ECC Redundant Server License</td>
</tr>
<tr>
<td>1</td>
<td></td>
<td>ECC Base 10 Package for release 9 - Includes server based software for contact center. Includes 10 Agent licenses (inbound voice / callbacks), 30 IVR Port, 1 Supervisor, 2 group/agent feed licenses.</td>
</tr>
<tr>
<td>105</td>
<td></td>
<td>Workgroup Agent Access License</td>
</tr>
<tr>
<td>34</td>
<td></td>
<td>Workgroup Supervisor Access License</td>
</tr>
<tr>
<td>900</td>
<td>DESKTOP</td>
<td>IP Phone IP 480g</td>
</tr>
<tr>
<td>50</td>
<td></td>
<td>IP Phone IP 655</td>
</tr>
<tr>
<td>115</td>
<td>LICENSES</td>
<td>Add On Bundle of 5 Web Dialer plus 5 Application Dialer license</td>
</tr>
<tr>
<td>12</td>
<td></td>
<td>Additional Site License</td>
</tr>
<tr>
<td>1</td>
<td></td>
<td>Base Bundle of 50 Web Dialer plus 50 Application Dialer license</td>
</tr>
<tr>
<td>1</td>
<td></td>
<td>Distributed Voice Services License</td>
</tr>
<tr>
<td>625</td>
<td></td>
<td>Extension &amp; Mailbox License</td>
</tr>
<tr>
<td>565</td>
<td></td>
<td>Extension-only License</td>
</tr>
<tr>
<td>24</td>
<td></td>
<td>Operator Access License</td>
</tr>
<tr>
<td>650</td>
<td></td>
<td>Personal Access License</td>
</tr>
<tr>
<td>80</td>
<td></td>
<td>Professional Access License</td>
</tr>
<tr>
<td>40</td>
<td></td>
<td>SIP Trunk Software License</td>
</tr>
</tbody>
</table>

**Contract for Products and Services Agreement**
Telecommunications System Replacement
## SCHEDULE A
### PRODUCTS and SERVICES

<table>
<thead>
<tr>
<th>Qty</th>
<th>Product</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>ShoreTel Enterprise MDF</td>
<td></td>
</tr>
<tr>
<td>20</td>
<td>SHIPPIING</td>
<td>Rack Mount Tray Kit for SG switch 1U half width switches</td>
</tr>
<tr>
<td>2738</td>
<td>SOFTWARE</td>
<td>Freight Charges</td>
</tr>
<tr>
<td>1</td>
<td></td>
<td>Report Scheduler - Application that runs, stores, and delivers CDR based</td>
</tr>
<tr>
<td></td>
<td></td>
<td>historical reports (both built-in and Enhanced) unattended.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>ShoreTel 14.2 Software Enterprise</td>
</tr>
<tr>
<td>1</td>
<td></td>
<td>3205 System Administrator Training (per student)</td>
</tr>
<tr>
<td>2</td>
<td></td>
<td>$417,059.50</td>
</tr>
</tbody>
</table>

**Other Terms Applicable to this Schedule:**
SCHEDULE A
PRODUCTS

Order Type:
☑ Product Order
☐ Product Upgrade Order

Product Installation Responsibility:
☐ Black Box
☐ Customer

Customer Billing Address:
WHATCOM COUNTY
STE 305
311 GRAND AVE
BELLINGHAM, WA  98225

Product Location Address (Premises):
Whatcom County Information Technology
STE 305
311 GRAND AVE
BELLINGHAM, WA  98225-4038

Payment Terms:
Reference Contract for Products & Services:
  Exhibit A (Scope of Work) Schedule A – Equipment Listing
  Exhibit B (Compensation)

Unless otherwise noted, billings are issued on a site-by-site basis.

Payment Terms:
Reference Contract for Products & Services:
  Exhibit A (Scope of Work) Schedule A – Equipment Listing
  Exhibit B (Compensation)

Unless otherwise noted, billings are issued on a site-by-site basis.

Product Description:

<table>
<thead>
<tr>
<th>Qty</th>
<th>Product Description</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>ShoreTel Conferencing Unit BASE SYSTEM</td>
<td>SA-400 appliance required to host Conferencing and Instant Messaging</td>
</tr>
<tr>
<td></td>
<td>LICENSES</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Total Purchase Price (exclusive of taxes)</td>
<td>10 Concurrent Audio Conferencing Ports $8,041.00</td>
</tr>
</tbody>
</table>

Other Terms Applicable to this Schedule:
Order Type:  
- [x] Product Order  
- [ ] Product Upgrade Order

Product Installation Responsibility:  
- [x] Black Box  
- [ ] Customer

Customer Billing Address:  
WHATCOM COUNTY  
STE 305  
311 GRAND AVE  
BELLINGHAM, WA 98225

Product Location Address (Premises):  
Whatcom County Information Technology  
STE 305  
311 GRAND AVE  
BELLINGHAM, WA 98225-4038

Payment Terms:  
Reference Contract for Products & Services:  
- Exhibit A (Scope of Work) Schedule A – Equipment Listing  
- Exhibit B (Compensation)

Unless otherwise noted, billings are issued on a site-by-site basis.

Product Description:  
<table>
<thead>
<tr>
<th>Qty</th>
<th>Product</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>135</td>
<td>ShoreTel Mobility Router LICENSES</td>
<td>Mobility Client Access License for one end user</td>
</tr>
<tr>
<td>1</td>
<td>ROUTERS</td>
<td>Mobility Router 4000 Appliance; supports up to 1000 users when the appropriate number of client access licenses are purchased.</td>
</tr>
</tbody>
</table>

Total Purchase Price (exclusive of taxes) $9,620.00

Other Terms Applicable to this Schedule:
SCHEDULE A
SERVICE

Order Type:
☒ Service Order
☐ Service Contract Upgrade Order

Service Responsibility:
☒ Black Box
☐ Customer

Customer Billing Address:
WHATCOM COUNTY
STE 305
311 GRAND AVE
BELLINGHAM, WA 98225

Service Location Address (Premises):
Whatcom County Information Technology
STE 305
311 GRAND AVE
BELLINGHAM, WA 98225-4038

Billing Terms:
Reference Contract for Products & Services:
   Exhibit A (Scope of Work) Schedule A – Equipment Listing
   Exhibit B (Compensation)

Billing Type:
IN ADVANCE

Maintenance Term:
39 months from shipment

Maintenance Type:
ShoreTel

Intended Installation Date:
TBD

Unless otherwise noted, billings are issued on a site-by-site basis.

Service Description:

<table>
<thead>
<tr>
<th>Qty</th>
<th>Product</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>154877</td>
<td>ShoreTel Support Contracts CONTRACT</td>
<td>Partner Support (3 Years, No Phones)</td>
</tr>
<tr>
<td>1</td>
<td>Total Purchase Price (exclusive of taxes)</td>
<td>Black Box ShoreTel Comprehensive Support Plan</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Three Months Service Contract Extension</td>
</tr>
<tr>
<td></td>
<td></td>
<td>$154,877.00</td>
</tr>
</tbody>
</table>

Other Terms Applicable to this Schedule:
SCHEDULE A PRODUCTS

Product Job Covered by this
Job No. 77551

Product Description:

<table>
<thead>
<tr>
<th>Product</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>BASE SYSTEM</td>
<td>SA-400 appliance required to host Conferencing and Instant Messaging</td>
</tr>
<tr>
<td>LICENSES</td>
<td>10 Concurrent Audio Conferencing Ports</td>
</tr>
</tbody>
</table>
SCHEDULE A
PRODUCTS and SERVICES

Order Type:
☒ Product Order
☐ Product Upgrade Order

Product Installation Responsibility:
☒ Black Box
☐ Customer

Customer Billing Address:
WHATCOM COUNTY
STE 305
311 GRAND AVE
BELLINGHAM, WA 98225

Product Location Address (Premises):
Whatcom County Information Technology
STE 305
311 GRAND AVE
BELLINGHAM, WA 98225-4038

Payment Terms:
Reference Contract for Products & Services:
   Exhibit A (Scope of Work) Schedule A – Equipment Listing
   Exhibit B (Compensation)

Warranty Term:
30 months from shipment

Unless otherwise noted, billings are issued on a site-by-site basis.

Product Description:

<table>
<thead>
<tr>
<th>Qty</th>
<th>Product</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>E911 Emergency App BASE SYSTEM</td>
<td>Emergency Gateway Virtual SMB Appliance 500 endpoint license</td>
</tr>
<tr>
<td>2</td>
<td></td>
<td>Emergency Gateway Virtual SMB Appliance - Additional SMB Licenses (per 250 additional endpoint license keys)</td>
</tr>
<tr>
<td>2</td>
<td>SUPPORT</td>
<td>Annual Maintenance &amp; Support – Emergency Gateway Virtual SMB Appliance and License - per additional year (first year included)</td>
</tr>
</tbody>
</table>

Total Purchase Price (exclusive of taxes) $40,120.00

Other Terms Applicable to this Schedule:
Order Type:  
☒ Product Order  
☐ Product Upgrade Order

Product Installation Responsibility:  
☒ Black Box  
☐ Customer

Customer Billing Address:  
WHATCOM COUNTY  
STE 305  
311 GRAND AVE  
BELLINGHAM, WA  98225

Product Location Address (Premises):  
Whatcom County Information Technology  
STE 305  
311 GRAND AVE  
BELLINGHAM, WA  98225-4038

Payment Terms:  
Reference Contract for Products & Services:  
Exhibit A (Scope of Work) Schedule A – Equipment Listing  
Exhibit B (Compensation)

Unless otherwise noted, billings are issued on a site-by-site basis.

Product Description:  

<table>
<thead>
<tr>
<th>Qty</th>
<th>Product Implementation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td>Remote Design, Onsite Installation and Training</td>
</tr>
</tbody>
</table>

Total Purchase Price  
(exclusive of taxes)  
$146,510.00

Warranty Term:  
39 months from shipment

Intended Installation Date:  

Other Terms Applicable to this Schedule:  
Whatcom County will be provided a 50% discount from list price on Enterprise Contact Center Agent and Supervisor Licenses through September 30th, 2015. All other ShoreTel items will be eligible for a 35% discount from list price.

Move, Add and Change hourly rate is $115.00 regular, $172.50 overtime and $230.00 Sunday and holiday.

Regular business hours are 8am - 5pm Monday through Friday.

 Expedited requests would be billed at the hourly rate - an example of an expedited request would be a minor case, as defined, where Whatcom County would like to expedite into an emergency case needing a 90 minute response time. (minor cases have 24 hour response time).

Supplemental end user training can be provided at an hourly rate of $90 per hour.
440


Unified Communications System

Statement of Work

11/13/2014
STATEMENT OF WORK (SOW)

Black Box Network Services (BBNS) will provide Whatcom County with a dedicated Sr. Project Manager to provide the following:

- Single point of contact in all aspects of this engagement including but not limited to scheduling, defining requirements, change control, risk mitigation, escalation, implementation planning, and acceptance.
- Work in accordance with, and under the direction of the Whatcom County Project Manager to verify design specifications and end user requirements.
- Guidance on best practices; however it is understood that the unique design requirements of Whatcom County will be the determining factor.
- One or more Certified Trainers in order to complete the training requirements.
- Project Engineer to be the primary technical resource for delivery of the services proposed herein.
- Where specialized products or third party products are used, the project engineer will be fully versed in those components or additional qualified engineers will be available to the project team as required to support the complete solution.

Whatcom County will provide the following resources:

- An internal Project Manager to work closely with the BBNS project team. This internal Whatcom County Project Manager’s responsibilities will be to facilitate all communication and meetings between the BBNS Project Manager and the Whatcom County project team, and to ensure that Whatcom County is meeting the deadlines for accomplishing any Whatcom County tasks set forth in the project schedule. It is understood that Whatcom County and its designated Project Manager will provide overall project direction.
- One or more resources to assist the BBNS Project Engineer with design specifications, data gathering, and compilation of end-user database.

BBNS suggests the following tasks for assignment to Whatcom County personnel:
- Entry of end-user database in excel spreadsheet provided by BBNS Project Manager to include; end user name, extension number, email, feature requirements, ShoreTel communicator and Voice over Internet Protocol (VoIP) phone configuration, etc.
- Completion of Primary Rate Interface (PRI) Trunking and routing documentation.
- Work hours anticipated for completion of these tasks will depend on what documentation Whatcom County already has on hand and complexity of end-user requirements, but BBNS would estimate 24 hours of Whatcom County labor to complete these tasks.

Whatcom County resources to complete installation of all client-side software. As noted in the SOW details listed below, BBNS Engineers will complete desktop installation for one Unified Communications / Unified Messaging (UC/UM) software client and provide ‘Train the Trainer’ training for Whatcom County Information Technology (IT) staff so they can activate and deploy additional clients. The ShoreTel UC/UM client can be pushed out via Active Directory Group Policies. BBNS will provide Whatcom County IT with the technical information necessary to use Active Directory to deploy the ShoreTel UC/UM software client. Work hours needed for completion will be dependent on deployment method and existing desktop configuration, but client installation should take no more than 5 minutes per workstation.

Whatcom County resources to complete placement and testing of VoIP handsets. BBNS Engineers will provide instructions and ‘Train the Trainer’ training for Whatcom County IT staff so they can configure and place handsets. Work hours needed for completion will be dependent on access to workstations and network ports, but handset placement and testing should take an average of 5 minutes per handset.

Whatcom County Network Engineer to assist with VoIP requirements preparation and VoIP Network Assessment testing. Estimated Whatcom County labor is 8 hours.
• Whatcom County IT staff to assist with necessary integrations, testing and deployment with Microsoft Exchange On-Line, Microsoft Active Directory, SQL Server and other County technology infrastructure and applications as needed to complete project. Estimated Whatcom County labor is 8 hours.

• Whatcom County resource to participate in system acceptance testing and sign off as well as cutover assistance. Whatcom County to provide a resource for acceptance testing and cutover assistance for 1 day for cutover and 1 day for follow-up/resolution per each cutover phase.
**System Test Plan rough draft below to be performed for each phase.**

**ROUGH DRAFT - ShoreTel System Test Plan**

<table>
<thead>
<tr>
<th>Date</th>
<th>Tested by:</th>
<th>Passed</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td><strong>IP Phone Testing</strong></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Test IP phones on Whatcom County Network</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Test Call Quality</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Test inter-office calling</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Test Phone features and functions</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td><strong>Test PRI Trunking</strong></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Connect and test Telco Circuits</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Test inbound DID calling</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Test Outbound Local, Long Distance, International and 911 Calling</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Verify Caller ID-Inbound and Outbound Calling</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Test Emergency Power Failure Stations</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Test Paging</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td><strong>Test Communicator Desktop Clients</strong></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Verify inbound and outbound call control</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Test IM functionality</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Test Outlook Integration</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Test Unified Messaging</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td><strong>Test Voicemail</strong></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Check Outlook for voicemail message link</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Play voicemail message by double-clicking the voice-mail link</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>While on a call; receive second inbound call after 4 rings; call should go to voicemail</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>While on a call, receive another call, when toast pops, click &quot;Send to Voicemail&quot;</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Main number auto-attendant &amp; Phone Tree Routing</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>On/Off hours testing</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Test Emergency Weather Announcements</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td><strong>Conference Bridge</strong></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Test Conference Bridge Calling</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td><strong>Contact Center and IVR Applications</strong></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Test Call routing and call delivery</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Test IVR menus</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Test Agent and Supervisor Client applications</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Test Call Center on/off hours routing</td>
</tr>
</tbody>
</table>

**Notes if test failed:**
Project Plan/Schedule

BBNS Project Manager will provide a detailed Project Plan/Schedule documenting all activities and timelines associated with the project including, but not limited to:

- Equipment ordered
- Equipment received
- Network readiness assessment
- Site preparedness
- Network and provider services coordination
- System design and configuration
- Equipment pre-programming and testing
- On-site training – timelines for system administration and end user training
- On-site installation
- Testing and acceptance
- On-site and remote post installation support
Whatcom County - Implementation Project Milestones (Draft)- Project Plan will be finalized during the initial kick-off meeting.

<table>
<thead>
<tr>
<th>Task Name</th>
<th>Estimated Duration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Core Project Team Kickoff Meeting</td>
<td>1 day</td>
</tr>
<tr>
<td>Approve Project Plan</td>
<td>1 day</td>
</tr>
<tr>
<td>Network Readiness Assessment</td>
<td>10 days</td>
</tr>
<tr>
<td>On-Site Database Meeting</td>
<td>5 days</td>
</tr>
<tr>
<td>Department Kickoff Meeting</td>
<td>1 day</td>
</tr>
<tr>
<td>System Design and Configuration</td>
<td>3 days</td>
</tr>
<tr>
<td>Functional Design and Configuration</td>
<td>3 days</td>
</tr>
<tr>
<td>User Configuration</td>
<td>3 days</td>
</tr>
<tr>
<td>Final Database Completion Cut-Off</td>
<td>1 day</td>
</tr>
<tr>
<td>On-Site Preparation &amp; Installation</td>
<td>5 days</td>
</tr>
<tr>
<td>Equipment Pre-Program</td>
<td>5 days</td>
</tr>
<tr>
<td>On-Site System Testing</td>
<td>2 days</td>
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<tr>
<td>Phase I (Pilot Group) Training</td>
<td>2 days</td>
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<tr>
<td>Phase I (Pilot Group) Final Cutover Planning Meeting</td>
<td>1 day</td>
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<td>Phase I (Pilot Group) System Cutover (~50 to 100 phones)</td>
<td>3 days</td>
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<tr>
<td>Phase II - Department Rollout (~250 to 300 phones)</td>
<td>45 days</td>
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<tr>
<td>Phase III – Department Rollout (~300 phones)</td>
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<tr>
<td>Old Phone System Decommission</td>
<td>2 days</td>
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<tr>
<td>Project Completion / Final System Acceptance (~300 phones)</td>
<td>21 days</td>
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Departmental rollout phases to be completed following Phase 1 Pilot Group with an estimated project completion date 5/30/2015.

Project Management Approach will be utilized for the following:

- Risk management- BBNS Project Manager will develop site specific testing procedures to be followed for system cutovers. All service affecting tasks will be scheduled and approved in writing by Whatcom County personal.
- Issues management- BBNS Project Manager will maintain an open issues log and manage any issues until resolution is found with all open issues being addressed and status updates provided at the weekly project meetings. BBNS will promptly escalate issues to ShoreTel technical support.
- Financial management- BBNS Project Manager will provide change orders for Whatcom County's approval for any items that fall outside of the approved SOW. An example Installation Change Order is included below.
- Change Control- All changes to the mutually agreed upon SOW will be approved by both parties in writing. Changes include but not limited to; SOW and equipment changes, scheduling changes, process changes.
- Communication Plan- BBNS Project Manager will provide a communication plan and work with Whatcom County Project Manager and team on how to communicate project cutovers and service outages to Whatcom County staff.
**INSTALLATION CHANGE ORDER**

Customer Name and Product Location Address  

Agreement No.  
Project No.  
Job No.  
Change Order No.  
Customer No.  
Written By  

WE HEREBY AGREE TO MAKE THE CHANGE(S) SPECIFIED BELOW

<table>
<thead>
<tr>
<th>ADD/DELETE</th>
<th>PRODUCT</th>
<th>DESCRIPTION</th>
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<th>UNIT PRICE</th>
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</table>

TOTAL - THIS CHANGE ORDER  
(Applicable Taxes Not Included)

ICO Notes:

This Installation Change Order becomes part of the above-referenced Job and shall be governed by the terms and conditions in effect for such job.

Whatcom County  

By:  
Printed Name:  
Date:  

Norstan Communications, Inc.  
d/b/a Black Box Network Services  

By:  
Printed Name:  
Date:

Contract for Products and Services Agreement  
Telecommunications System Replacement  

Page 22 of 39
BBNS Project Manager shall:

- Participate in planning meetings, weekly status meetings, weekly conference calls and e-mail communications with Whatcom County to discuss the project and coordinate activities.
- Maintain the Project Plan/Schedule, track dependencies between BBNS and Whatcom County tasks, identify and manage BBNS initiated project risks, and alert both project teams of any timeline slips and their effect on the project’s target end date.
- Work in partnership with Whatcom County’s Project Manager and third party implementation consultant to coordinate BBNS tasks with Whatcom County tasks throughout all phases of the project.
- Provide on-site project management, technical and user support during the phased cut-overs, to include an estimated 2 days of post-live assistance and project management/coordination on-site to assist users and to coordinate resolution of any remaining issues. The BBNS project manager will use an organized incident management process to track, document and resolve all identified issues. This process will be replicated for all phases of the project.
- Provide Project Management throughout the project. The project manager will collaborate and participate in Steering Committee briefings.

NOTE: It is BBNS intent to maintain the above requirements through an online Whatcom County SharePoint® Account.

BBNS SharePoint® - Whatcom County Home Page

Welcome to the Whatcom County SharePoint Site

BBNS SharePoint® - Whatcom County Project Plan

A project task list has been created to display a collection of tasks that are part of the project. After the project tasks list has been determined, you can add tasks, assign resources to tasks, update the progress on tasks, and view the task information on bars that are displayed along a timeline.
BBNS SharePoint® - Whatcom County Document Library
Document libraries are collections of files that can be shared with team members via the Web on Microsoft SharePoint. For example, document folders have been created for this project, and team members can use their Web browsers to find files, read them, and make comments.
BBNS SharePoint® - Whatcom County Discussion Boards
Discussion Boards have been created to share information and discuss important topics pertaining to the project. The discussion board shows the most recent discussion first, as well as the number of replies for each discussion. That way, you can quickly see which discussions have the most recent activity and which ones are the most popular.
BBNS SharePoint® - Whatcom County Outlook Alerts

You can use Microsoft Office Outlook to track updates and manage notifications from the SharePoint site. You can receive alerts when items change. Alerts are sent as messages to your Inbox when content changes on the SharePoint site. You can specify the conditions for receiving alerts — for example, when any changes occur or when a new item is created. You can also choose whether you want to receive the alerts immediately or to receive a daily or weekly summary.

The Whatcom County Project Manager shall:

- Participate in planning meetings, weekly status meetings, weekly conference calls and e-mail communications with the Vendor to discuss the project and coordinate activities.
- Identify Whatcom County initiated project risks and manage resolution.
- Monitor project budgets, approve billings.
- Manage project communications with governance bodies.
- Work in partnership with BBNS Project Manager to coordinate Whatcom County resources and tasks throughout for all aspects of the project.

BBNS Pre-Installation & Network Readiness for VoIP System

- BBNS will work with designated Whatcom County resource to perform a Voice Readiness Assessment to confirm network readiness for VoIP and will provide a written report documenting findings and any required remediation that is based on the specific requirements of the proposed solution. Where required, Whatcom County will perform agreed-upon remediation and work with BBNS to verify network readiness.
- BBNS will define: Quality of Service (QoS) settings; IP subnet and Virtual Local Area Network (VLAN) recommendations; Domain Name Service (DNS), Trivial File Transfer Protocol (TFTP), Dynamic Host Configuration Protocol (DHCP), and Active Directory (AD) configuration requirements; settings to enable Virtual Private Network (VPN) and wireless Local Area Network (LAN) operations; compatibility needs of network monitoring tools; and make suggestions to address any potential firewall issues.
• BBNS will support and train designated Whatcom County resource with implementation and testing of QoS and other configuration settings; and will work with designated Whatcom County resource to resolve any voice quality issues.

Environmental

• BBNS will perform site inspections to assess power, cooling, equipment layout requirements and communicate any additional requirements to customer.
• Whatcom County will perform changes as recommended by site inspections to provide adequate environmental conditions and equipment layout requirements.
• BBNS will ensure that all services are tested and in place at system install.

Carrier Services

• BBNS will work with Whatcom County to coordinate the order, install and test all voice and data circuits as required prior to implementation and ensure that all telecommunications demarcations and circuits are clearly identified. BBNS will validate the carrier services match the ShoreTel system requirements.
• BBNS will work with Whatcom County Project Manager to ensure all provider series are in place and tested prior to implementation.

NOTE: BBNS also has a Carrier Services Division that works with 20+ service providers and we are able to help Whatcom County with order placement and management of the carrier services installation utilizing a Carrier Services Specialist dedicated to the Whatcom County Project. This will provide a single point of contact for this project and will work with Whatcom County Project Manager to ensure all provider services are in place and tested prior to implementation.

Equipment Install

• BBNS, in collaboration with Whatcom County IT staff, will install all ShoreTel voice switches based on final approved network design.
• ShoreTel voice switches will be connected to the Whatcom County LAN at each site.
• Main Distribution Frame (MDF) cables will be installed for each voice switch supporting analog stations and trunks. Analog station & trunks will be identified at each ShoreTel switch location and a cut sheet will be created for cutover of analog devices.

Tie-Line Trunk to Ericsson

• BBNS will provide support to keep the existing Ericsson Private Branch Exchange (PBX) coexisting with the new ShoreTel system through project completion.
• BBNS will install a Tie-line connection between the ShoreTel platform and the existing Ericsson PBX to provide 4-digit dialing between the platforms.
• BBNS will provide Ericsson programming to move users from the Ericsson to the ShoreTel for the proposed phased cutover plan.

End User Requirements

• BBNS and Whatcom County Project Manager and team will conduct meetings with departmental representatives as needed and will provide guidance and recommendations based on best practices on telephone features, button layout and ShoreTel UC/UM software clients.
• BBNS will work with Whatcom County resources to collect, compile, and validate end user information (non-call center agents).
• BBNS will work with Whatcom County resources to collect, compile, and validate information for Call Center Agents and Supervisors.
• BBNS will design and configure IP telephones and PC Client templates based on s

Routing

• BBNS will compile information on current and proposed dial plan, routing restrictions, alternate routing, and integration with other systems, E911 identification, internal dialing and calling across the Whatcom County network; will build a dial plan and routing tables, validate, and upload into system programming.

E911

• BBNS, in collaboration with Whatcom County IT staff, will install the Enable 911 solution to provide Enhanced 911 functionality.
• BBNS will test E911 routing for each phase of the cutover.
• Whatcom County will participate in E911 design and planning for deployment of E911 solution.
• Whatcom County will complete any configuration on LAN switches to support integration with the E911 solution.

Automated Call Handling & IVR

• BBNS will meet with designated Whatcom County staff to determine call flow and IVR call handling as well as, validate design, document and build call flow.
• BBNS will work with Whatcom County to record all required announcements based on the routing scheme.

Contact Center Requirements

BBNS will:
• Meet with designated contact center representatives to determine call flow design, agent and supervisor requirements.
• Compile and document contact center design including:
  o Routing rules
  o Agent capabilities
  o Supervisor capabilities
  o Agent and supervisor PC client
  o Access to real-time and historical reports
  o Design of standard and any required custom reports
• Validate and document contact center design.
• Compile, validate and configure agent and supervisor queue and skills assignments.
• Configure queues and skills-based routing.
• Upload contact center programming into system.
• Configure agent and supervisor desktops (PC clients).
• Work with the Whatcom County desktop support team to deploy the ShoreTel PC client.

Training

BBNS shall provide the following training:

• Perform knowledge transfer on all elements of the proposed solution for Whatcom County’s implementation team.
• Provide manufacturer certified end user, supervisor, and administrative training.
• Work with Whatcom County Project Manager to determine training curriculum and schedules.
  NOTE: BBNS Trainers are certified on the proposed equipment with at least one year of field training experience; classes will be conducted on live system equipment at the Whatcom County HQ site.
• **BBNS** will provide users with Quick Reference Guides and access to online resources.
• **BBNS** will provide on-site end-user training per below to all interested Whatcom County users of the new ShoreTel telecommunications system. This is estimated to be 900 users.
• Whatcom County IT will provide the Training Center or alternate facility for BBNS to conduct the training.
• End-User Classes will be “hands-on” instructor-led classes with no more than 12 users per class and include training on:
  o Use of basic telephone features
  o Use of PC client
  o Use of voice or multi-media messaging
• Specialized training will be provided for contact center agents that includes:
  o Use of agent functionality as appropriate to agent skill level
  o Operation of PC client including After Call Work Codes and Transaction Codes
  o Access to individual metrics as appropriate
• Specialized training will be provided for supervisors that includes:
  o Review of available supervisor tools
  o Operation of supervisor PC client
  o Access to conditional routing tools including announcements
  o Access to standard reports
  o Creation of custom reports

• **BBNS** will provide ongoing knowledge transfer to designated Whatcom County resources during system design, configuration, implementation and support stabilization.
Specialized training will be provided for System Administration and Management for Whatcom County staff, sufficient to obtain manufacturer certification on system admin functionality. This training maybe on-site or at a vendor/manufacturer training facility as agreed upon.
• **BBNS** has included System Admin training to include:
  o (1) 2-3 Hour Basic Admin training class for up to 5 Whatcom County personal at Whatcom County’s HQ offices. Training to be conducted by BBNS certified ShoreTel engineer onsite.
• Additional training options are available including week long training courses at ShoreTel’s training center. BBNS can work with Whatcom County to determine the best training courses to meet your staff’s needs.
  **NOTE**: **BBNS will make available any other training tools deemed advantageous to the ongoing training and management of the proposed systems, including but not limited to access to online resources and continuing education.**

**Installation Coordination**

**BBNS** will:
• Work with Whatcom County Project Manager to determine site installation, deployment schedule, cutover plan, and coordination of equipment delivery. Cutover work will be carefully scheduled and performed with minimal disruption to Whatcom County operations including the potential for the project being disrupted due to adverse weather conditions and public service emergencies.
• Assume all responsibility for delivery, installation, configuration and testing of all vendor supplied equipment, software and support services proposed.
• Install, configure and test all core equipment. Testing will include system failover and key integration points – i.e. Unified Messaging to Microsoft Exchange On-line and E911. The final test plan will be developed and agreed to with Whatcom County after the project kick-off.
• Stage and deploy phones according to the agreed-upon schedule. Per SOW details; Whatcom County staff will provide a resource to work with BBNS to stage and deploy phones.
• Remove and properly dispose of all telephones and PBX common equipment upon successful cutover.
• Test and verify:
  o Connectivity, registration, and programming accuracy of each IP phone.
  o Automatic Call Distribution (ACD) queues and skills-based routing.
  o Auto attendant call handling including announcements and prompts.
• Business continuity failover and recovery.
  • Trunking, standard and alternate call routing, inbound and outbound dial plan.
• Provide cutover coordination and support that includes the following:
  • Work with the Whatcom County Project Manager to determine timeline and schedule for migration to the new system.
  • Provide onsite and remote (as needed) resources to support migration schedule.
  • Provide resources for an estimated (2) days of onsite business support following cutover of the core system and pilot.
Post Installation Test and Acceptance

BBNS will provide Whatcom County with the following:

- Adequate resources for all post-cutover issues including training, knowledge transfer, troubleshooting and user programming adjustments.
- A Test and Acceptance document for review and approval for Whatcom County. Once the installation has been completed, final acceptance testing shall be performed upon the system following the phased cutover to all Whatcom County departments. This test and verification period, if successful, shall consist of twenty-one (21) consecutive days of normal traffic load with no major component failures and no major alarms defined as:
  - Any core server, core appliance, or Telco gateway processing failure;
  - Any core server, core appliance, or Telco gateway power supply failure;
  - Inability for the contact center sub-system to route calls as designed;
  - 10% or more of incoming/outgoing trunks inoperable;
  - 10% or more stations at a site inoperable; or
  - 10% or more of the voice mail system users inoperable; or
  - Any issue escalated to a major alarm status by Whatcom County. Whatcom County shall have sole discretion in identifying a major alarm.
- In addition, the system shall perform as described in the Black Box response to RFP #14-37 and this Statement of Work, including completion of all punch list items created as part of cutover testing.
- Work with Whatcom County resources to conduct and document test acceptance and site sign off.

NOTE: Whatcom County shall accept the installed system after a signed letter of official system certification with successful acceptance test results, accompanied by two sets of as-built documentation provided by BBNS, is received, reviewed with the BBNS, and accepted in writing by Whatcom County.

Documentation

BBNS will provide Whatcom County with documentation compiled during the course of the project.

- Final as-built documentation will be provided by BBNS including, but not limited to:
  - Detailed system configuration settings and device configurations
  - IP phone inventory information (templates, extensions, MAC addresses, serial numbers)
  - Voice mail configurations
  - End user, agent and supervisor profiles
  - Contact center configurations
  - Call flow documentation
  - Queue and skill configurations
  - System architecture diagrams

NOTE: BBNS will provide a description of ongoing support resources available to Whatcom County post installation. For example: knowledge base, website, trouble tickets, user guides, web based training, etc.

- At the conclusion of the project, BBNS will also provide Whatcom County with an electronic export of all project documentation from the BBNS SharePoint® site for this project that is easily accessed.
Assumptions

BBNS assumes the following:

- Whatcom County's network architecture is capable of supporting VoIP traffic as required per the network voice readiness assessment.
- Whatcom County's cabling infrastructure, premise wiring and data connectivity to required equipment is installed, tested and capable of supporting VoIP traffic prior to implementation.
- Whatcom County assigned resources are available to complete project tasks on a timely basis.
- Whatcom County will provide BBNS with an adequate work space for BBNS project managers and engineers at Whatcom County's location for the duration of the project.
- Whatcom County will provide BBNS staff, who have successfully passed a background check performed by the Whatcom County Sheriff’s Office (see below), with remote access to the ShoreTel systems once installed at Whatcom County’s location for remote programming and configuration.
- Whatcom County will provide BBNS staff, who have successfully passed a background check performed by the Whatcom County Sheriff’s Office (see below), access to all necessary work spaces for testing.
- Whatcom County will be providing all necessary servers for this project. Black Box will provide hardware and OS requirements for each server. Whatcom County will be responsible for installing the server OS and Black Box will be installing the ShoreTel application on the customer provided servers.

NOTE: BBNS will be providing a Network Assessment assuming Whatcom County will provide resource(s) to help install client agents, with associated costs provided in the scope of this proposal; if Whatcom County does not have the resources and upon pre-approval, BBNS will install the client agents at BBNS’s standard Time and Material rates. BBNS further assumes upon completion of entire Network Assessment, any faulty hardware and/or cabling deficiencies will be corrected and/or replaced by Whatcom County at their cost(s). BBNS will provide pricing for any or all changes necessary to certify a clean assessment upon Whatcom County’s request/approval.

Access to Whatcom County Facilities and Systems

- Whatcom County is required to comply with the Department of Justice Criminal Justice Information Systems (CJIS) Security Policy. Physical or remote access to County facilities and information systems will be restricted to BBNS personnel who have been fingerprinted and have received a security clearance from a background check conducted by the Whatcom County Sheriff's Office.
EXHIBIT
INSTALLATION RESPONSIBILITIES POLICY

This Exhibit describes the installation responsibilities of each party for the Products which you ordered on a Schedule A to the Master Agreement for Products and Services which references this Exhibit. The installation responsibilities for such Products may vary depending on the location where they are installed, and we will notify you if this occurs.

1. BLACK BOX RESPONSIBILITIES

a. INSTALLATION. Except as otherwise noted on Schedule A, we shall provide all installation personnel, tools, equipment and materials necessary to install the Products and shall install the Products in a workmanlike manner and in accordance with all applicable federal, state and local laws. Unless otherwise stated on Schedule A, the Price does not include the cost for removal of any pre-existing equipment, cable or wire from your Premises, or if pre-existing cable or wire is utilized, the cost to bring such cable or wire up to industry standards and/or regulatory requirements. We will secure and pay for all work permits, bonds, fees and licenses necessary to enable us to perform our work.

b. TRAINING. We will provide training in the operation of the Products, if applicable, as noted on the Scope of Work. Additional training, as requested by you, will be provided at our then-current rates.

c. PRODUCT-RELATED REQUIREMENTS. Except as otherwise noted on Schedule A, when Product installation is ordered by you, Black Box will provide the following additional product-related services:

Convergence and Voice Products
i. Station Equipment Returns. Station equipment may be returned for credit during the first thirty (30) days following the final phase Cutover Date, but only if unused and in the original factory packing.

ii. Software Changes. For two weeks following Product Cutover, where remote access is available, we will make minor remote software changes in the Product at no charge, provided that such changes: a) are within the original software configuration; b) do not exceed the parameters of the program; and c) involve changes in Class of Service, Pickup Groups, Com Groups, Forwarding, or System Speed.

iii. Station Design. We will perform the station design and coding necessary for installation of any Products based upon information which our personnel will obtain from you. We will further coordinate the installation of necessary trunking and other facilities with the local telephone company, and you agree to execute such documents as may be necessary to enable us to perform this obligation.

iv. Software Design. When ordered by you, we will perform the software design, installation and implementation in accordance with the detailed project specifications document. We will coordinate the installation of necessary trunking, communications interfaces and other facilities with your telephone and data processing equipment and/or service providers. You agree to execute such documents as may be necessary to enable us to perform the above obligations.

d. BLACK BOX STANDARDS. Black Box's services shall be provided in accordance with Black Box's standard practices, including but not limited to the implementation and utilization of remote access. Variations from Black Box's standards requested by the Customer may be subject to an additional charge. Black Box shall provide prior notice to the Customer of any additional charges under this section which shall be mutually agreed to by the parties.

2. CUSTOMER RESPONSIBILITIES

a. PROGRESS OF THE WORK. To assist us in being responsive to your needs, you agree to provide reasonable written notice that the building, any Customer-provided equipment, software and network facilities on the Premises are ready for us to begin installation.

b. SITE CONDITIONS. You agree to permit or arrange for access to the Premises for our installation and maintenance personnel, to provide a suitably protected area for storage of the Products pending installation, and to furnish adequate utilities and building services as reasonably required by us at your expense. You agree to make available a space on the Premises, including appropriate utility and acoustic requirements, for installation of the Products and to provide and maintain the Premises in compliance with all applicable laws and regulations and according to the environmental specifications established by us and/or the Product manufacturer. You also agree that it shall be your responsibility and expense to provide all conduits, outlets, carpentry, openings, and firestops and to secure and pay for all site permits, bonds, fees and licenses necessary to enable us to perform our work.

Your obligations must be performed on or before the date or dates mutually agreed upon in writing. In addition to the Price of the Products, you agree to pay us all additional and maintenance costs arising from any concealed conditions of the Premises and the cost of all measures taken by us or our subcontractors to protect the health and safety of our or their employees from, and to comply with all applicable laws and regulations relating to, any hazardous material, substance or process at the Premises.

c. PRODUCT-RELATED REQUIREMENTS. You agree to provide the following additional product-related facilities or services:

Except as otherwise noted on Schedule A, you shall take sole responsibility to have the network and connecting hardware properly configured and operational to link/connect with the Products listed on Schedule A per the system design.

For the Telemanagement Products, you are responsible for creating, maintaining and modifying the database of the Products purchased. If requested by Black Box, Customer agrees to implement, install and update Software Owner recommended virus protection software, policies and procedures.

3. ENVIRONMENTAL CONDITIONS

If either party becomes aware of asbestos, hazardous materials or concealed conditions on your Premises, such party agrees to notify the other party promptly, and it shall be your responsibility to correct all such conditions.

Contract for Products and Services Agreement
Telecommunications System Replacement
EXHIBIT
WARRANTY SERVICES POLICY

This Exhibit describes our Warranty Services Policy for the Products which you ordered on a Schedule A to the Master Agreement for Products and Services which references this Exhibit. The terms, conditions and features for such Warranty Services, which include any Service Plans referenced on a Schedule A, may vary depending on the location where the Service is provided, and we will notify you if this occurs.

1. WARRANTY PERIOD
The warranty period applicable to Products purchased by you from us shall be noted on Schedule A, except, however, Product Upgrades or MAC performed by us during the warranty period of a Product will be warranted on the same terms as, and coeterumines with, the remaining term of the Warranty Services Policy for the Product, or for a period of ninety (90) days, whichever is greater. The warranty period shall commence upon shipment on all ShoreTel products and will be for a period of 15 months.

2. COVERAGE HOUR
Coverage Hours are from 8:00 a.m. to 5:00 p.m., Monday through Friday excluding our recognized holidays, unless otherwise noted on Schedule A.

3. BLACK BOX RESPONSIBILITIES
We will perform and respond to all calls for Corrective Maintenance placed during Coverage Hours in accordance with the applicable Service Plan(s) references on the Schedule A. Warranty services may be performed on-site or from a remote location as determined by us.

We will provide new parts or like-new parts necessary to repair the Products. All replaced defective parts will become our property. Tools, test equipment and maintenance materials necessary for performance of Warranty Services will be provided by us.

We will notify you of any Product(s) that has only a manufacturer support or return warranty. In such cases, a copy of the applicable warranty or support procedure will be either supplied with each purchased unit or is available on request, and such procedure shall supersede the other provisions of this Warranty Services Policy.

Our obligations are subject to manufacturer's discontinuation of Product(s) and/or Services. In such event, we agree to meet with you to discuss alternative solutions and pricing which may include, but are not limited to, alternative products, T&M maintenance or upgrades.

We will change the maintenance level passwords in accordance with our established security policy. These passwords are for the use of our maintenance personnel. We may provide this password to the manufacturer of the Product or escalate technical support from the manufacturer.

Black Box's security policy is available upon request. Black Box reserves the right to modify its security policy without notice to you. Black Box is not responsible for the back up, security, or Customer's information system(s). However, Black Box is responsible for initial system set up, testing and back up plan.

If you elect to complete manufacturer certification, we will create a system administration password for your use to perform agreed upon tasks with the database configuration as outlined within our security policy. Except as noted herein, the parties agree not to disclose these passwords without obtaining the prior written consent of the other party.

Black Box's services shall be provided in accordance with Black Box's standard practices, including but not limited to the implementation and utilization of remote access. Variations from Black Box's standards requested by the Customer may be subject to an additional charge. Black Box shall provide prior notice to the Customer of any additional charges under this section which shall be mutually agreed to by the parties.

4. CUSTOMER RESPONSIBILITIES
You shall designate one individual and an alternate to be responsible for coordinating and reporting service calls to us and for assisting us in identifying and/or isolating problems as reasonably requested by us. You agree to permit or arrange for access to the Premises and service personnel and to provide remote access to the Products for troubleshooting purposes. In addition, you agree to provide space at or near the Products for storage of miscellaneous pieces, parts and drawings, and to furnish adequate utilities and building services as reasonably required by us at your expense.

If requested by Black Box, Customer agrees to implement, install and update Software Owner recommended virus protection software, policies and procedures.

For Convergence and Voice Products, you will be responsible, if requested by us, to provide an up-to-date directory listing for all telephones indicating extension number, name of employees, functional title, and location.

For CTI/IDN Products, you shall provide a Black Box-approved power conditioner to support the contracted network server and other critical components. It is your responsibility to maintain backup media, systems and procedures sufficient to meet your internal restoration time requirements.

In the event of your default under this Warranty Services Policy or the applicable Schedule A, and, in addition to our other remedies, we may immediately cease performance.

5. ENVIRONMENTAL CONDITIONS
As a precondition to our duty to provide Warranty Services, you agree to provide and maintain the Premises in compliance with all applicable laws and regulations and according to the environmental specifications established by us and/or the manufacturer.

If either party becomes aware of asbestos, hazardous materials or concealed conditions on your Premises, such party agrees to notify the other party promptly, and it shall be your responsibility to correct all such conditions.

We reserve the right to cease performing service after notice to you if, in our reasonable judgment, our ability to perform such service property and safely is unduly hampered by your acts or omissions, or workplace conditions on the Premises.

6. RELOCATION OF PRODUCTS
Upon ninety (90) days prior written notice, you may, at your expense, relocate and re-install the Products. If re-installation occurs within the established travel zone of one of our offices, this Warranty Services Policy will remain in effect. If re-installation of a Product(s) is beyond any such established travel zone, this Warranty Service Policy for such Product(s) shall become void, at our option.

7. BILLABLE SERVICE/EXCLUSION FROM WARRANTY SERVICE
We will bill you at our current T&M rates for service performed by us due to any of the following circumstances:

a) Your failure to follow our and/or the manufacturer's maintenance or operation instructions for the Product; b) corrective action required as a result of Customer application of Software Owner provided software patches, fixes or updates prior to Black Box's validation; c) theft, strikes, riots, vandalism, acts of war, lightning, water, fire and other perils; d) work performed by persons other than our personnel or without our supervision; e) shock, corrosive atmosphere, electrical damage, accident, air conditioning or humidity control failure; f) service calls necessitated by products not serviced by us; g) normal wear and tear of disposable items such as headsets, magnetic tapes, wet cell batteries, and operating media; h) service requested outside of Coverage Hours or on an expedited basis; i) time required to identify or isolate a problem due to a patch, alteration or repair made by you without our prior written consent; j) any cause other than your ordinary and proper use of the Products; k) work on Customer's system resulting from the presence of a virus; l) services required to accommodate Customer's modifications to network configuration and/or additions of non-Black Box approved or provided hardware or software; or m) backup restoration time.

If you permit access to the internal components of the Products to anyone other than our employees, agents or subcontractors without our prior written permission, we may, in addition to any other remedies, at our option and with prior notice, cancel this Warranty Services Policy and all future service will be provided at our then current T&M rates.

Labor and materials for moves, adds and changes are not included in this Warranty Services Policy.
EXHIBIT

PERIODIC SERVICES POLICY

This Exhibit describes our Periodic Services Policy for the Periodic Services which you ordered on a Schedule A to the Master Agreement for Products and Services which references this Exhibit. The terms, conditions and features for such Periodic Services, which include any Service Plans referenced on a Schedule A, may vary depending on the location where the Service is provided, and we will notify you if this occurs.

1. TERM OF SERVICES

The initial term for the Periodic Services will be noted on Schedule A and renewed automatically at the end of the initial term at our then-current rates for successive terms equal to the initial term unless either party gives the other thirty (30) days prior written notice of its intent not to renew. Prior to maintenance renewal, we may modify the terms of this Exhibit or a Service Plan with sixty (60) days prior written notice which shall become effective unless you notify us otherwise in writing at least thirty (30) days prior thereto.

THE INITIAL TERM FOR THE PERIODIC SERVICES AND ANY RENEWAL TERM ARE NON-CANCELABLE EXCEPT AS PROVIDED IN SECTION 6 HEREOF.

2. COVERAGE HOURS

Coverage Hours are from 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding our recognized holidays, unless otherwise noted in the Service Plan referenced on Schedule A. You may change Coverage Hours consistent with your current Service Plan at the beginning of any billing period with a minimum of thirty (30) days prior written notice.

3. BLACK BOX RESPONSIBILITIES

We will prepare a Schedule A listing the Products which will be covered under this Periodic Services Policy.

We will perform and respond to all calls for Corrective Maintenance placed during Coverage Hours in accordance with the applicable Service Plan(s) referenced on the Schedule A. Time will be measured on coverage days only. All maintenance may be performed on-site or from a remote location as determined by us.

We will provide new parts or like-new parts necessary to repair the Products. All replaced defective parts will become our property. Tools, test equipment and maintenance material necessary for performance of the Periodic Services will be provided by us.

Our obligations are subject to manufacturer’s discontinuation of Product(s) and/or Services. In such event, we agree to meet with you to discuss alternative solutions and pricing which may include, but are not limited to, alternative products, T&M maintenance or upgrades.

We will change the maintenance level passwords in accordance with our established security policy. These passwords are for the use of our service personnel. We may provide this password to the manufacturer of the Product only for escalated technical support from the manufacturer. If you elect to complete manufacturer certification, we will create a system administration password for your use to perform agreed upon tasks with the database configuration as outlined within our security policy. Except as noted herein, the parties agree not to disclose these passwords without obtaining the prior written consent of the other party.

Black Box’s security policy is available upon request. Black Box reserves the right to modify its security policy without notice to you. Black Box is not responsible for the back-up, loss, or security, of Customer’s information system(s). However, Black Box is responsible for initial system set up, testing and back up plan.

Black Box’s services shall be provided in accordance with Black Box’s standard practices, including but not limited to the implementation and utilization of remote access. Variations from Black Box’s standard practices requested by the Customer may be subject to additional cost. Black Box shall provide prior notice to the Customer of any additional charges under this section which shall be mutually agreed to by the parties.

4. CUSTOMER RESPONSIBILITIES

You shall designate one individual and an alternate to be responsible for coordinating and reporting service calls to us and for assisting us in identifying and/or isolating problems as reasonably requested by us. You agree to permit or arrange for access to the Premises for our service personnel and to provide remote access to the Products for service purposes. In addition, you agree to provide space at or near the Products for storage of miscellaneous pieces, parts and drawings, and to furnish adequate utilities and building services as reasonably required by us at your expense.

If requested by Black Box, Customer agrees to implement, install and update Software Owner recommended virus protection software, policies and procedures.

For Convergence and Voice Products, you will be responsible, if requested by us, to provide an up-to-date directory listing for all telephones indicating extension number, name of employees, functional title and location.

5. ENVIRONMENTAL CONDITIONS

As a pre-condition to our duty to provide Periodic Services, you agree to provide and maintain the Premises in compliance with all applicable laws and regulations and according to the environmental specifications established by us and/or the manufacturer. If either party becomes aware of asbestos, hazardous materials or conceded conditions on your Premises, such party agrees to notify the other party promptly, and it shall be your responsibility to correct all such conditions.

We reserve the right to cease performing Services after notice to you if, in our reasonable judgment, our ability to perform such Services properly and safely is unduly hampered by your acts or omissions, or workplace conditions on the Premises.

You acknowledge that the Products serviced here under are by no means invulnerable to network interference or to fraudulent or unauthorized calls or access, and any such charges shall be your responsibility.

6. RELOCATION OF PRODUCTS

Upon ninety (90) days prior written notice, you may, at your expense, relocate and re-install the Products. If re-installation occurs within the established travel zone of one of our offices, this Periodic Services Policy will remain in effect. If installation of a Product(s) is beyond any such established travel zone, the Periodic Services Policy shall terminate for such Product(s) without further obligation or liability to either party, except for payments then due through the relocation date or ninety (90) days after notice, whichever is later.

7. BILLABLE SERVICE/EXCLUSION FROM SERVICE

In addition to the charges set forth on Schedule A, you will be billed at our current T&M rates for service performed by us due to any of the following circumstances:

a) Your failure to follow our and/or the manufacturer’s maintenance or operation instructions for the Product; b) corrective action required as a result of Customer application of Software Owner provided software patches, fixes or updates prior to Black Box’s validation; c) theft, strikes, riots, vandalism, acts of war, lighting, water, fire and other perils; d) work performed by persons other than our personnel or without our supervision; e) shock, corrosive atmosphere, electrical damage, accident, air conditioning or humidity control failure; f) service calls necessitated by products not serviced by us; g) normal wear and tear of disposable items such as headsets, magnetic tapes, wet cell batteries, and operating media; h) service requested outside of Coverage Hours or on an expedited basis; i) time required to identify or isolate a problem due to a patch, alteration or repair made by you without our prior written consent; j) any cause other than your ordinary and proper use of the Products; k) work on Customer’s system resulting from the presence of a virus; l) services required to accommodate Customer’s modifications to network configuration and/or additions of non-Black Box approved or provided hardware or software; or m) backup restoration time.

We reserve the right, at your expense and at our current T&M rates, to inspect any product that has not been serviced by us immediately prior to the Effective Date of this Periodic Services Policy and to require that any nonconforming product meet our and/or the original manufacturer’s specifications.

If you permit access to the internal components of the Products to anyone other than our employees, agents or subcontractors without our prior written permission, we may, in addition to any other remedies, cancel this Periodic Services Policy, and all future service will be provided at our then current T&M rates.

Labor and materials for moves, adds and changes are not included in this Periodic Services Policy.
End User License Agreement

This End User License Agreement (the "Agreement") is a legal Agreement between you (either an individual or an entity) and ShoreTel, Inc. (the "Company"), regarding the use of the Company's software, which may include user documentation provided in "online" or electronic form (the "Software"). By installing, copying, or otherwise using the Software product described in the cover sheet, you agree to be bound by the terms of this Agreement. If you do not agree to the terms of this Agreement, promptly return all CDs, packages and accompanying items (including printed materials and binders or other containers) to the place you obtained them for a full refund.

Grant of License. This Agreement permits you to use the software products you acquired as described in the cover sheet, for internal purposes only. The Software is "in use" on a computer when it is loaded into the temporary memory (i.e., RAM) or installed into the permanent memory (e.g., hard disk, CD-ROM, or other storage device) of that computer.

Copyright. The Software is owned by the Company or its suppliers or licensors and is protected by United States copyright laws and international treaty provisions. Therefore, you may not use, copy, or distribute the Software without authorization.

Restrictions. You may not rent, lease, loan or sublicense the Software. Except as expressly provided herein, you may not transfer any or all of your rights under this Agreement. You may transfer your rights under this Agreement with prior written consent from the Company in case you are acquired or merge with another entity, provided you transfer this Agreement, the Software and all accompanying printed materials, retain no copies, and the recipient agrees to the terms of this Agreement. You may not modify, decompile, disassemble, reverse engineer or otherwise attempt to derive the source code of the Software, except to the extent the foregoing restriction is expressly prohibited by applicable law. You may not modify or create derivative works based upon the Software. ALL RIGHTS NOT EXPRESSLY GRANTED HEREIN ARE RESERVED BY THE COMPANY.

Compliance Assurance. To ensure compliance with the terms of this Agreement, the Company shall have the right to inspect and audit all the books and records relevant to the use of the licenses granted hereunder and reserves the right to request that you conduct an internal audit at any time. If such audit shall disclose any discrepancy between the licenses purchased and the licenses used, you shall promptly pay the Company for any amounts underpaid, together with interest thereon at a rate of 1.5% per month or partial month during which such amount was owed and unpaid, or the highest rate allowed by law, from the date such amount became due until finally paid.

Limited Warranty. The Company warrants that the media on which the Software is furnished under normal use will be free from defects in materials and workmanship for a period of ninety (90) days from the date of receipt. This warranty is valid only for the original purchaser. Some states do not allow limitations on implied warranties, so the above limitation may not apply to you. The Company's entire liability and your exclusive remedy under this warranty will be replacement of the defective media that does not meet the Company's limited warranty and that is returned to the Company or a Company authorized representative with a copy of your receipt. This limited warranty is void if failure of the Software has resulted from accident, abuse, or misapplication. Any replacement Software will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer.

NO OTHER WARRANTIES. YOU ASSUME ALL RESPONSIBILITIES FOR SELECTION OF THE SOFTWARE TO ACHIEVE YOUR INTENDED RESULTS, AND FOR THE INSTALLATION OF, USE OF, AND RESULTS OBTAINED FROM THE SOFTWARE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE COMPANY DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT WITH RESPECT TO THE SOFTWARE AND THE ACcompanyING WRITTEN MATERIALS. SOME STATES DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

NO LIABILITY FOR CONSEQUENTIAL DAMAGES. YOU ASSUME THE ENTIRE COST OF ANY DAMAGE RESULTING FROM THE INFORMATION CONTAINED IN OR COMPILED BY THE SOFTWARE TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. IN NO EVENT WILL THE COMPANY OR ITS SUPPLIERS OR LICENSORS BE LIABLE FOR ANY DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR OTHER PECUNIARY LOSS) ARISING OUT OF THE USE OR INABILITY TO USE THE SOFTWARE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL THE COMPANY'S TOTAL LIABILITY TO YOU FOR ALL DAMAGES IN ANY ONE OR MORE CAUSE OF ACTION EXCEED THE AMOUNT PAID BY YOU FOR THE SOFTWARE. THIS LIMITATION WILL APPLY REGARDLESS OF ANY ESSENTIAL REMEDY. BECAUSE SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

U.S. Government-Restricted Rights. The Software and accompanying documentation are deemed to be "commercial computer Software" and "commercial computer Software documentation," respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any use, modification, reproduction release, performance, display or disclosure of the Software and accompanying documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except as to the extent expressly permitted by the terms of this Agreement.

Export Restrictions. You may not download, export, or reexport the Software (a) into, or to a national or resident of, any country to which the United States has embargoed goods, or (b) to anyone on the United States Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Deny Orders. By downloading or using the Software, you are representing and warranting that you are not located in, under the control of, or a national or resident of any such country or on any such list.

General. This Agreement is governed by the laws of the United States and the State of California, without reference to conflict of laws principles. Any dispute between you and the Company regarding this Agreement will be subject to the exclusive venue of the state and federal courts in the state of California. The Company's licensors and third party beneficiaries of this Agreement are made expressly for the benefit of, and are enforceable by, such licensors. This Agreement is the entire agreement between you and the Company and supersedes any other communications or advertising with respect to the Software and documentation. If any provision of this Agreement is held invalid, the remainder of this Agreement will continue in full force and effect. Should you have any questions concerning this Agreement, or if you desire to contact the Company for any reason, please contact: Legal Department ShoreTel, Inc Bldg Stewart Drive Sunnyvale, CA 94085 Tel: 408-331-3330/ Fax: 408-331-3333

Rev. 11/17/08
COMPREHENSIVE SERVICE PLAN

SHORETEL SUPPORT SOLUTIONS

The Customer Solutions Center will provide remote diagnostics and resolve the problem or dispatch on-site assistance if needed. The Comprehensive Plan includes all ShoreTel branded parts, labor, priority response and emergency protection for major failures.

SERVICE FEATURES

**SUPPORT FROM SINGLE SERVICE PROVIDER**
- One Toll-Free 800 # or via CSC.com for all Service Requests *
- Materials: **Major hardware shipped over night.** Phone replacement shipped ground
- Labor Included During Coverage Hours
- Corrective Maintenance
- Remotely Diagnose Problem **
- Dispatch On-Site as Needed
- Black Box Network Services Technical Assistance Center

- One Site Audit (performed at the beginning of the contract)
- Escalation to Manufacturer Technical Assistance Center
- Work to Completion/Continuous Effort-Majors only
- System and Network Monitoring (optional)
- Manufacturer Corrective Software Updates including Major Software release updates.
- 24 Hour x 7 Day Customer Solutions Center ***

**DEFINED SERVICE RESPONSE TIME**
- Coverage Hours 8am-5pm, Monday-Friday
- 24x7 Emergency Protection for Major Failures
- On-Site or Remote Response within Ninety (90) Minutes of Initial Call for System Down****
- Move, Add and Change within Seventy-Two (72) Hours of request

- Black Box Network Services Holidays Included
- Service is Available Outside Coverage Hours at Current Labor Rates
- On-Site or Remote Response within Twenty-Four (24) Hours of Initial Call for Minor Failures ****

**BENEFITS**
- Ease and Convenience of a Single Source Solution
- Priority Response and Problem Resolution for Major Failures, 24 Hours a Day at no Additional Charge

- Experienced Technical Expertise is Accessible when Needed to Resolve Problems
- Extended Service Protection Options Available Enabling Long Term Planning

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* To obtain CSC.com Web Access, the following information needs to be emailed to CSC@blackbox.com, to set up a customer profile: Contact Name, phone number, fax number, email address, company name and site numbers.

** Remote Diagnostics requires 24x7 access through SSL, IPSEC, and PPTP which are the most popular and are all approved for remote access. Black Box can provide the public IP address used by our network for remote access to add another layer of security requiring the login to only originate from our office.

*** The Black Box Network Services Customer Solutions Center is staffed after hours with personnel responsible for entering customer service requests and dispatching on-call technical support engineers for problem resolution.

**** All maintenance may be performed on-site or from a remote location as determined by us to most effectively and efficiently address the maintenance to be performed. System Down defined as: More than 25% of the phones are not functioning or when more than two ShoreGear Switches have failed. All other issues are defined as Minor Failures.

□ ShoreTel backups are the customer’s responsibility (configuration database and ShoreLine Data folder)
EXHIBIT "B"
(COMPENSATION)

The maximum consideration for the initial term of this Agreement or for any renewal term shall not exceed $843,759.29. This is a fixed price contract with payments by milestone as identified below. The Contract Number shall be included on all billings or correspondence in connection with this Agreement. The following payment terms will apply to the purchase of goods and services defined as part of this contract and will be tied to the installation and cutover as set in the implementation schedule mutually determined by Black Box and Whatcom County. Payment will be made upon receipt of a properly prepared invoice from Norstan Communications, Inc. dba/ Black Box Network Services subsequent to receipt of equipment and completion of installation phases. A detailed itemization of each payment milestone is provided in Schedule A – Equipment Listing.

<table>
<thead>
<tr>
<th>Implementation Milestone</th>
<th>Payment</th>
<th>Amount (Includes 8.7% Sales Tax)</th>
<th>% of Total Payment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Upon Receipt of All Equipment in Initial Order</td>
<td>Payment #1</td>
<td>$315,986.01</td>
<td>37%</td>
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<tr>
<td>Completion of Phase I:</td>
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<td></td>
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<tr>
<td>- Core System Installation</td>
<td>Payment #2</td>
<td>$168,351.30</td>
<td>20%</td>
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<tr>
<td>- Successful Pilot Group Cutover of up to 100 Phones</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Completion of Phase II:</td>
<td>Payment #3</td>
<td>$116,415.53</td>
<td>14%</td>
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<tr>
<td>- Successful Department Cutover of at Least First 300 Phones</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>(Phones deployed to Pilot Group are included in this count)</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Completion of Phase III:</td>
<td>Payment #4</td>
<td>$115,601.36</td>
<td>14%</td>
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<tr>
<td>- Successful Department Cutover of at Least Second 300 Phones</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Upon Final Acceptance:</td>
<td>Payment #5</td>
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<td>- Successful Department Cutover of up to 300 Remaining Phones</td>
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</tr>
<tr>
<td>- Final Acceptance per Exhibit A Statement of Work</td>
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<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$843,759.29</td>
<td>100%</td>
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</table>

Note: The initial equipment order will be for a partial order of ShorePhone handsets for the Pilot Group of users in Phase I and all other equipment. Two additional ShorePhone handset orders will be placed prior to the rollout of each major phase.
# EXHIBIT "C"
(CERTIFICATE OF INSURANCE)

## CERTIFICATE OF LIABILITY INSURANCE

**PRODUCER:** Lockton Companies  
444 W. 47th St., Suite 900  
Kansas City MO 64112-1906  
(816) 960-5000

**INSURED:** NORSTAN COMMUNICATIONS, INC.  
1607290  
DAMA BLACK BOX NETWORK SERVICES  
5050 LINCOLN DRIVE  
SUITE 300  
MINNEAPOLIS, MN 55438

**INSCRIBER:** Travelers Indemnity Co of America  
25074  

**INSCRIBER B:** The Travelers Indemnity Company  
25658

**INSCRIBER C:**

**INSCRIBER D:**

**INSCRIBER E:**

**INSCRIBER F:**

**CERTIFICATE NUMBER:** 13183187  
**REVISION NUMBER:** XXXXXXXX

---

### COVERAGE X (LIABITY)  

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<th>TYPE OF INSURANCE</th>
<th>ACCIDENT YEAR</th>
<th>EXPIRY DATE</th>
<th>POLICY NUMBER</th>
<th>LIABILITY LIMITS</th>
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<td>Y Y</td>
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<td>X CONTRACTUAL LIAB</td>
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<tr>
<td>X UM/ADG</td>
<td>3/31/2015</td>
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<tr>
<td>X SUB AGG</td>
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### AUTOMOBILE LIABILITY

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<tbody>
<tr>
<td>A ANY AUTO</td>
<td>N N</td>
<td>3/31/2014</td>
<td>TCG2-CAP-1312259-TIL-14</td>
<td>2,000,000,000</td>
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<tr>
<td>X ANY OWNER</td>
<td>3/31/2015</td>
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<td></td>
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</tr>
<tr>
<td>X HIRED AUTOS</td>
<td>3/31/2015</td>
<td></td>
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### UMBRELLA LIABILITY

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<tbody>
<tr>
<td>A EXCESS LIAB</td>
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<td>3/31/2014</td>
<td>ZL/P-12123037-T-14-NF</td>
<td>10,000,000,000</td>
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<td>X OCCUR</td>
<td>3/31/2015</td>
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### WORKMANS COMPENSATION AND EMPLOYER LIABILITY

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<td>X WC</td>
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<td>3/31/2014</td>
<td>TC22U123111223-4</td>
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<tr>
<td>X PER FRM</td>
<td>3/31/2015</td>
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</tr>
</tbody>
</table>

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**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES:** (Attach ACORD 101, Additional Remarks Schedule, may be attached if more space is required.)

_WHATCOM COUNTY, WA IS NAMED AS ADDITIONAL INSURED ON A PRIMARY AND NON-CONTRIBUTORY BASIS UNDER THE COMMERCIAL GENERAL LIABILITY INSURANCE POLICY. WAIVER OF SUBROGATION APPLIES IN FAVOR OF THE CERTIFICATE HOLDER._

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**CERTIFICATE HOLDER**

**CANCELATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

**AUTHORIZED REPRESENTATIVE**

**ACORD 26 (2014/01)**

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**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></td>
<td></td>
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<td>12/09/2014</td>
<td>Finance</td>
</tr>
<tr>
<td>Division Head:</td>
<td>BML</td>
<td>12/1/2014</td>
<td></td>
<td>12/9/14</td>
<td>Council</td>
</tr>
<tr>
<td>Dept. Head:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prosecutor:</td>
<td>KMF</td>
<td>12/1/2014</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Purchasing/Budget:</td>
<td>BB</td>
<td>12/1/2014</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Executive:</td>
<td></td>
<td>12/2/2014</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**TITLE OF DOCUMENT:** Contract Amendment for Telecommunications Consulting Services

**ATTACHMENTS:**
- Cover Memo
- Contract Information Sheet
- Contract Amendment

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

**Should Clerk schedule a hearing?** ( ) Yes ( X ) NO  
**Requested Date:**

**REQUEST FOR ACTION:**  
Request authorization for the County Executive to amend a contract with COMgroup, Inc. in the amount of $19,770 for services to assist with implementation preparation steps for a new telecommunications system.

**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
    Jack Louws, County Executive

FROM: Perry Rice, IT Manager

RE: Amendment 3 to Telecommunications Consultant Contract 201401031

DATE: December 1, 2014

Enclosed is proposed Amendment No. 3 between COMgroup, Inc. (COMgroup) and Whatcom County for your review and signature.

- **Background and Purpose**
  COMgroup was selected in Request For Proposal (RFP) #13-92 to assist Whatcom County with the process of replacing the current Ericsson MD110 telecommunications system. To date COMgroup has worked with the County on the process to complete the following:
  - Organization wide requirements
  - Specifications for an RFP
  - Selection of Black Box Network Services to implement a telecommunications system
  - Contract negotiation support

  The primary purpose of this amendment is to add an additional task (Task 9) to the current contract for COMgroup to assist Whatcom County prepare for the implementation of a new ShoreTel telecommunications system.

- **Funding Amount and Source**
  This amendment increases the maximum consideration of this contract by $19,770 to a new total of $92,200. These funds are available in the Telecommunications System Replacement Fund (cost center 351100).

- **Differences from Previous Contract**
  The Scope of Work (Exhibit A) has been modified to add Task 9 for consulting services to assist with implementation preparation steps for a new telecommunications system. Compensation (Exhibit B) has been modified to increase the contract compensation by $19,770. The contract expiration date has been extended from 12/31/2014 to 06/30/2015.

Please contact Perry Rice at x 52511 or Denise Toth Banyan at x50639 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>AS - IT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract or Grant Administrator:</td>
<td>Perry L. Rice</td>
</tr>
<tr>
<td>Contractor's / Agency Name:</td>
<td>COMgroup, Inc.</td>
</tr>
</tbody>
</table>

- **Is this a New Contract?** No [x] Yes [ ]
- **If yes, is this an Amendment or Renewal to an Existing Contract?** Yes [x] No [ ]
- **If Amendment or Renewal, Original Contract #** 201401031
- **Does contract require Council Approval?** Yes [ ] No [x]

- **Is this a grant agreement?** Yes [x] No [ ]
- **If yes, grantor agency contract number(s) and CFDA #**

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

- **Is this contract the result of a RFP or Bid process?** Yes [x] No [ ]
- **If yes, RFP and Bid number(s) 13-92**
- **Cost Center: 351100**

- **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 [x]
- 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 Gov't's) [ ]
- Public Works - Local Agency/Federally Funded FHWA [ ]

- **Contract Amount:(sum of original contract amount and any prior amendments)** $72,430
- **This Amendment Amount:** $19,770
- **Total Amended Amount:** $92,200

**Contracts that require Council Approval (incl. agenda bill & memo):**
- Professional Services Agreement above $20,000.
- Bid is more than $40,000.
- Amendments that have either an increase greater than 10% or provide a $10,000 increase in amount ( whichever is greater)

**RENEWALS:** Council approval is not required when exercising an option to renew that is provided in the original contract.

**Summary of Scope:** Request authorization for the County Executive to amend a contract with COMgroup, Inc. in the amount of $19,770 for services to assist with implementation preparation steps for a new telecommunications system.

**Term of Contract:** 17 Months

**Expiration Date:** 06-30-2015

### Contract Routing Steps & Signoff

<table>
<thead>
<tr>
<th>Contract Routing Steps &amp; Signoff</th>
<th>Sign or Initial</th>
<th>Indicate date transmitted</th>
</tr>
</thead>
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<tr>
<td>1. Prepared by:</td>
<td>TGH</td>
<td>Date: 11/26/2014</td>
</tr>
<tr>
<td>2. Attorney reviewed:</td>
<td></td>
<td>Date: 12/1/14</td>
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<td>Date: 12/1/14</td>
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<td>4. IT reviewed, if IT related:</td>
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<td>Date: 12/1/14</td>
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<tr>
<td>6. Attorney signoff:</td>
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<td>Date: 12/1/14</td>
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<tr>
<td>7. Contractor signed:</td>
<td></td>
<td>Date: 12/2/14</td>
</tr>
<tr>
<td>8. Submitted to Exec Office:</td>
<td></td>
<td>Date: 12/2/14</td>
</tr>
<tr>
<td>9. Council Approved (if required):</td>
<td>Date:</td>
<td></td>
</tr>
<tr>
<td>10. Executive signed:</td>
<td></td>
<td>Date: 12/2/14</td>
</tr>
<tr>
<td>11. Contractor original returned to Dept.:</td>
<td>Date:</td>
<td></td>
</tr>
<tr>
<td>12. County original to Council:</td>
<td></td>
<td>Date:</td>
</tr>
</tbody>
</table>
Amendment No. 3
Whatcom County Contract No. 201401031
CONTRACT BETWEEN WHATCOM COUNTY AND COMgroup, Inc.

THIS AMENDMENT is to the Contract between Whatcom County and COMgroup, Inc., dated February 19, 2014 and designated “Whatcom County Contract No 201401031”, Amendment 1 dated April 7, 2014 and Amendment 2 dated June 7, 2014. In consideration of the mutual benefits to be derived, the parties agree to the following:

This Amendment replaces Second Amended Exhibit A of Amendment 2 of the original contract with the attached Third Amended Exhibit A (Scope of Work).

This Amendment replaces Amended Exhibit B of Amendment 1 of the original contract with the attached Second Amended Exhibit B (Compensation).

This Amendment extends the termination date of this Agreement to the 30th day of June, 2015.

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

This Amendment takes effect: October 1, 2014, regardless of the date of signature.

IN WITNESS WHEREOF, Whatcom County and COMgroup, Inc. have executed this Amendment on the date and year below written.

DATED this _______________ day of __________________, 2014.

CONTRACTOR:

CONTRACTOR

______________________________
J.R. Simmons
President and Principal Consultant

STATE OF WASHINGTON    )
COUNTY OF WHATCOM       ) ss.

On this ___ day of __________, 2014, before me personally appeared __________________________ to me known to be the ___
___________________________ of the __________________________ and who executed the above instrument
and who acknowledged to me the act of signing and sealing thereof.

________________________________

NOTARY PUBLIC in and for the State of Washington, residing at
__________________________. My commission expires
__________________________.
WHATCOM COUNTY:

Approved for Approval:

IT Manager  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 ____________________, 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:

CONTRACTOR

COMgroup, Inc.

4040 Lake Washington Boulevard, Suite 205
Kirkland, WA 98003

Contact Name: J.R. Simmons
Contact Phone: 425-284-6545
Contact FAX: 425-284-6505
THIRD AMENDED EXHIBIT "A"
(SCOPE OF WORK)

Task 1 – Project Initiation

- Obtain and review the technical documentation for the County's communications technologies
- Meet with the County's Project Manager and key personnel to develop the project scope, goals and objectives for the project
- Review the anticipated project timelines
- Review the current operating budget and billing information
- Establish clear expectations, roles and responsibilities for all parties
- Create a plan of action for all project tasks
- Establish the communication plan
- Identify the required reporting needs
- Discuss the requirements and feasibility of VoIP technology / systems
- Review the impact of technology related projects that are either planned or underway

Task 1 Deliverables:
1. Project “Kick-Off” meetings
2. Project Plan
3. Review of Whatcom County Technical Data
4. Weekly Project Status Reports

Task 2 – Project Planning

- Refine the existing high-level project plan
- Prepare and conduct a preliminary interactive educational session for the project team regarding the current technology trends and issues
- Prepare and conduct educational sessions for department leaders and representatives; providing:
  - An overview of the current industry standards, trends and technologies
  - Descriptions of the impact upon project charter, project risks, etc.
  - Information on the data gathering / needs assessment process, including the importance of collecting the appropriate information and documentation
  - Identification of the features and functionality that could be expected of more modern phone systems.

Task 2 Deliverables:
1. Interactive educational session for the project team
2. Educational sessions for the department representatives

Task 3 – Technical Review

Task 3 will be completed in two (2) parts:

Task 3A:
- Identify and review the telecommunications systems and configurations
- Evaluate the physical infrastructure (closets, low-voltage wiring, HVAC, power, etc.) and identify required changes, including a site visit to all major County facilities
- Identify and review the data network infrastructure and system configurations
- Identify and review all carrier and long distance services
- Discuss the requirements for Business Continuity and alternatives if an outage affects any major system or component
- Review emergency identification services and determine if changes are needed to ensure the proper address and callback number is communicated when dialing E911
- Perform a technical gap analysis that compares the current technical situation to the requirements needed to support new solutions. This report will include a section that is specific to the network assessment findings.
- Identify and collect any additional required documentation
- Prepare summary document and conduct a preliminary assessment of bullets related to Task 3A

Task 3B:
- Conduct a network assessment to determine the suitability of the current network to support real-time traffic (voice and video) over IP, and what would be required, both for the components and the configuration.
- Identify and review the data network infrastructure and system configurations
- Perform a technical gap analysis that compares the current technical situation to the requirements needed to support new solutions. This report will include a section that is specific to the network assessment findings.
- Identify and collect any additional required documentation
- Prepare summary document that encapsulates all outcomes from Task 3A and Task 3B
Task 3A – Deliverables:
1. Current systems and design documentation summary
2. Preliminary assessment of the current infrastructure, systems, and networks, including deficiencies and corrective actions required (preliminary technical gap analysis)

Task 3B – Deliverables:
1. Structured network assessment test results for VoIP
2. Final assessment of the current infrastructure, systems, and networks, including deficiencies and corrective actions required (final technical gap analysis)

Task 4 – Needs Assessment
- Leading the information gathering effort by engaging all department representatives
- Interviewing key users in each department
- Request and analyze each department’s uses of the systems and identify opportunities to improve workflows and/or productivity
- Identify common functional requirements of the departments and users
- Identify any unique functional requirements of the individual departments, key users, or specific sites (facilities)
- Identify carrier and long distance services and contractual term agreements
- Identify the degree / requirements for Business Continuity and the tolerance for down time on all major systems and components
- Perform a functional gap analysis that describes where the system is not meeting needs
- Perform an operational gap analysis that covers system management and support
- Prepare and conduct a presentation for the project team and department representatives to present the findings and suggested strategy and approach for all locations and all departments including each department’s usage off the current telecommunications system as well as any identified deficiencies
- New features that may cost effectively improve department and countywide workflows will be identified

Task 4 – Deliverables:
1. Needs Assessment Document, including gap analysis for department needs, network infrastructure, facilities, and system management / support
2. Presentations (including supporting documentation materials) for project team and department representatives

Task 5 – Requirements
- Produce a specifications and requirement document that covers:
  - The overall system technical needs / expectations
  - The functional needs and configurations for each department
  - Descriptive use cases were needed for complex challenges / requirements
  - System administration and support requirements
  - Vendor requirements necessary to deliver the technical solution(s)
- Finalize the data network and infrastructure requirements that match the above needs

Task 5 – Deliverables:
1. Technical specifications documents that can be used for RFP documentation, if needed

Task 6 – Industry Survey and Preliminary Budget Support
- Create and issue a survey of the telecommunication systems at comparable jurisdictions that meet high-level requirements
- Create a short-list of probable vendors to be considered
- Help distribute the preliminary requirements to viable vendors
- Assist with reviewing vendor responses regarding gross cost estimates for the replacement telecommunications systems
- Evaluate and summarize the vendor responses
- Factoring in COMGROUP’s experiences, develop a preliminary budget
- Assist IT and the County Administration in formalizing the budget

Task 6 – Deliverables:
1. Survey of systems and vendors used by comparable jurisdictions
2. Short-list of probable vendors
3. Summary of vendor budget estimates
4. Develop an estimated range of project capital and operating costs
5. Help create the final / formal budget for Whatcom County
Task 7 – Implementation Strategy

- Review possible implementation strategies and create a preliminary list of project milestones as required by the strategy
- Options for changes to the County’s dial-plan
- Collaborate with the County’s Project Manager to finalize the high-level milestones

Task 7 – Deliverables:
1. Strategic implementation strategy descriptions
2. Dial-plan options and the impact on implementation strategies
3. High-level project implementation milestones document

Task 8 – System Procurement Support

- Work with Whatcom County’s IT staff to identify existing contracts or vehicles for short-list vendor solutions, including inter-local agreements
- Create a specific guideline for the vendor’s implementation Statement of Work (SOW) to be supplied as part of the RFP response
- Based on the needs assessment and specifications, assist the County with drafting an RFP for the systems to be replaced
- Attend pre-proposal conference and site visitations as needed
- Respond to technical questions from proposers and assist with addendums, if necessary
- Analyze each proposal to ensure that they address technical requirements and identify shortfalls and differences between proposals
- Provide a written assessment of each proposal
- Using a consensus driven process, assist the Whatcom County project team in identifying the short-list of vendors
- Provide an overview of short-listed solutions and options including pros and cons and life cycle cost projections
- Help coordinate and attend if required any product demonstrations or vendor presentations
- Make recommendations for additions or changes in the final design & configuration, finalizing the project scope in terms of necessary equipment, software, and services
- Help create a recommendation presentation and assist with presenting to department representatives, leadership, and other stakeholders as needed
- As needed, assist Whatcom County with vendor negotiations and contracting

Task 8 – Deliverables:
1. Identify contracting alternatives, including any state or interlocal agreements
2. Create formal RFP documents
3. Conduct pre-proposal conference
4. Provide answers to technical questions / addendums
5. Produce written proposal assessments
6. Lead project team in selecting finalists
7. Provide overview of finalists, including lifecycle costs
8. Attend vendor presentations
9. Finalize configurations and project scope
10. Create and present final recommendation
11. Help negotiate contracts

Task 9 – Implementation Preparation Support

- Participate in the implementation kickoff meeting with Black Box Network Services (Black Box)
- Provide recommendations regarding the scheduling and the work flow for the implementation plan, including the detailed information gathering process
- Assist with contracts and orders for telephone company circuits (carrier services) and the new block of Direct Inward Dial (DID) numbers
- Participate in the countywide dialing plan design decisions and presentations
- Assist with the final telecommunications system design
- Assist with preliminary implementation planning steps
- Provide general guidance and consulting advice to the Whatcom County Project Manager and team as requested

Task 9 – Deliverables:
The Task 9 scope of work identified above will be performed on a time and materials basis under the direction of the Whatcom County Project Manager. Rates and other terms for these services are identified in Second Amended Exhibit B (Compensation).

Prior to initiating work on any Task 9 item, COMgroup will provide the Whatcom County Project Manager with an estimate of hours / expenses to complete the specific work item and receive approval to proceed. COMgroup will also provide the Whatcom County Project Manager with a weekly update on the status of work along with hours / expenses used for this task to date.

***Deliverable timeline appears on the following page***
<table>
<thead>
<tr>
<th>TASKS / DELIVERABLES</th>
<th>Completion Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Task 1 – Project Initiation</td>
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<tr>
<td>All deliverables detailed in the Scope of Work</td>
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<tr>
<td>Task 2 – Project Planning</td>
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<tr>
<td>Task 3 – Technical Review</td>
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<td>Task 6 – Industry Survey and Preliminary Budget Support</td>
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<td>Task 7 – Implementation Strategy</td>
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<td>Task 8 – System Procurement Support</td>
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SECOND AMENDED EXHIBIT "B"
(COMPLEMENTATION)

Services

As consideration for the services provided pursuant to Exhibit "A," Scope of Work, Whatcom County agrees to compensate Contractor at the lump sum rates at the time of completion of Tasks 1 through 8 below. Task 9 below will be compensated per Contractor's actual time and materials.

Task 1: Project Initiation $4,110.00
Task 2: Project Planning $2,350.00
Task 3A: Technical Review $5,550.00
Task 3B: Network Assessment $2,930.00
Task 4: Needs Assessment $12,720.00
Task 5: Requirements $4,960.00
Task 6: Industry Survey and Preliminary Budget Support $4,790.00
Task 7: Implementation Strategy $2,720.00
Task 8: System Procurement Support $27,260.00
Task 9: Implementation Preparation Support $19,070.00

Contractor shall invoice Whatcom County at completion and acceptance of Tasks 1 through 8. Invoices shall include a description of the tasks accomplished. Any work performed prior to the effective date of this contract or continuing after the completion date of the same shall be at the Contractor’s expense, unless otherwise agreed upon in writing.

Contractor shall invoice Whatcom County on a time and materials basis for approved work performed under Task 9 using the following rates:

<table>
<thead>
<tr>
<th>Classification</th>
<th>Staff</th>
<th>Rate</th>
<th>Estimated Hours</th>
<th>Total</th>
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<tbody>
<tr>
<td>Principal Consultant</td>
<td>J.R. Simmons</td>
<td>$185 per hour</td>
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<td>Voice Consultant / Project Managers</td>
<td>Stephanie White</td>
<td>$145 per hour</td>
<td>106</td>
<td>$15,370</td>
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<td></td>
<td>Tish Brown</td>
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Overall services are estimated not to exceed $86,500.

Expenses

Contractor will invoice County for Contractor's reasonable, direct costs incurred in performance of the Services, within the limits set forth below. Direct expenses include, but may not be limited to: airfare, lodging, mileage, shipping, lift rentals, photo copies, tolls and parking. Meals and incidental expenses will be reimbursed at the Federal GSA per diem rates for Bellingham, WA.

Overall expenses are estimated not to exceed $5,700.

Travel expense limitations will be as follows:

• Airfare will not exceed coach rate;
• Direct mileage will be billed at the current IRS rate;
• Lodging/Meals will not exceed the Federal GSA per diem rates for Bellingham, WA:
  o 2014 Meals & Incidental Expense rates are listed here: [www.gsa.gov/mie](http://www.gsa.gov/mie)
  o 2014 Lodging rates are listed here: [http://www.gsa.gov/portal/category/100120](http://www.gsa.gov/portal/category/100120)
• Car Rental will not exceed economy car rates, plus fuel costs; and
• Receipts will be provided for all airfare, car rental, fuel costs, and to prove lodging accommodations

The total maximum consideration for this contact is:

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<tr>
<td>Services</td>
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<td>Expenses</td>
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WHATCOM COUNTY COUNCIL AGENDA BILL

CLEARANCES

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<tr>
<th>Originator:</th>
<th>Initial</th>
<th>Date</th>
<th>Date Received in Council Office</th>
<th>Agenda Date</th>
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<td>11/14/14</td>
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<tr>
<td>Executive:</td>
<td>12/2/14</td>
<td></td>
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</tbody>
</table>

TITLE OF DOCUMENT: Contract between Whatcom County and Northwest Youth Services.

ATTACHMENTS:
1. Executive Memo
2. Information 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.)

This contract provides funding for operations of Northwest Youth Services emergency shelter program.

COMMITTEE ACTION:         COUNCIL ACTION:

Related County Contract #:  Related File Numbers:  Ordinance or Resolution Number:

Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County's website at: www.co.whatcom.wa.us/council.
## WHATCOM COUNTY CONTRACT INFORMATION SHEET

<table>
<thead>
<tr>
<th>Originating Department:</th>
<th>Health</th>
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<tbody>
<tr>
<td>Contract or Grant Administrator:</td>
<td>Gail de Hoog</td>
</tr>
<tr>
<td>Contractor's / Agency Name:</td>
<td>Northwest Youth Services</td>
</tr>
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</table>

**Is this a New Contract?** Yes ___ No ___
If not, is this an Amendment or Renewal to an Existing Contract? Yes ___ No ___
If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract # ______

**Does contract require Council Approval?** Yes ___ No ___ If No, include WCC ______

**Is this a grant agreement?** Yes ___ No ___
If yes, grantor agency contract number(s) ________ CFDA # ______

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

**Is this contract the result of a RFP or Bid process?**
Yes ___ No ___
If yes, RFP and Bid number(s) RFP 14-51 Cost Center: _121100.

**Is this agreement excluded from E-Verify?** Yes ___ No ___
If no, include Attachment D Contractor Declaration form.

**If yes, indicate exclusion(s) below:**
- Professional services agreement for certified/licensed professional
- 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:**
Sum of original contract amount and any prior amendments
$ 65,000
This Amendment Amount:
$ ______
Total Amended Amount:
$ ______

**Summary of Scope:**
The purpose of this contract is to fund personnel costs essential to facility operations of the PAD Program.

**Term of Contract:** 1 Year
**Expiration Date:** 12/31/2015

<table>
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<tr>
<th>Contract Routing Steps &amp; Signoff:</th>
<th>[sign or initial]</th>
<th>[indicate date transmitted]</th>
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<tbody>
<tr>
<td>1. Prepared by:</td>
<td>pi</td>
<td>Date 10/6/14</td>
</tr>
<tr>
<td>2. Attorney reviewed:</td>
<td>rb</td>
<td>Date 10/15/14</td>
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<td>3. AS Finance reviewed:</td>
<td>bennett</td>
<td>Date 10/30/14</td>
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<tr>
<td>5. Attorney signoff:</td>
<td></td>
<td>Date 11/14/14</td>
</tr>
<tr>
<td>7. Contractor signed:</td>
<td></td>
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</tr>
<tr>
<td>8. Submitted to Exec Office:</td>
<td></td>
<td>Date 11/14/14</td>
</tr>
<tr>
<td>9. Council approved (if necessary):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10. Executive signed:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11. Original to Council</td>
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**Contracts that require Council Approval (incl. agenda bill & memo):**
- Professional Services Agreement above $20,000.
- Bid is more than $50,000.
- Amendments that have either an increase greater than 10% or provide a $10,000 increase in amount (whichever is greater)

**RENEWALS:** Council approval is not required when exercising an option to renew that is provided in the original contract.
MEMORANDUM

TO: Jack Louws, County Executive
FROM: Regina A. Delahunt
RE: Northwest Youth Services, Contract for Emergency shelter program
DATE: November 12, 2014

Enclosed are two (2) originals of a contract between Whatcom County and Northwest Youth Services for your review and signature.

- **Background and Purpose**
  One hundred and twenty five homeless youth under 18 years old were counted during the Whatcom County 2014 annual homeless count. Homelessness among youth may result from family problems, economic problems, and residential instability. Some youth become homeless with their families, others leave home after years of physical and sexual abuse, strained relationships, parental neglect, addiction of a family member, or their own chemical addiction. Youth are identified as a priority population in the Whatcom County Plan to End Homelessness. Northwest Youth Services' Positive Adolescent Development (PAD) Program is an essential part of the community’s strategy to reduce youth homelessness in Whatcom County. The PAD is a sixteen bed facility that provides emergency and interim housing and support services for 13-17 year old runaway and homeless youth. The PAD program assisted 62 youth in 2013 and an additional 60 in the first eight months of 2014. The purpose of this contract is to fund personnel costs essential to facility operations of the PAD Program.

- **Funding Amount and Source**
  This contract is funded in an amount not to exceed $65,000 with local document recording fees. This contract is a result of RFP 14-51. Council approval is required and an Agenda Bill is attached.

- **Differences from Previous Contract**
  This contract funds the same activities as the previous contract except at a reduced rate due to the reduction in document recording fee revenue.

Please contact Gail de Hoog at extension 30693, if you have any questions or concerns regarding the terms of this agreement.

Encl.
CONTRACT FOR SERVICES AGREEMENT
Youth Emergency & Transitional Shelter

Northwest Youth Services, 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), p. 9,
Exhibit B (Compensation), p. 10,
Exhibit C (Certificate of Insurance), p. 11.

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 1st day of January, 2015, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 31st day of December 2015.

The general purpose or objective of this Agreement is to: operate a youth emergency shelter facility, 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 bills 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 12th day of November, 2014.

CONTRACTOR:

Northwest Youth Services

[Signature]

Rhann Bardsley, Executive Director

STATE OF WASHINGTON
COUNTY OF Whatcom

On this 12th day of November, 2014, before me personally appeared Rhann Bardsley to me known to be the Executive Director of Northwest Youth Services and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

[Signature]

VICTORIA L. McCLURE
NOTARY PUBLIC in and for the State of Washington, residing at Blaine.

My commission expires 11/18/2016.
WHATCOM COUNTY:
Recommended for Approval:

Anne Deacon, Human Services Manager
Date 11/13/14

Regina Delahunt, Director
Date 11/14/14

Approved as to form:

Rayos Buckingham, Deputy 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 ______________________, 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:

Northwest Youth Services
1020 N. State Street
Bellingham, WA 98225
(360) 734-9662
riannonb@nwys.org
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 here to 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 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. 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.

HL_010115_NWYS_PAD_Facility_O&M
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.

31.2 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 general liability and property damage insurance with the following minimums:
Property Damage per occurrence - $500,000.00
General Liability & Property Damage for bodily injury- $1,000,000.00

A Certificate of 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 Professional Liability:

A. Professional Liability: $1,000,000 per occurrence. Not Applicable.

34.3 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.

34.4 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 subcontracts for standard commercial supplies or raw materials, or to sole proprietorships with no employees.

35.2 Non-Discrimination in Client Services:
The Contractor shall not discriminate on the grounds of race, color, creed, religion, national origin, sex, age, marital status, sexual orientation, disability, or veteran status; or deny an individual or business any service or benefits under this Agreement; or subject an individual or business to segregation or separate treatment in any manner related to his/her/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:

Gail de Hoog, Housing Program Specialist
Whatcom County Health Department
509 Girard St.
Bellingham, WA 98225
360-676-6724 X 30693
GdeHoog@co.whatcom.wa.us

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.
EXHIBIT "A"  
(SCOPE OF WORK)

I. Background

One hundred and twenty five homeless youth under 18 years old were counted during the Whatcom County 2014 annual homeless count. Homelessness among youth may result from family problems, economic problems, and residential instability. Some youth become homeless with their families, others leave home after years of physical and sexual abuse, strained relationships, parental neglect, addiction of a family member, or their own chemical addiction. Youth are identified as a priority population in the Whatcom County Plan to End Homelessness. Northwest Youth Services' Positive Adolescent Development (PAD) Program is an essential part of the community's strategy to reduce youth homelessness in Whatcom County. The PAD is a sixteen bed facility that provides emergency and interim housing and support services for 13-17 year old runaway and homeless youth. The purpose of this contract is to fund facility rent and personnel costs essential to facility operations of the PAD Program.

II. Statement of Work

The Contractor will be reimbursed for operational expenses for the PAD Program. Allowable expenses are the salary and benefits for PAD Youth Workers. Contractor will maintain a staff-to-youth ratio of 1:8 at all times in compliance with Washington State Department of Licensing requirements. The duties of PAD Youth Workers will include such items as:

- Making routine checks on all facilities and ensuring the safety and privacy of the residents;
- Documenting and updating resident or program information in the appropriate logs or forms; maintaining information and referral data.
- Record keeping
- Ensuring client confidentiality according to NWYS policies and procedures
- Assisting youth with household operations including meal planning and preparation, cleaning and other necessary functions
- Assisting youth to find basic care items such as clothing, hygiene products, and school supplies

The Contractor will comply with Homeless Management Information System (HMIS) data collection and recording requirements by coordinating with the HMIS coordinator located at the Whatcom Homeless Service Center.

III. Required Reporting

The Contractor will submit monthly occupancy reports in a format approved by the Whatcom County Health Department.
EXHIBIT “B”

(COMPENSATION)

I. Budget and Source of Funding: The source of funding for this contract, in the amount not to exceed $65,000, is County-held SHB 2060 Housing Program funds.

II. Budget of Allowable Costs

The budget for this cost reimbursement contract is as follows:

<table>
<thead>
<tr>
<th>Activity / Line Item</th>
<th>Documentation Required with Invoice</th>
<th>Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>PAD Personnel Costs</td>
<td>General Ledger Detail indicating staff member assigned to the project, hours worked and rate of pay</td>
<td>$ 59,091</td>
</tr>
<tr>
<td>10% Administration</td>
<td></td>
<td>$ 5,909</td>
</tr>
<tr>
<td>Total Budget</td>
<td></td>
<td>$ 65,000</td>
</tr>
</tbody>
</table>

In no instance shall the administration line item exceed 10% of direct costs.

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. Invoice documentation requirements are specified above.

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.
EXHIBIT "C"
(CERTIFICATE OF INSURANCE)
## Certificate of Liability Insurance

**Certificate Number:** CL147324554  
**Revision Number:**

### Coverages

<table>
<thead>
<tr>
<th>Type of Insurance</th>
<th>Policy Number</th>
<th>Policy Eff Date</th>
<th>Policy Exp Date</th>
<th>Limits</th>
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</thead>
<tbody>
<tr>
<td><strong>General Liability</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Commercial General Liability</td>
<td>24CC29544430</td>
<td>7/7/2014</td>
<td>7/7/2015</td>
<td>Each Occurrence: $1,000,000; Damage to Rented Premises (EA occurrence): $1,000,000; Med Exp (Any one person): $120,000; Personal &amp; Adv Injury: $1,000,000; General Aggregate: $3,000,000; Products - Comprod Agg: $3,000,000</td>
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<tr>
<td><strong>Automobile Liability</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>All Owned Autos</td>
<td>24CC29544630</td>
<td>7/7/2014</td>
<td>7/7/2015</td>
<td>Combined Single Limit: $1,000,000; Bodily Injury (Per Person): $1,000,000; Bodily Injury (Per Accident): $1,000,000; Property Damage (Per Accident): $1,000,000</td>
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<tr>
<td><strong>Umbrella Liability</strong></td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Excess Liability</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Workers' Compensation and Employers' Liability</strong></td>
<td>24CC29544430</td>
<td>7/7/2014</td>
<td>7/7/2015</td>
<td>E.L. Each Accident: $1,000,000; E.L. Disease - EA Employer: $1,000,000; E.L. Disease - Policy Limit: $3,000,000</td>
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<tr>
<td>Professional Liability</td>
<td>L97745254B</td>
<td>7/7/2014</td>
<td>7/7/2015</td>
<td>Each Occurrence: $1,000,000; General Aggregate: $3,000,000</td>
</tr>
</tbody>
</table>

### Certificate Holder

Whatcom County Health Department  
509 Girard St  
Bellingham, WA 98225

### Cancellation

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

Authorized Representative

Jay Gossage/AKC

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<table>
<thead>
<tr>
<th>Ref #</th>
<th>Description</th>
<th>Coverage Code</th>
<th>Form No.</th>
<th>Edition Date</th>
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<tbody>
<tr>
<td></td>
<td>Employee Benefits</td>
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</tr>
<tr>
<td>Limit 1</td>
<td>1,000,000</td>
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<tr>
<td>Limit 2</td>
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POLICY NUMBER: 24-CC-295444-3

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED — DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

<table>
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<tr>
<th>Name Of Additional Insured Person(s) Or Organization(s)</th>
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<td>ANY AND ALL FUNDING SOURCES AS RESPECTS THE INSURED’S OPERATIONS</td>
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Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

Section II — Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for “bodily injury”, “property damage” or “personal and advertising injury” caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

A. In the performance of your ongoing operations;
or

B. In connection with your premises owned by or rented to you.

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### WHATCOM COUNTY COUNCIL AGENDA BILL

**CLEARANCES**

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<th>Originator:</th>
<th>Initial</th>
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<th>Agenda Date</th>
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**Execution: 2/27/14**

**TITLE OF DOCUMENT:** Contract between Whatcom County and Opportunity Council for operation of transitional housing and essential needs assistance.

**ATTACHMENTS:**
1. Executive Memo
2. Information 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.)

This contract funds operation and maintenance activities at a 21-unit apartment complex providing transitional housing to single women and women with children who are survivors of domestic violence and living at or below 30% of the area median income. Additionally, the Opportunity Council will distribute essential needs items such as bus passes, laundry tokens, fuel vouchers, personal hygiene products and cleaning supplies to eligible recipients.

**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: Regina A. Delahunt
RE: Opportunity Council, Operation & Maintenance of Transitional Housing and Essential Needs Assistance
DATE: October 29, 2014

Enclosed are two (2) originals of a contract between Whatcom County and Opportunity Council for your review and signature.

- **Background and Purpose**
  Through its homeless housing programs, Opportunity Council provides a continuum of housing services including emergency and transitional housing, homelessness prevention assistance, and rent assistance to individuals and families. This contract provides funding for the operation and maintenance of Dorothy Place, a transitional housing program for single women and women with children who are survivors of domestic violence. Approximately 18 single women and 26 families with children will receive services at Dorothy Place in 2015. Additionally this contract provides funding for the distribution of transportation and hygiene product assistance to eligible households.

- **Funding Amount and Source**
  Funding for this contract, in an amount not to exceed $77,951 is from the Washington State Department of Commerce Consolidated Homeless Grant. This contract is a result of RFP# 14-51. Funding for this contract is included in the 2015 budget. Council approval is required and an Agenda Bill is attached.

- **Differences from Previous Contract**
  This contract is similar to a previous contract began in 2012 except this contract does not include housing case management services.

Please contact Gail de Hoog at extension 30693, if you have any questions or concerns regarding the terms of this agreement.

Encl.
WHATCOM COUNTY CONTRACT INFORMATION SHEET

Originating Department: Health
Contract or Grant Administrator: Gail de Hoog
Contractor's / Agency Name: Opportunity Council

Is this a New Contract? Yes X No __ If not, is this an Amendment or Renewal to an Existing Contract? Yes ___ No ___
If Amendment or Renewal, Original Contract # __________________
Does contract require Council Approval? Yes X No ___

Is this a grant agreement? Yes ___ No X If yes, grantor agency contract number(s) __________________ CFDA # __________________

Is this contract grant funded? Yes X No ___ If yes, associated Whatcom County grant contract number(s) 201311017

Is this contract the result of a RFP or Bid process? Yes X No ___ If yes, RFP and Bid number(s) 14-51 Cost Center: 122300

Is this agreement excluded from E-Verify? No X Yes ___ If no, include Attachment D Contractor Declaration form.
If yes, indicate exclusion(s) below:
☐ Professional services agreement for certified/licensed professional
☐ Contract work is for less than 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 Gov't's)
☐ Public Works - Local Agency/Federally Funded FHWA

Contract Amount:(sum of original contract amount and any prior amendments)
$ 77,951
This Amendment Amount: __________________________
Total Amended Amount: __________________________

Contracts that require Council Approval (incl. agenda bill & memo)
- Professional Services Agreement above $20,000.
- Bid is more than $40,000.
- Amendments that have either an increase greater than 10% or provide a $10,000 increase in amount (whichever is greater)

RENEWALS: Council approval is not required when exercising an option to renew that is provided in the original contract.

Summary of Scope:
Through its homeless housing programs, Opportunity Council provides a continuum of housing services including emergency and transitional housing, homelessness prevention assistance, and rent assistance to individuals and families. This contract provides funding for the operation and maintenance of Dorothy Place, a transitional housing program and for distribution of transportation and hygiene product assistance to eligible households.

Term of Contract: 1 Year Expiration Date: 12/31/2015

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

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CONTRACT FOR SERVICES AGREEMENT
Operation & Maintenance of Transitional Housing and
Essential Needs Assistance

Opportunity Council, hereinafter called Contractor, and Whatcom County, hereinafter referred to as County, agree and contract as set forth in this Agreement, including:

General Conditions, pp. 3 to 8
Exhibit A (Scope of Work), pp. 9 to 10
Exhibit B (Compensation), pp. 11 to 12
Exhibit C (Certificate of Insurance), p. 13
Exhibit D (Special Terms & Conditions CHG), pp. 14 to 17.

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 1st day of January, 2014, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 31st day of December, 2014.

The general purpose or objective of this Agreement is to: provide transitional housing and essential needs assistance, 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 $77,951. 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 24th day of October, 2014.

CONTRACTOR:

Opportunity Council

[Signature]

David Finet, Executive Director

STATE OF WASHINGTON

) ss.

COUNTY OF Whatcom

On this 24th day of October, 2014, before me personally appeared David Finet to me known to be the Executive Director of Opportunity Council and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

WHATCOM COUNTY:
Recommended for Approval:

Anne Deacon, Human Services Manager  10/29/14

Regina A. Delahunt, Director  10/30/14

Approved as to form:  11-3-14

Royce Buckingham, Deputy Prosecuting Attorney

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.

__________________________  My commission expires ____________.

NOTARY PUBLIC in and for the State of Washington, residing at ______________________ .

CONTRACTOR INFORMATION:

David Finet, Executive Director
Opportunity Council
1111 Cornwall Avenue
Bellingham, WA 98225
360-734-5121
Dave_finet@oppoc.org
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 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. 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 enabling Contractor to terminate 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.

31.2 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 general liability and property damage insurance with the following minimums:
Property Damage per occurrence - $500,000.00
General Liability & Property Damage for bodily injury- $1,000,000.00

A Certificate of 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.

a. Professional Liability - $1,000,000 per occurrence: Not Applicable

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:

Gail de Hoog, Housing Program Specialist
Whatcom County Health Department
509 Girard St.
Bellingham, WA 98225
360-676-6724 X 30693
GdeHoog@co.whatcom.wa.us

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

Through its homeless housing programs, Opportunity Council provides a continuum of housing services including emergency and transitional housing, prevention assistance, ongoing rental subsidies, and case management support for individuals and families, including to those waiting for housing assistance. This contract funds operating costs for Dorothy Place, a transitional housing program, essential needs assistance, and limited transportation assistance for households whose eligibility has been established by the Washington State Department of Social and Health Services (DSHS).

II. Statement of Work

A. Transitional Housing – Dorothy Place Apartments

Under this contract, the Contractor will:

1. Provide Transitional Housing at Dorothy Place, a 21-unit complex located at 1020 N. Forest Street, which will serve approximately 18 single women and 26 families consisting of women and their children per year.

2. Pay for public utility costs for units of housing serving families with children at Dorothy Place.

3. Accept only those tenants at Dorothy Place who access services through the Whatcom Homeless Service Center.

4. Collect and enter Homeless Management Information System (HMIS) data for all program participants.

5. Document client eligibility and recertify clients for continued eligibility.

6. Comply with the program requirements contained in the "Department of Commerce Guidelines for Consolidated Homeless Grant (CHG)". Changes to the CHG Guidelines may be made without contract amendment. Whenever a revised edition of the CHG Guidelines is available County will provide a notice to the Contractor via e-mail correspondence.

B. Essential Needs Assistance

1. Purchase and distribute essential needs products to clients eligible for the Housing and Essential Needs (HEN) program.


3. Have written and available Applicant Denial and Grievance and Termination and Grievance policies and/or procedures.

4. Maintain an inventory tracking and tracking of client usage system.

5. Comply with the program requirements contained in the "Department of Commerce Guidelines for Consolidated Homeless Grant". Changes to the CHG Guidelines may be made without contract amendment. Whenever a
revised edition of the CHG Guidelines is available County will provide a notice to the Contractor via e-mail correspondence.

III. Special Conditions

The Contractor will also comply with all special terms and conditions of Exhibit D.

IV. Reporting Requirements

The Contractor will submit a Monthly Essential Needs Report to the County that identifies the number of instances of Essential Needs services provided. The report must answer this question, "How many people did you serve with Essential Needs this month?" Duplication of people is expected and will be acceptable.
EXHIBIT “B”
(COMPENSATION)

I. Budget and Source of Funding: The source of funding for this contract, in the amount not to exceed $77,951, is the Washington Department of Commerce Consolidated Homeless Grant.

II. Budget of Allowable Costs

The budget for this cost reimbursement contract is as follows:

<table>
<thead>
<tr>
<th>OPERATION &amp; MAINTENANCE OF TRANSITIONAL HOUSING</th>
<th>Documents Required Each Invoice</th>
<th>Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Utilities</td>
<td>GL detail</td>
<td>$19,695</td>
</tr>
<tr>
<td>Indirect Costs – 11.5% *</td>
<td></td>
<td>$2,265</td>
</tr>
<tr>
<td>O&amp;M TOTAL</td>
<td></td>
<td>$21,960</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ESSENTIAL NEEDS ASSISTANCE</th>
<th>Documents Required Each Invoice</th>
<th>Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personnel</td>
<td>GL detail</td>
<td>$5,788</td>
</tr>
<tr>
<td>Hygiene Product and Transportation Assistance</td>
<td>GL detail and receipts</td>
<td>$45,800</td>
</tr>
<tr>
<td>Insurance/Supplies/Mortgage/Rent</td>
<td>GL detail</td>
<td>$740</td>
</tr>
<tr>
<td>Indirect Costs – 7% **</td>
<td></td>
<td>$52,328</td>
</tr>
<tr>
<td>Essential Needs TOTAL</td>
<td></td>
<td>$55,991</td>
</tr>
<tr>
<td>Contract Total</td>
<td></td>
<td>$77,951</td>
</tr>
</tbody>
</table>

* As provided in contractors Non-Profit Rate Agreement for 2015 dated 9/25/14 from the US Department of Health and Human Services.
** Maximum rate allowable by WA State Dept. of Commerce for this grant

III. Invoicing

1. The Contractor shall submit itemized invoices on a monthly/quarterly basis in a format approved by the County. Monthly/quarterly 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.

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.
# Non Profit Insurance Program
## CERTIFICATE OF INSURANCE

**Issue Date:** 05/23/2014

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policies below. This certificate of insurance does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder.

**IMPORTANT:** If the certificate holder is an additional insured, the policy(ies) must be endorsed. If subrogation is waived, subject to the terms and conditions of the policy, certain coverage may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

## PRODUCER

<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Canfield</td>
<td>451 Diamond Drive</td>
</tr>
<tr>
<td></td>
<td>Ephrata, WA 98823</td>
</tr>
</tbody>
</table>

## INSURED

<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Opportunity Council, The</td>
<td>1111 Cornwall Avenue, Ste C</td>
</tr>
<tr>
<td></td>
<td>Bellingham, WA 98225</td>
</tr>
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</table>

## COMPANIES AFFORDING COVERAGE

<table>
<thead>
<tr>
<th>Type of Insurance</th>
<th>Policy Number</th>
<th>Policy Eff Date</th>
<th>Policy Exp Date</th>
<th>Description</th>
<th>Limits</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>GENERAL LIABILITY</strong></td>
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<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Commercial General Liability</td>
<td>N1-A2-RL-0000013-06</td>
<td>06/01/2014</td>
<td>06/01/2015</td>
<td>Per occurrence</td>
<td>$5,000,000</td>
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<td></td>
<td></td>
<td></td>
<td>Per member aggregate</td>
<td>$10,000,000</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Product-com/Op</td>
<td>$5,000,000</td>
</tr>
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<td></td>
<td></td>
<td></td>
<td></td>
<td>Personal &amp; Adv. Injury</td>
<td>$5,000,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Annual Pool Aggregate</td>
<td>$50,000,000</td>
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<tr>
<td></td>
<td></td>
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<td></td>
<td>(Liability is subject to a $50,000 SIR payable from program funds)</td>
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</tr>
<tr>
<td><strong>AUTOMOBILE LIABILITY</strong></td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Any Auto</td>
<td>N1-A2-RL-0000013-06</td>
<td>06/01/2014</td>
<td>06/01/2015</td>
<td>Combined Single Limit</td>
<td>$5,000,000</td>
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<tr>
<td></td>
<td></td>
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<td></td>
<td>Annual Pool Aggregate</td>
<td>None</td>
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<td></td>
<td></td>
<td>(Liability is subject to a $50,000 SIR payable from program funds)</td>
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</tr>
<tr>
<td><strong>PROPERTY</strong></td>
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<td></td>
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<tr>
<td></td>
<td>N1-A2-RL-0000013-06</td>
<td>06/01/2014</td>
<td>06/01/2015</td>
<td>All Risk Per Occ Excl. EQ &amp; Fl</td>
<td>$55,000,000</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td>Earthquake Per Occ</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Flood Per Occ</td>
<td>$1,000,000</td>
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<td></td>
<td></td>
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<td></td>
<td>Annual Pool Aggregate</td>
<td>None</td>
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<tr>
<td></td>
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<td></td>
<td></td>
<td>(Property is subject to a $50,000 SIR payable from program funds)</td>
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<tr>
<td><strong>MISCELLANEOUS PROFESSIONAL LIABILITY</strong></td>
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<td>Per Claim</td>
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<td></td>
<td>Annual Pool Aggregate</td>
<td></td>
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<td></td>
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<td></td>
<td></td>
<td>(Liability is subject to a $50,000 SIR payable from program funds)</td>
<td></td>
</tr>
</tbody>
</table>

Regarding the Housing and Essential Needs Grant Program. Whatcom County Health Department and Whatcom County are named as Additional Insureds regarding this program only and are subject to policy terms, conditions, and exclusions. Additional insured endorsement is attached.

## CANCELLATION

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

## CERTIFICATE HOLDER

<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attn: Gail de Hoog</td>
<td>Whatcom County Health Department</td>
</tr>
<tr>
<td></td>
<td>509 Girard St</td>
</tr>
<tr>
<td></td>
<td>Bellingham, WA 98225</td>
</tr>
</tbody>
</table>

## AUTHORIZED REPRESENTATIVE

[Signature]

**509**
AMERICAN ALTERNATIVE INSURANCE COMPANY

ADDITIONAL INSURED – DESIGNATED PERSON OR ORGANIZATION (GENERAL LIABILITY)

<table>
<thead>
<tr>
<th>Named Insured</th>
<th>Non Profit Insurance Program (NPIP)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Policy Number: N1-A2-RL-0000013-06
Endorsement Effective: 06/01/2014

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

This endorsement modifies insurance provided under the following:

GENERAL LIABILITY COVERAGE PART

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated above.

Schedule

Person or Organization (Additional Insured): As Per Schedule on file with Canfield, Underwriting Administrator

A. With respects to the General Liability Coverage Part only, the definition of Insured in the Liability Conditions, Definitions and Exclusions section of this policy is amended to include as an Insured the Person or Organization shown in the above Schedule. Such Person or Organization is an Insured only with respect to liability for Bodily Injury, Property Damage, or Personal and Advertising Injury caused in whole or in part by your acts or omissions or the acts or omissions of those acting on your behalf:

1. In performance of your ongoing operations; or
2. In connection with your premises owned or rented to you.

B. The Limits of Insurance applicable to the additional Insured are those specified in either the:

1. Written contract or written agreement; or
2. Declarations for this policy,

whichever is less. These Limits of Insurance are inclusive and not in addition to the Limits Of Insurance shown in the Declarations.

All other terms and conditions remain unchanged.
EXHIBIT "D"
(SPECIAL TERMS AND CONDITIONS CHG)

The Consolidated Homeless Grant (CHG) combines state homeless resources into a single grant opportunity and is under the administration of the Washington State Department of Commerce. The CHG is designed to support an integrated system of housing assistance to prevent homelessness and quickly re-house households who are unsheltered. This grant provides resources to address the needs of people who are homeless or at risk of homelessness. The funding sources for this grant are from Washington State Home Security Fund, Affordable Housing for All Fund, Transitional Housing Operating and Rent Account, Homeless Housing Program as authorized pursuant to §43.185C RCW.

APPLICABLE LAWS

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

(1). Affirmative action, RCW 41.06.020 (11).

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

(3). Disclosure-campaign finances-lobbying, Chapter 42.17 RCW.

(4). Discrimination-human rights commission, Chapter 49.60 RCW.

(5). Ethics in public service, Chapter 42.52 RCW.

(6). Office of minority and women’s business enterprises, Chapter 39.19 RCW and Chapter 326-02 WAC.

(7). Open public meetings act, Chapter 42.30 RCW.

(8). Public records act, Chapter 42.56 RCW.

(9). State budgeting, accounting, and reporting system, Chapter 43.88 RCW.

(10). All applicable requirements of the Consolidated Homeless Grant contract between Washington State Department of Commerce and Whatcom County, incorporated into this contract by reference.

INSURANCE REQUIREMENTS

(1). Commercial General Liability: Contractor is required to carry commercial general liability insurance no less than $1,000,000 per occurrence.

(2). Fidelity Insurance: Contractors who receive $10,000 or more per year in funding through this agreement shall secure fidelity insurance no less than $100,000 per occurrence.

ALLOWABLE EXPENSES

The following are allowable expenses under the grant guidelines:

(1). Day shelters and homeless drop in centers;

(2). Monthly rent, rent utilities (gas, propane, landline phone, electric, internet, water, sewer, garbage removal), and any combination of first and last month’s rent;

(3). Costs of parking spaces when connected to a unit;

(4). Security deposit for households moving to permanent housing or to a transitional in place rental assistance model;

(5). Costs associated with household credit checks, reasonable storage costs and landlord incentives (provided there are written procedures).

(6). Reasonable moving costs (such as truck rental and hiring a moving company). Note reuniting households with family members is not eligible unless the participant can live with the family permanently.

(7). Maintenance (janitorial/cleaning supplies, pest control, fire safety, materials and contract staff maintenance salaries and benefits associated with providing maintenance).

(8). Toiletries and food served in emergency shelters.

(9). Expendable transportation costs directly related to the transportation of eligible clients (bus tokens and fuel for a shelter van).

(10). Hotel/Motel vouchers (emergency shelter only).

(11). On site and off site management costs related to the building.
(12). Facility specific insurance (mortgage insurance is not allowed) and accounting.

(13). Marketing.

(14). **Rental Arrears**: Rental assistance may also be used to pay for up to three (3) months of rental arrears. Rental arrears may be paid if the payment enables the household to remain in the housing unit for which the arrears are being paid or move to another unit. If funds are used to pay rental arrears, arrears must be included in determining the total period of the household’s rental assistance, which may not exceed 24 months. In cases where an eviction cannot be prevented, rental arrears can still be paid if it satisfies the grievance with the evicting landlord and thereby allows the household receiving a subsidy from another public program (e.g. Section 8) because it represents a different time period and cost type than the rental subsidy (i.e., the arrears represents a back payment of the household portion and the current rental assistance is a forward payment).

(15). **Temporary Absence**: If a household must be temporarily away from their unit but is expected to return (e.g., participant violates conditions of their DOC supervision and is placed in confinement for 30 days) Contractor may pay for the households rent for up to 60 days and charge the grant for eligible costs. Extensions beyond the 60-day limit must be fully documented in the client file.

(16). **Program Operations**: Operations are costs specifically attributed to case managers, outreach workers, and/or housing locators (and their supervisors); and other related personnel (such as staff who check in shelter clients, staff the overnight shelter hours and daytime activities) and costs specifically related to the CHG such as salaries and benefits for: case management, housing search and placement (may include counseling, developing, securing, and securing services; monitoring and evaluating household progress; assessing households’ rights are protected; and developing an individualized housing and service plan, including a path to permanent housing stability subsequent to assistance), outreach (services or assistance designed to publicize the availability of programs to make persons who are homeless or almost homeless aware of these and other available services and programs). Time spent assessing a household is an eligible expense under this activity), Inspections, data collection and entry, staff costs to issue rent assistance, office space, utilities, supplies, telephone, internet, training, conferences, travel, per diem, general liability insurance and automobile insurance, costs of criminal background checks of clients if necessary and required for housing, costs of urinalysis for drug testing of clients if necessary and required for housing.

(17). **Housing Search and Placement**: Services or activities designed to assist individuals or households in locating, obtaining, and retaining suitable housing. Services or activities may include: tenant counseling, assisting individuals and households to understand leases, securing utilities, making moving arrangements, representative payee services concerning rent and utilities, and medication and outreach to property owners related to locating or retaining housing.

(18). **Staff Costs to Issue Rent Assistance**: This cost is not for case management or the cost of a bookkeeper whose duties extend beyond CHG related activities. This cost is only associated with the appropriate portion of salary and benefits of the bookkeeper who issues checks to landlords, utility companies or paying hotel or motel bills on behalf of a household because it is directly related to the delivery of rent or rent and utility assistance with the CHG funds.

(19). **Administrative**: Allowable administrative expenses are those expenses that benefit the organization as a whole. They include the following: executive director, accounting, human resources, and IT salaries and benefits, office supplies and equipment, general organization insurance, organization wide audits, board expenses, organization wide membership fees and dues. Facilities expenses are also allowable administrative expenses. They include the following: rent, building use allowances, and operations and maintenance costs such as janitorial and utilities.

**UNALLOWABLE COSTS**

1. Transportation costs for household members including bus, train, and airplane tickets related to initial move-in or for any subsequent moves are not eligible.
2. CHG rent and rent/utility assistance cannot be combined with CHG funded facility support or project based Section 8 unless approved by Commerce.
3. A household’s share of rent and utilities cannot exceed 50% of the household’s monthly income unless approved in advance by Commerce.
4. The maximum assistance any household may receive is 24 months of rent and utility assistance.
5. Households may not transfer their rent assistance to areas outside of Whatcom County.
6. Direct client services other than the cost of staff time for housing support and move-in costs (other than rent or deposits) as described above.
7. Replacement or operating reserves.
8. Debt service.
9. Construction or rehabilitation of shelter facilities.
10. In combination with rent assistance.
11. Any costs that are the responsibility of the tenant.
12. Political Activities: Political activity of Contractor employees and officers are limited by the State Campaign Finances and Lobbying provisions of 42.17 RCW and the Federal Hatch Act, 5 USC§§1501-1508. No funds may be used under this agreement for working for or against ballot measures or for or against the candidacy of any person for public office.
CONFIDENTIALITY/SAFE GUARDING INFORMATION

The Contractor shall comply with all state and federal laws related to the use, sharing, transfer sale or disclosure of Confidential Information. Contractor agrees that it will not enter information into HMIS which it is not authorized to enter. Contractor further agrees that it will not designate information for sharing which Contractor is not authorized to share under any relevant federal, state, or local confidentiality laws, regulations, or other restrictions applicable to Client information. By entering information into HMIS or designating it for sharing, Contractor represents that it has the authority to enter such information or designated it for sharing.

The Contractor must have policies and or procedures ensuring client records are maintained in a confidential manner pursuant to RCW §43.185C.030 and keep written records or files pertaining to households under lock and key with designated personnel granted access to those files.

Contractor shall comply with the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA) and Washington State RCW §53.185C.030. No identified information may be entered into HMIS for Clients in licensed domestic violence programs or for Clients fleeing domestic violence situations.

SERVICES TO ETHNIC MINORITY AND DIVERSE POPULATIONS

Contractor shall comply with all federal, state, and local nondiscrimination laws, regulations and policies. In the event that these are not followed this contract may be terminated after Contractor has been given reasonable time to cure this noncompliance.

POLICIES AND PROCEDURES

Contractor must have written policies and or procedures covering the following topics: 1) Recertification of Income Eligibility; 2) Rent Assistance; 3) Rent Reasonableness Standard; 4) Rent Limit/ Payment Standard; 5) Housing Stability Plan; 6) Termination of Participation and Grievance; 7) Applicant Denial and Grievance; 8) Confidentiality of Client Records and 9) Record Retention.

OTHER REQUIREMENTS

(1). Households residing in units supported by facility support funds beyond three (3) months must have a Housing Stability Plan.

(2). Contractors who provide rental assistance will be required to conduct initial inspections of housing units into which a household will be moving in to and applies only when a household is receiving rent or rent/utility assistance. The unit must pass inspection before the subsidy is paid. Inspections less than twelve (12) months old performed by other housing providers can be used. Complete records of inspections and follow-up actions must be maintained in household file.

(3). Tenants must be made aware of the Washington Residential Landlord-Tenant Act, RCW §59.18, and be informed on how to use this law when problems arise.

(4). Lead-Based Paint Requirement: Contractor must comply with the Lead-Based Paint Poisoning Prevention Act of 1973 and its applicable regulations found at 24 CFR §35, parts A, B, M, and R. A lead-based paint visual assessment must be completed for all units that meet the following three (3) conditions: 1) the household moving into or living in the unit is being assisted with CHG rent assistance; 2) the unit was constructed prior to 1978; 3) a child under the age of six (6) is or will be living in the unit. This requirement applies regardless of whether a household is remaining in an existing unit or moving into a new unit. The visual inspection must be completed prior to the CHG assistance being provided and annually thereafter. There are certain exceptions where visual assessments are not triggered under the following circumstances: 1) it is a zero bedroom or STO sized unit; 2) X-ray or laboratory testing of all paint surfaces by certified personnel has been conducted in accordance with HUD regulations and the unit is officially certified to not contain lead-based paint; 3) the property has had all lead-based paint identified and removed in accordance with HUD regulations; 4) the unit has already undergone a visual assessment within the past twelve (12) months- obtain documentation that a visual assessment has been conducted or 5) it meets any of the other exemptions described in 24 CFR §35.115(a).

REPORTING REQUIREMENTS

(1). HMIS Reporting Requirements: Contractor must use HMIS for data collection and reporting purposes. Contractor must enter a record for every client served under this agreement in the state HMIS.
AUDITING AND MONITORING

(1). On-Site Monitoring: County shall conduct a risk assessment of Contractor at a minimum of once every two years. The monitoring may consist of on-site or remote techniques to be determined based on the risk assessment results. County reserves the right to undertake special reviews when an audit or other emerging issue demands prompt intervention and or investigation.

(2). Records Maintenance: Contractor shall maintain all books, records, documents, data and other evidence relating to this contract and performance of the services provided, including, but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract. Records shall be maintained for a period of six (6) years.

(3). Audit: Contractors are required to receive an audit on their financial status once every two years.
**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>
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<td>Executive:</td>
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**TITLE OF DOCUMENT:** Contract between Whatcom County and Opportunity Council for leasing specialist services.

**ATTACHMENTS:**
- 1. Executive Memo
- 2. Information Sheet
- 3. 2 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.)

Sponsor Based Rental Assistance (SBRA) is a federal program that provides long term rental assistance in Whatcom County to homeless persons with serious mental illness. The Bellingham Whatcom County Housing Authorities administers the SBRA program by providing housing vouchers directly to eligible persons. The program design requires a service match be provided to recipients by other sources; for example, case management, mental health treatment, housing search and placement. Opportunity Council acts as a SBRA sponsor in Whatcom County, and helps SBRA recipients find and maintain housing. Funding provided by the County under this contract funds a leasing specialist and administrative costs of the SBRA program.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:**

Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: www.co.whatcom.wa.us/council.
TO: 
Jack Louws, County Executive

FROM: 
Regina A. Delahunt, Director

RE: 
Opportunity Council, Leasing Specialist Services-Sponsor Based Rental Assistance Program

DATE: 
October 22, 2014

Enclosed are two (2) originals of a contract between Whatcom County and Opportunity Council for your review and signature.

- **Background and Purpose**
  Sponsor Based Rental Assistance (SBRA) is a federal program that provides long term rental assistance in Whatcom County to homeless persons with serious mental illness. The Bellingham Whatcom County Housing Authority administers the SBRA program by providing housing vouchers directly to eligible persons. The program design requires that service match be provided to recipients by other sources; for example, case management, mental health treatment, housing search and placement. Opportunity Council acts as a SBRA sponsor in Whatcom County, and helps SBRA recipients find and maintain housing. Funding provided by the County under this contract funds a leasing specialist and administrative costs of the SBRA program. Opportunity Council will continue to provide safe, clean and affordable housing to 55 formerly homeless mental health consumers with rental subsidies from the SBRA program and the administrative reimbursement from Whatcom County.

- **Funding Amount and Source**
  The source of funding for this contract is County mental health millage funds in the amount of $70,025.

- **Differences from Previous Contract**
  This is a new contract resulting from RFP 14-49, however it is very similar to a contract in place with this vendor since 2012. Council approval is required because this service agreement annual contract budget exceeds $50,000. An agenda bill is attached.

Please contact Gail de Hoog at extension 30693, if you have any questions or concerns regarding the terms of this agreement.

Encl.
<table>
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<tr>
<th>Originating Department:</th>
<th>Health</th>
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<tbody>
<tr>
<td>Contract or Grant Administrator:</td>
<td>Gail de Hoog</td>
</tr>
<tr>
<td>Contractor's / Agency Name:</td>
<td>Opportunity Council</td>
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<tr>
<td>Is this a New Contract? Yes X No</td>
<td>If not, is this an Amendment or Renewal to an Existing Contract? Yes ___ No ___</td>
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<tr>
<td>Does contract require Council Approval? Yes X No</td>
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<tr>
<td>Is this a grant agreement? Yes ___ No X</td>
<td>If yes, grantor agency contract number(s) __________ CFDA # __________</td>
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<tr>
<td>Is this contract grant funded? Yes ___ No X</td>
<td>If yes, associated Whatcom County grant contract number(s) __________</td>
</tr>
<tr>
<td>Is this contract the result of a RFP or Bid process? Yes X No</td>
<td>If yes, RFP and Bid number(s) 14-49 Contract Cost Center: 671300</td>
</tr>
<tr>
<td>Is this agreement excluded from E-Verify? No ___ Yes X</td>
<td>If no, include Attachment D Contractor Declaration form.</td>
</tr>
</tbody>
</table>

**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 Gov’ts)
- Public Works - Local Agency/Federally Funded FHWA

**Contract Amount:** (sum of original contract amount and any prior amendments)

| $ 70,025 |

**This Amendment Amount:**

| $ |

**Total Amended Amount:**

| $ |

**Summary of Scope:**

- This contract funds operating costs and Leasing Specialist services to support the federal Sponsor Based Rental Assistance program.

**Term of Contract:** 1 Year  Expiration Date: 12/31/2015

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

1. Prepared by: [pi] Date: 9/19/14 [electronic]
2. Attorney reviewed: [rb] Date: 10/6/14 [electronic]
3. AS Finance reviewed: [rb] Date: 10/9/14 [electronic]
4. IT reviewed if IT related [ ] Date: [ ] [electronic]
5. Corrections made: [ ] Date: [ ] [electronic] hard copy printed
6. Attorney signoff: [KDF] Date: 10/9-14
7. Contractor signed: Date: 10-31-14 [summary via electronic; hardcopies]
8. Submitted to Exec Office [ ] Date: [ ]
9. Council approved (if necessary) [ ] Date: [ ]
10. Executive signed: [ ] Date: [ ]
11. Contractor Original Returned to dept; [ ] Date: [ ]
12. County Original to Council [ ] Date: [ ]
Opportunity Council, hereinafter called **Contractor**, and Whatcom County, hereinafter referred to as **County**, agree and contract as set forth in this Agreement, including:

General Conditions, pp. 1 to 8.
Exhibit A (Scope of Work), pp. 9 to 10.
Exhibit B (Compensation), p. 11.
Exhibit C (Certificate of Insurance), p. 12.

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 1st day of January, 2015, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 31st day of December, 2015.

The general purpose or objective of this Agreement is to provide **Leasing Specialist Services** to support the Sponsor Based Rental Assistance Program, 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 $70,025. The Contract Number, set forth above, shall be included on all billings or correspondence in connection therewith.

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

**IN WITNESS WHEREOF**, the parties have executed this Agreement this ___ day of ________________, 2014.

**CONTRACTOR:**

[Signature]

David W. Finet, Executive Director

**STATE OF WASHINGTON**

**COUNTY OF WHATCOM**

On this 14 day of **OCTOBER**, 2014, before me personally appeared David W. Finet, Executive Director of Opportunity Council and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

[Signature]

WHATCOM COUNTY:
Recommended for Approval:

Anne Deacon, Human Services Manager 10/22/14
Anne Deacon, Human Services Manager  Date

Regina Delahunt, Director 10/23/14
Regina Delahunt, Director  Date

Approved as to form:
Royce Buckingham, Deputy Prosecuting Attorney 10/24/14
Royce Buckingham, Deputy 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 ________________________, 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:

Greg Winter, Director Whatcom Homeless Service Center
Opportunity Council
1111 Cornwall Avenue
Bellingham, WA 98225
360-255-2091 x 131
Greg_winter@whatcomhsc.org
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 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. 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, settlements, 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.

31.2 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 general liability and property damage insurance with the following minimums:
Property Damage per occurrence - $500,000.00
General Liability & Property Damage for bodily injury- $1,000,000.00

A Certificate of 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, 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:

Gail de Hoog, Housing Specialist
Whatcom County Health Department
509 Girard Street
Bellingham, WA 98225
(360) 676-6724, ext. 30696
gdehoog@co.whatcom.wa.us

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.
EXHIBIT "A"
SCOPE OF WORK

I. Background

Department of Housing and Urban Development Continuum of Care Sponsor Based Rental Assistance (formerly Shelter Plus Care) is a federally funded program that provides long term rental assistance to homeless persons with disabilities, primarily those with serious mental illness, chronic problems with alcohol and/or drugs, and HIV/AIDS or related diseases (see Programmatic Crosswalk of Changes: CoC, SHP, SPC Program Regulation https://www.onecpd.info/resource/2046/programmatic-crosswalk-of-changes-coc-shp-spc-program-regulations/ for more information about the program). In Whatcom County, program eligibility is limited to homeless persons with mental illness. The program requires that housing assistance be matched with supportive services (e.g., case management, mental health services) funded through other sources. In Whatcom County, the Sponsor Based Rental Assistance (SBRA) program is administered by the Bellingham Whatcom County Housing Authorities (BWCHA), through participating "sponsors." Sponsors take responsibility for the rental units either through ownership, master leasing of the rental housing unit and or facility, or by co-signing tenant leases.

The purpose of this contract is to fund support services associated with the provision of housing by sponsor agencies. Sponsor agency support services typically include locating available housing units in the community, acting as leasing specialists, and working with tenants and participating landlords to resolve tenancy issues that may arise. Sponsors are also responsible for paying tenant rent, in the event of tenant abandonment of the unit, and for paying for tenant caused damages that are in excess of normal wear and tear and that exceed the federal SBRA damages coverage. This contract will also support the leasing specialist activities provided to Supportive Housing Program participants (SHP) as needed. The SHP is a HUD housing assistance program for people who are chronically homeless with a mental health disability.

This contract is part of Whatcom County's ongoing efforts to create a continuum of housing services and supports for low income and homeless individuals and families, in a manner that is cost effective and responsive to the needs of the community.

II. Statement of Work

Under this contract, the Contractor will place or maintain at least 55 new and or continuing Sponsor Based Rental Assistance clients each month in housing units that meet Federal program requirements during the 2015 calendar year. Leasing specialist activities will include the following:

(1). Locate new housing units for Sponsor Based Rental Assistance and Supportive Housing Program clients as needed.

(2). Prepare Sponsor Based Rental Assistance application and verification documents with prospective clients and submit to BWCHA.

(3). Document client eligibility and lease agreement for the Sponsor Based Rental Assistance program and Supportive Housing Program in the client file.

(4). Provide housing services to Sponsor Based Housing Assistance and Supportive Housing Program clients in order to promote housing retention. Housing services include, but are not limited to:

(a). Conducting in-home inspections and/or visits with the client in order to identify and address barriers to housing stability.

(b). Educating clients about rental/lease compliance and tenant responsibilities under Landlord Tenant Law.
(c) Coordinating with case managers and clients about cleaning and maintaining housing units.

(d) Working directly with case managers and clients to resolve conflicts with landlords and/or other tenants.

(5). Comply with BWCHA Sponsor Based Rental Assistance sponsorship duties.

(6). Assist clients in preparing Section 8 and/or public housing applications.

(7). Comply with Homeless Management Information System (HMIS) data collection and recording requirements by working directly with Whatcom Homeless Service Center.

(8). Maintain master lease liability insurance coverage on units utilized in the Sponsor Based Housing Assistance Program and Supportive Housing Program.

III. Reporting Requirements

Contractor shall provide the County a report by the 15th of each month to include a listing of all active SBRA clients by a unique client identification number along with the date the client’s SBRA lease began. Please include this list along with the monthly invoice documentation required in Exhibit B.
EXHIBIT “B”
COMPENSATION

I. **Budget and Source of Funding:** The source of funding for this contract is County held mental health millage funds in an amount not to exceed $70,025.

II. **Budget for the 1/1/2015 – 12/31/2015 Period**

<table>
<thead>
<tr>
<th>Activity / Line Item</th>
<th>Documents Required Each Invoice</th>
<th>Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Leasing Specialist Services</td>
<td>General Ledger Detail</td>
<td>54,037</td>
</tr>
<tr>
<td>Mileage</td>
<td>Mileage log to include: name of the staff member, date of travel, starting point and destination of travel, number of miles traveled. Mileage will be reimbursed at the GSA rate (per <a href="http://www.gsa.gov">www.gsa.gov</a>).</td>
<td>1,470</td>
</tr>
<tr>
<td><strong>Subtotal:</strong></td>
<td></td>
<td>55,507</td>
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<tr>
<td>Administrative Costs/Indirect Costs</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Master lease liability insurance</td>
<td>General Ledger Detail</td>
<td>8,135</td>
</tr>
<tr>
<td><strong>Total:</strong></td>
<td></td>
<td><strong>$ 70,025</strong></td>
</tr>
</tbody>
</table>

* As provided in contractors Non-Profit Rate Agreement for 2015 dated 9/25/14 from the US Department of Health and Human Services.

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.

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

   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.
# Non Profit Insurance Program

## CERTIFICATE OF INSURANCE

Issue Date: 10/31/2014

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONVEYS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain coverage may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

### PRODUCER
- Canfield
  - 451 Diamond Drive
  - Ephrata, WA 98823

### COMPANIES AFFORDING COVERAGE
- **GENERAL LIABILITY**
  - American Alternative Insurance Corporation
- **AUTOMOBILE LIABILITY**
  - American Alternative Insurance Corporation
- **PROPERTY**
  - American Alternative Insurance Corporation
  - RSUI Group, Inc.
- **MISCELLANEOUS PROFESSIONAL LIABILITY**

### INSURED
- Opportunity Council, The
  - 1111 Cornwall Avenue, Ste C
  - Bellingham, WA 98225

### COVERAGES

This is to certify that the policies of insurance listed below have been issued to the insured named above for the coverage period indicated, not withstanding any requirement, term or condition of contract or other document with respect to which this certificate may be issued or may pertain. The insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies. Limits shown may have been reduced by paid claims.

### TYPE OF INSURANCE

<table>
<thead>
<tr>
<th>TYPE OF INSURANCE</th>
<th>POLICY NUMBER</th>
<th>POLICY EFF DATE</th>
<th>POLICY EXP DATE</th>
<th>DESCRIPTION</th>
<th>LIMITS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>GENERAL LIABILITY</strong></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>COMMERCIAL GENERAL LIABILITY</td>
<td>N1-A2-RL-0000013-06</td>
<td>06/01/2014</td>
<td>06/01/2015</td>
<td>PER OCCURRENCE</td>
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<td>OCCURRENCE FORM</td>
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<td>PER MEMBER AGGREGATE</td>
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<td>INCLUDES STOP GAP</td>
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<td>PRODUCT-COMP/OP</td>
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<tr>
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<td>PERSONAL &amp; ADV. INJURY</td>
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<td>ANNUAL POOL AGGREGATE</td>
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<td><strong>AUTOMOBILE LIABILITY</strong></td>
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<td>ANY AUTO</td>
<td>N1-A2-RL-0000013-06</td>
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<td>06/01/2015</td>
<td>COMBINED SINGLE LIMIT</td>
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<td>ANNUAL POOL AGGREGATE</td>
<td>NONE</td>
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<tr>
<td><strong>PROPERTY</strong></td>
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<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>N1-A2-RL-0000013-06</td>
<td>06/01/2014</td>
<td>06/01/2015</td>
<td>ALL RISK PER OCC EXCL EQ &amp; FL</td>
<td>$65,000,000</td>
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<tr>
<td>(PROPERTY IS SUBJECT TO A $50,000 SIR PAYABLE FROM PROGRAM FUNDS)</td>
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<td></td>
<td></td>
<td>EARTHQUAKE PER OCC</td>
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<td></td>
<td>FLOOD PER OCC</td>
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<td></td>
<td>ANNUAL POOL AGGREGATE</td>
<td>NONE</td>
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<tr>
<td><strong>MISCELLANEOUS PROFESSIONAL LIABILITY</strong></td>
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<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td>PER CLAIM</td>
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<tr>
<td>(LIABILITY IS SUBJECT TO A SIR PAYABLE FROM PROGRAM FUNDS)</td>
<td></td>
<td></td>
<td></td>
<td>ANNUAL POOL AGGREGATE</td>
<td></td>
</tr>
</tbody>
</table>

### DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / SPECIAL ITEMS

Regarding 75 master leased transitional housing units. Whatcom County is named as Additional Insured regarding these locations only and is subject to policy terms, conditions and exclusions. Additional Insured and Waiver of Subrogation endorsements are attached. The NPIP retained limit is primary and non-contributory.

### CANCELLATION

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

### CERTIFICATE HOLDER
- Whatcom County
  - 509 Girard St
  - Bellingham, WA 98225

### AUTHORIZED REPRESENTATIVE
- [Signature]

2895405

532
AMERICAN ALTERNATIVE INSURANCE COMPANY

WAIVER OF TRANSFER OR RIGHTS AND RECOVERY AGAINST OTHERS TO US

| Named Insured Non Profit Insurance Program (NPIP) |  |
| Policy Number | N1-A2-RL-0000013-06 | Endorsement Effective 06/01/2014 |

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

This endorsement modifies insurance provided under the following:

GENERAL LIABILITY COVERAGE PART

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated above.

Schedule

Name of Person or Organization: As Per Schedule on file with Canfield, Underwriting Administrator

The Our Right To Recovery Condition in the Liability Conditions, Definitions and Exclusions form is amended by addition of the following:

We waive any rights of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or Your Work done under contract with that person or organization. This waiver only applies to the person or organization shown in the Schedule above; however, this waiver does not apply if the injury or damage is due to the sole negligence of such scheduled person or organization.

All other terms and conditions remain unchanged.

Includes copyrighted material of the Insurance Services Office, Inc., with its permission.
WHATCOM COUNTY COUNCIL AGENDA BILL

CLEARANCES

<table>
<thead>
<tr>
<th>Originator:</th>
<th>Initial</th>
<th>Date</th>
<th>Date Received in Council Office</th>
<th>Agenda Date</th>
<th>Assigned to:</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>TGH</td>
<td>11/13/2014</td>
<td></td>
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</tr>
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</table>

Division Head: Paul 11/20/2014

Dept. Head:

Prosecutor: KnF 11/21/14

Purchasing/Budget: BBA 11/20/14

Executive: 12/2/14

TITLE OF DOCUMENT: Microsoft Enterprise Agreement – Three Year Software Maintenance

ATTACHMENTS:

- Cover Memo
- Contract Information Sheet
- Microsoft Enterprise Enrollment
- Microsoft Enterprise and Enterprise Subscription Enrollment Product Selection Form
- Microsoft Program Signature Form
- Microsoft Enterprise Agreement Renewal – CompuCom Software Quote

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.)

Request authorization for the County Executive to enter into a contract with CompuCom Systems, Inc. pursuant to State of Washington contract T11-MST-579 for the renewal of our Microsoft Enterprise Agreement in the amount of $134,444.49 per year.

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.
Enclosed is a proposed contract between CompuCom Systems Inc. and Whatcom County to renew our Microsoft Enterprise Agreement for your review and signature.

- **Background and Purpose**
  Whatcom County currently has a Microsoft Enterprise Agreement that provides organization-wide software licensing for various Microsoft products such as Microsoft Office Professional Pro, Microsoft networking and other components. The agreement was amended in 2013 to include promotional pricing for Microsoft Exchange Online (e-mail).

  Whatcom County receives discounted pricing from Microsoft pursuant to State of Washington contract # T11-MST-579 with CompuCom Systems Inc. The purpose of this agreement is to renew the Microsoft Enterprise Agreement for a new 3-year term.

- **Funding Amount and Source**
  This agreement is to pay software maintenance in the amount of $134,444.49 per year for 2015, 2016 and 2017. The annual sources of funding are:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Information Technology Base Budget (507111)</td>
<td>$59,627.77</td>
</tr>
<tr>
<td>Technology Replacement &amp; Revolving Fund (507700)</td>
<td>$74,816.72</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$134,444.49</strong></td>
</tr>
</tbody>
</table>

- **Differences from Previous Contract**
  This agreement represents an increase of $9,957 per year primarily due to the addition of Microsoft Exchange Online (e-mail) to our base Microsoft Enterprise Agreement along with modest pricing increases for existing products. Our e-mail plan changes from Exchange Online Plan 1 to Office 365 Enterprise E1 which provides additional features such as instant messaging, document sharing and storage.

Please contact Perry Rice at x 52511 or Denise Toth Banyan at x 50639, if you have any questions or concerns regarding the terms of this agreement.
<table>
<thead>
<tr>
<th>Originating Department:</th>
<th>AS-Information Technology</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract or Grant Administrator:</td>
<td>Perry L. Rice</td>
</tr>
<tr>
<td>Contractor's / Agency Name:</td>
<td>CompuCom Systems, Inc.</td>
</tr>
<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>Yes ☐ No ☒ If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #:</td>
<td>201203004</td>
</tr>
<tr>
<td>Does contract require Council Approval? Yes ☒ No ☐</td>
<td>If No, include WCC: (see Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)</td>
</tr>
<tr>
<td>Is this a grant agreement?</td>
<td>Yes ☐ No ☒</td>
</tr>
<tr>
<td>Yes ☒ No ☐ If yes, grantor agency contract number(s):</td>
<td>CFDA#:</td>
</tr>
<tr>
<td>Is this contract grant funded?</td>
<td>Yes ☐ No ☒</td>
</tr>
<tr>
<td>Yes ☒ No ☐ If yes, Whatcom County grant contract number(s):</td>
<td></td>
</tr>
<tr>
<td>Is this contract the result of a RFP or Bid process?</td>
<td>State of WA Contract Number: T11-MST-579</td>
</tr>
<tr>
<td>Yes ☒ No ☐ If yes, RFP and Bid number(s):</td>
<td>Contract Cost Center: 507111 &amp; 507700</td>
</tr>
<tr>
<td>Is this agreement excluded from E-Verify?</td>
<td>No ☐ Yes ☒</td>
</tr>
<tr>
<td>No ☒ Yes ☒ If no, include Attachment D Contractor Declaration form.</td>
<td></td>
</tr>
</tbody>
</table>

If YES, indicate exclusion(s) below:

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

<table>
<thead>
<tr>
<th>Contract Amount: (sum of original contract amount and any prior amendments):</th>
<th>$134,444.49 per Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>This Amendment Amount:</td>
<td>$</td>
</tr>
<tr>
<td>Total Amended Amount:</td>
<td>$</td>
</tr>
</tbody>
</table>

Summary of Scope:

Renewal of three year Microsoft Enterprise Agreement that provides software maintenance for organization-wide use of select Microsoft products. These products include Microsoft Office, Microsoft Exchange Online (e-mail) and Microsoft networking (client access licenses).

<table>
<thead>
<tr>
<th>Term of Contract:</th>
<th>3-Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Expiration Date:</td>
<td>December 31, 2017</td>
</tr>
<tr>
<td>Contract Routing:</td>
<td></td>
</tr>
</tbody>
</table>

1. Prepared by: Jami Gubler
2. Attorney signoff: Knt
3. AS Finance reviewed: Obranch
4. IT reviewed (if IT related): Pkn
5. Contractor signed: 
6. Submitted to Exec.: 
7. Council approved (if necessary): 
8. Executive signed: 
9. Original to Council: 

Date: 11/20/14
Date: 11/21/14
Date: 11/20/14
Date: 11/20/14
Date: 11/24/14

Last Edited 060414
Enterprise Enrollment

Enterprise Enrollment number
(Microsoft to complete)

Proposal ID/Framework ID

Previous Enrollment number
(Reseller to complete)

Earliest expiring previous Enrollment end date

9044383
12/31/2014

This Enrollment must be attached to a signature form to be valid.

This Microsoft Enterprise Enrollment is entered into between the entities as identified in the signature form as of the effective date. Enrolled Affiliate represents and warrants it is the same Customer, or an Affiliate of the Customer, that entered into the Enterprise Agreement identified on the program signature form.

This Enrollment consists of: (1) these terms and conditions, (2) the terms of the Enterprise Agreement identified on the signature form, (3) the Product Selection Form, (4) any supplemental contact information form or Previous Agreement/Enrollment form that may be required, (5) any order submitted under this Enrollment. This Enrollment may only be entered into under a 2011 or later Enterprise Agreement.

All terms used but not defined are located at http://www.microsoft.com/licensing/contracts. In the event of any conflict the terms of this Agreement control.

Effective date. If Enrolled Affiliate is renewing Software Assurance or Subscription Licenses from one or more previous Enrollments or agreements, then the effective date will be the day after the first prior Enrollment or agreement expires or terminates. Otherwise, the effective date will be the date this Enrollment is accepted by Microsoft. Any reference to "anniversary date" refers to the anniversary of the effective date each year this Enrollment is in effect.

Term. The initial term of this Enrollment will expire on the last day of the month, 36 full calendar months from the effective date of the initial term. If the Enrollment is renewed, the renewal term will expire 36 full calendar months after the effective date of the renewal term. Any reference in this Enrollment to "day" will be a calendar day.

Product order. The Reseller will provide Enrolled Affiliate with Enrolled Affiliate's Product pricing and order. Prices and billing terms for all Products ordered will be determined by agreement between Enrolled Affiliate and the Reseller. The Reseller will provide Microsoft with the order separately from this Enrollment.

Terms and Conditions

1. Definitions.

Terms used but not defined in this Enrollment will have the definition in the Enterprise Agreement. The following definitions are used in this Enrollment:

"Additional Product" means any Product identified as such in the Product List and chosen by Enrolled Affiliate under this Enrollment.

"Enterprise Online Service" means any Online Service designated as an Enterprise Online Service in the Product List and chosen by Enrolled Affiliate under this Enrollment. Enterprise Online Services are treated as Online Services, except as noted.

"Enterprise Product" means any Desktop Platform Product that Microsoft designates as an Enterprise Product in the Product List and chosen by Enrolled Affiliate under this Enrollment. Enterprise
Products must be licensed for all Qualified Devices and Qualified Users on an Enterprise-wide basis under this program.

"Expiration Date" means the date upon which the Enrollment expires.

"Industry Device" (also known as line of business device) means any device that: (1) is not useable in its deployed configuration as a general purpose personal computing device (such as a personal computer), a multi-function server, or a commercially viable substitute for one of these systems; and (2) only employs an industry or task-specific software program (e.g. a computer-aided design program used by an architect or a point of sale program) ("Industry Program"). The device may include features and functions derived from Microsoft software or third-party software. If the device performs desktop functions (such as email, word processing, spreadsheets, database, network or internet browsing, or scheduling, or personal finance), then the desktop functions: (1) may only be used for the purpose of supporting the Industry Program functionality; and (2) must be technically integrated with the Industry Program or employ technically enforced policies or architecture to operate only when used with the Industry Program functionality.

"L&SA" means a License with Software Assurance for any Product ordered.

"Qualified Device" means any device that is used by or for the benefit of Enrolled Affiliate's Enterprise and is: (1) a personal desktop computer, portable computer, workstation, or similar device capable of running Windows Professional locally (in a physical or virtual operating system environment), OR (2) a device used to access a virtual desktop infrastructure ("VDI"). Qualified Devices do not include any device that is: (1) designated as a server and not used as a personal computer, OR (2) an Industry Device, OR (3) not managed (as defined in the Product List at the start of the applicable initial or renewal term of the Enrollment) as part of Enrolled Affiliate's Enterprise. At its option, the Enrolled Affiliate may designate any device excluded above (e.g., Industry Device) that is used by or for the benefit of the Enrolled Affiliate's Enterprise as a Qualified Device for all or a subset of Enterprise Products or Online Services the Enrolled Affiliate has selected.

"Qualified User" means a person (e.g., employee, consultant, contingent staff) who: (1) is a user of a Qualified Device, or (2) accesses any server software requiring an Enterprise Product Client Access License or any Enterprise Online Service. It does not include a person who accesses server software or an Online Service solely under a License identified in the Qualified User exemptions in the Product List.

"Reserved License" means for an Online Service identified as eligible for true-ups in the Product List, the License reserved by Enrolled Affiliate prior to use and for which Microsoft will make the Online Service available for activation.

"Transition" means the conversion of one or more License to or from another License(s). Products eligible for Transition and permitted Transitions are identified in the Product List.

"Transition Period" means the time between the Transition and the next Enrollment anniversary date for which the Transition is reported.

2. Order requirements.

   a. Minimum Order requirements. Enrolled Affiliate’s Enterprise must have a minimum of 250 Qualified Users or Qualified Devices. The initial order must include at least 250 Licenses for Enterprise Products or Enterprise Online Services.

      (i) Enterprise Commitment. If ordering any Enterprise Products, Enrolled Affiliate’s order must include coverage for all Qualified Users or Qualified Devices, depending on the License Type, of one or more Enterprise Products or a mix of Enterprise Products and the corresponding Enterprise Online Services.

      (ii) Enterprise Online Services. If ordering Enterprise Online Services only, then Enrolled Affiliate must maintain at least 250 Subscription Licenses.

   b. Additional Products. Upon satisfying the minimum order requirements above, Enrolled Affiliate may order Additional Products and Services.

   c. Product Use Rights for Enterprise Products. For Enterprise Products, if a new Product version has more restrictive use rights than the version that is current at the start of the
applicable initial or renewal term of the Enrollment, those more restrictive use rights will not apply to Enrolled Affiliate's use of that Product during that term.

d. Country of usage. Enrolled Affiliate must specify the countries where Licenses will be used on its initial order and on any additional orders.

e. Adding Products.

(i) Adding new Products not previously ordered. Enrolled Affiliate may add new Enterprise Products by entering into a new Enrollment or as part of a renewal. New Enterprise Online Services may be added by contacting a Microsoft Account Manager or Reseller. New Additional Products, other than Online Services, may be used if an order is placed in the month the Product is first used. For Additional Products that are Online Services, an initial order for the Online Service is required prior to use.

(ii) Adding Licenses for previously ordered Products. Additional Licenses for previously ordered Products must be included in the next true-up order. Enrolled Affiliate must purchase Services and Licenses for Online Services prior to use, unless the Online Services are (1) identified as eligible for true-up in the Product List or (2) included as part of other Licenses (e.g., Enterprise CAL).

f. True-up requirements.

(i) True-up order. Enrolled Affiliate must submit an annual true-up order that accounts for changes since the initial order or last true-up order, including: (1) any increase in Licenses, including any increase in Qualified Devices or Qualified Users and Reserved Licenses; (2) Transitions (if permitted); or (3) Subscription License quantity reductions (if permitted). Microsoft, at its discretion, may validate the customer true-up data submitted through a formal product deployment assessment using an approved Microsoft partner.

(ii) Enterprise Products. Enrolled Affiliate must determine the number of Qualified Devices and Qualified Users (if ordering user-based Licenses) at the time the true-up order is placed and must order additional Licenses for all Qualified Devices and Qualified Users that are not already covered by existing Licenses, including any Enterprise Online Services.

(iii) Additional Products. For Products that have been previously ordered, Enrolled Affiliate must determine the Additional Products used and order the License difference (if any).

(iv) Online Services. For Online Services identified as eligible for true-up orders in the Product List, Enrolled Affiliate may first reserve the additional Licenses prior to use. Microsoft will provide a report of Reserved Licenses in excess of existing orders to Enrolled Affiliate and its Reseller. Reserved Licenses will be invoiced retroactively for the prior year based upon the month in which they were reserved.

(v) Transitions. Enrolled Affiliate must report all Transitions. Transitions may result in an increase in Licenses to be included on the true-up order and a reduction of Licenses for prior orders. Reductions in Licenses will be effective at end of the Transition Period. Associated invoices will also reflect this change. For Licenses paid upfront, Microsoft will issue a credit for the remaining months of Software Assurance or Subscription Licenses that were reduced as part of the Transition.

(vi) True-up due date. The true-up order must be received by Microsoft between 60 and 30 days prior to the Enrollment anniversary date. The third-year anniversary true-up order is due within 30 days prior to the Expiration Date. Enrolled Affiliate may true-up more often than at each Enrollment anniversary date except for Subscription License reductions.

(vii) Late true-up order. If the true-up order is not received when due:

1) Microsoft will invoice Reseller for all Reserved Licenses not previously ordered.

2) Transitions and Subscription License reductions cannot be reported until the following Enrollment anniversary date (or at Enrollment renewal, as applicable).
(viii) Subscription License reductions. Enrolled Affiliate may reduce the quantity of Subscription Licenses on a prospective basis if permitted in the Product List as follows:

1) For Subscription Licenses part of an Enterprise-wide purchase, Licenses may be reduced if the total quantity of Licenses and Software Assurance for an applicable group meets or exceeds the quantity of Qualified Devices identified on the Product Selection Form. Step-up Licenses do not count towards this total count.

2) For Enterprise Online Services not a part of an Enterprise-wide purchase, Licenses can be reduced as long as the initial order minimum requirements are maintained.

3) For Additional Products available as Subscription Licenses, Enrolled Affiliate may reduce the Licenses. If the License count is reduced to zero, then Enrolled Affiliate's use of the applicable Subscription License will be cancelled. Invoices will be adjusted to reflect any reductions in Subscription Licenses at the true-up order Enrollment anniversary date and effective as of such date.

(ix) Update statement. An update statement must be submitted instead of a true-up order if, as of the initial order or last true-up order, Enrolled Affiliate's Enterprise has not: (1) changed the number of Qualified Devices and Qualified Users licensed with Enterprise Products or Enterprise Online Services; and (2) increased its usage of Additional Products. This update statement must be signed by Enrolled Affiliate's authorized representative. The update statement must be received by Microsoft between 60 and 30 days prior to the Enrollment anniversary date. The last update statement is due within 30 days prior to the Expiration Date.

g. Step-up Licenses. For Licenses eligible for a step-up under this Enrollment, Enrolled Affiliate may step-up to a higher edition or suite as follows:

(i) For step-up Licenses included on an initial order, Enrolled Affiliate may order according to the true-up process.

(ii) If step-up Licenses are not included on an initial order, Enrolled Affiliate may step-up initially by following the process described in the Section titled "Adding new Products not previously ordered," then for additional step-up Licenses, by following the true-up order process.

(iii) If Enrolled Affiliate has previously ordered an Online Service as an Additional Product and wants to step-up to an Enterprise Online Service eligible for a Transition, the step-up may be reported as a Transition.

(iv) If Enrolled Affiliate Transitions a License, it may be able to further step-up the Transitioned License. If Enrolled Affiliate chooses to step-up and the step-up License is separately eligible to be Transitioned, such step-up Licenses may result in a License reduction at the Enrollment anniversary date following the step-up.

h. Clerical errors. Microsoft may correct clerical errors in this Enrollment, and any documents submitted with or under this Enrollment, by providing notice by email and a reasonable opportunity for Enrolled Affiliate to object to the correction. Clerical errors include minor mistakes, unintentional additions and omissions. This provision does not apply to material terms, such as the identity, quantity or price of a Product ordered.

3. Pricing.

a. Price Levels. For both the initial and any renewal term Enrolled Affiliate’s Price Level for all Products ordered under this Enrollment will be Level "D" throughout the term of the Enrollment. Price Level ‘s will be captured in the Product Selection Form.

b. Setting Prices. Enrolled Affiliate’s prices for each Product will be established by its Reseller. As long as Enrolled Affiliate continues to qualify for the same price level, Microsoft’s prices for Resellers for each Product or Service will be fixed throughout the applicable initial or renewal Enrollment term. However, if Enrolled Affiliate qualifies for a different price level, Microsoft will establish a new price level for future new orders either
upon Enrolled Affiliate's request or on its own initiative. Any changes will be based upon price level rules in the Product Selection Form.

4. **Payment terms.**

For the initial or renewal order, Enrolled Affiliate may pay upfront or elect to spread its payments over the applicable Enrollment term. If spread payments are elected, unless indicated otherwise, Microsoft will invoice Enrolled Affiliate’s Reseller in three equal annual installments. The first installment will be invoiced upon Microsoft’s acceptance of this Enrollment and on each Enrollment anniversary date. Subsequent orders are invoiced upon acceptance of the order and Enrolled Affiliate may elect to pay annually or upfront for Online Services and upfront for all other Licenses.

5. **Transitions.**

a. **Transition requirements.**

(i) Licenses with active Software Assurance or Subscription Licenses may be Transitioned at any time if permitted in the Product List. Enrolled Affiliate may not, however, reduce the quantity of Licenses or associated Software Assurance prior to the end of the Transition Period.

(ii) Enrolled Affiliate must order the Licenses to which it is transitioning for the year(s) following the Transition Period.

(iii) If a Transition is made back to a License that had active Software Assurance as of the date of Transition, then Software Assurance must be re-ordered for all such Licenses on a prospective basis following the Transition Period. Software Assurance coverage may not exceed the quantity of perpetual Licenses for which Software Assurance was current at the time of any prior Transition. Software Assurance may not be applied to Licenses transferred by Enrolled Affiliate.

(iv) If a device-based License is Transitioned to a user-based License, all users of the device must be licensed as part of the Transition.

(v) If a user-based License is Transitioned to a device-based License, all devices accessed by the user must be licensed as part of the Transition.

b. **Effect of Transition on Licenses.**

(i) Transition will not affect Enrolled Affiliate’s rights in perpetual Licenses paid in full.

(ii) New version rights will be granted for perpetual Licenses covered by Software Assurance up to the end of the Transition Period.

(iii) For L&SA not paid in full at the end of the Transition Period, Enrolled Affiliate will have perpetual Licenses for a proportional amount equal to the amounts paid for the Transitioned Product as of the end of the Transition Period.

(iv) For L&SA not paid in full or granted a perpetual License in accordance with the above or Subscription Licenses, all rights to Transitioned Licenses cease at the end of the Transition Period.

6. **End of Enrollment term and termination.**

a. **General.** At the Expiration Date, Enrolled Affiliate must immediately order and pay for Licenses for Products it has used but has not previously submitted an order, except as otherwise provided in this Enrollment.

b. **Renewal Option.** At the Expiration Date of the initial term, Enrolled Affiliate can renew Products by renewing the Enrollment for one additional 36 full calendar month term or signing a new Enrollment. Microsoft must receive a Product Selection Form and renewal order prior to or at the Expiration Date. The renewal term will start on the day following the Expiration Date. Microsoft will not unreasonably reject any renewal. Microsoft may
make changes to this program that will make it necessary for Customer and its Enrolled Affiliates to enter into new agreements and Enrollments at renewal.

c. If Enrolled Affiliate elects not to renew.

(i) Software Assurance. If Enrolled Affiliate elects not to renew Software Assurance for any Product under its Enrollment, then Enrolled Affiliate will not be permitted to order Software Assurance later without first acquiring L&SA.

(ii) Online Services eligible for an Extended Term. For Online Services identified as eligible for an Extended Term in the Product List, the following options are available at the end of the Enrollment initial or renewal term.

1) Extended Term. Licenses for Online Services will automatically expire in accordance with the terms of the Enrollment. An extended term feature that allows Online Services to continue month-to-month ("Extended Term") is available. During the Extended Term, Online Services will be invoiced monthly at the then-current published price for Enrolled Affiliate’s price level as of the Expiration Date plus a 3% administrative fee for up to one year. If Enrolled Affiliate does want an Extended Term, Reseller must submit a request to Microsoft. Microsoft must receive the request not less than 30 days prior to the Expiration Date.

2) Cancellation during Extended Term. If Enrolled Affiliate has opted for the Extended Term and later determines not to continue with the Extended Term, Reseller must submit a notice of cancellation for each Online Service. Cancellation will be effective at the end of the month following 30 days after Microsoft has received the notice.

(iii) Subscription Licenses and Online Services not eligible for an Extended Term. If Enrolled Affiliate elects not to renew, the Licenses will be cancelled and will terminate as of the Expiration Date. Any associated media must be uninstalled and destroyed and Enrolled Affiliate’s Enterprise must discontinue use. Microsoft may request written certification to verify compliance.

(iv) Customer Data. Upon expiration or termination of a License for Online Services, Microsoft will keep Customer’s Data in a limited function account for 90 days so that Customer may extract it. Enrolled Affiliate will reimburse Microsoft if there are any associated costs. After 90 days Microsoft will disable Enrolled Affiliate’s account and will delete its Customer Data. Enrolled Affiliate agrees that, other than as described above, Microsoft has no obligation to continue to hold, export or return Enrolled Affiliate’s Customer Data and that Microsoft has no liability whatsoever for deletion of Enrolled Affiliate’s Customer Data pursuant to these terms.

d. Termination for cause. Any termination for cause of this Enrollment will be subject to the “Termination for cause” section of the Agreement.

e. Early termination. Any Early termination of this Enrollment will be subject to the “Early Termination” Section of the Enterprise Agreement.

For Subscription Licenses, in the event of a breach by Microsoft, Microsoft will issue Reseller a credit for any amount paid in advance that would apply after the date of termination.
Enrollment Details

1. **Enrolled Affiliate’s Enterprise.**
   a. Identify which Agency Affiliates are included in the Enterprise. (Required) Enrolled Affiliate’s Enterprise must consist of entire offices, bureaus, agencies, departments or other entities of Enrolled Affiliate, not partial offices, bureaus, agencies, or departments, or other partial entities. Enrolled Affiliate’s organization includes:
      - [ ] Enrolled Affiliate only
      - [ ] Enrolled Affiliate and the following Affiliate(s) (Only identify specific affiliates to be included if fewer than all Affiliates are to be included in the Enterprise):
      - [ ] Enrolled Affiliate and all Affiliates, with following Affiliate(s) excluded:

   b. Please indicate whether the Enrolled Affiliate’s Enterprise will include all new Affiliates acquired after the start of this Enrollment: Check only one box in this section:
      - [ ] Enrolled Affiliate’s Enterprise will include all new Affiliates acquired after the start of this Enrollment
      - [ ] Enrolled Affiliate’s Enterprise will **not** include all new Affiliates acquired after the start of this Enrollment

      If no selection is made, or if both boxes are checked, Microsoft will deem the Enterprise to include all future Affiliates

2. **Contact information.**

   Each party will notify the other in writing if any of the information in the following contact information page(s) changes. The asterisks (*) indicate required fields. By providing contact information, Enrolled Affiliate consents to its use for purposes of administering this Enrollment by Microsoft, its Affiliates, and other parties that help administer this Enrollment. The personal information provided in connection with this Enrollment will be used and protected in accordance with the privacy statement available at https://www.microsoft.com/licensing/servicecenter:

   a. **Primary contact.** This contact is the primary contact for the Enrollment from within Enrolled Affiliate’s Enterprise. This contact is also an Online Administrator for the Volume Licensing Service Center and may grant online access to others. The primary contact will be the default contact for all purposes unless separate contacts are identified for specific purposes

      **Name of entity (must be legal entity name)**: Whatcom County
      **Contact name***: First Perry  Last Rice
      **Contact email address**: PPrice@co.whatcom.wa.us
      **Street address**: 311 Grand Ave., Suite 305
City* Bellingham
State/Province* WA
Postal code* 98225-4038
(For U.S. addresses, please provide the zip + 4, e.g. xxxxx-xxxx)
Country* USA
Phone* 360-676-7684
Tax ID 91-6001383
* indicates required fields

b. Notices contact and Online Administrator. This contact (1) receives the contractual notices, (2) is the Online Administrator for the Volume Licensing Service Center and may grant online access to others, and (3) is authorized for applicable Online Services to add or reassign Licenses, step-up, and initiate Transitions prior to a true-up order.

☐ Same as primary contact (default if no information is provided below, even if the box is not checked).

Contact name* First Denise Last Toth Banyan
Contact email address* DTothban@co.whatcom.wa.us
Street address* 311 Grand Ave., Suite 305
City* Bellingham
State/Province* WA
Postal code* 98225-4038
(For U.S. addresses, please provide the zip + 4, e.g. xxxxx-xxxx)
Country* USA
Phone* 360-676-7684
Language preference. Choose the language for notices. English
☐ This contact is a third party (not the Enrolled Affiliate). Warning: This contact receives personally identifiable information of the Customer and its Affiliates.
* indicates required fields

c. Online Services Manager. This contact is authorized to manage the Online Services ordered under the Enrollment and (for applicable Online Services) to add or reassign Licenses, step-up, and initiate Transitions prior to a true-up order.

☑ Same as notices contact and Online Administrator (default if no information is provided below, even if box is not checked)

Contact name*: First Last
Contact email address*
Phone*
☐ This contact is from a third party organization (not the entity). Warning: This contact receives personally identifiable information of the entity.
* indicates required fields

d. Reseller information. Reseller contact for this Enrollment is:

Reseller company name* CompuCom Systems, Inc.
Street address (PO boxes will not be accepted)* 7171 Forest Lane
City* Dallas
State/Province* TX
Postal code* 75230-2306
Country* USA
Contact name* Bruce Valenti
Phone* 972-856-4617
Contact email address* bvalenti@compucom.com
* indicates required fields
By signing below, the Reseller identified above confirms that all information provided in this Enrollment is correct.

Signature*

Printed name* Bruce E. Valentin
Printed title* Microsoft Licensing Specialist
Date*

*Indicates required fields

Changing a Reseller. If Microsoft or the Reseller chooses to discontinue doing business with each other, Enrolled Affiliate must choose a replacement Reseller. If Enrolled Affiliate or the Reseller intends to terminate their relationship, the initiating party must notify Microsoft and the other party using a form provided by Microsoft at least 90 days prior to the date on which the change is to take effect.

e. If Enrolled Affiliate requires a separate contact for any of the following, attach the Supplemental Contact Information form. Otherwise, the notices contact and Online Administrator remains the default.

(i) Additional notices contact
(ii) Software Assurance manager
(iii) Subscriptions manager
(iv) Customer Support Manager (CSM) contact

3. Financing elections.

Is a purchase under this Enrollment being financed through MS Financing?  No

If a purchase under this Enrollment is financed through MS Financing, and Enrolled Affiliate chooses not to finance any associated taxes, it must pay these taxes directly to Microsoft Corporation.
Enterprise and Enterprise Subscription Enrollment Product Selection Form – State and Local

Step 1. Please indicate whether Enrolled Affiliate is ordering Enterprise Products or Enterprise Online Services on the initial enrollment order. Choose both if applicable.

- **Enterprise Products.** Choose platform option: Components only (not full platform)
  - Qualified Devices: 827
  - Qualified Users: 827
- **Enterprise Online Services**

Step 2. Select the Products and Quantities Enrolled Affiliate is ordering on its initial Enrollment Order. Quantity may not include any Licenses which Enrolled Affiliate has selected for optional future use, or to which it is transitioning or stepping up within enrollment term. Products for which the Enrolled Affiliate has an option to transition or step-up should be listed in Step 3.

<table>
<thead>
<tr>
<th>Products</th>
<th>Quantity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Office Professional Plus</td>
<td>827</td>
</tr>
<tr>
<td>Office Pro Plus</td>
<td></td>
</tr>
<tr>
<td>Office Pro Plus for Office 365</td>
<td></td>
</tr>
<tr>
<td>Office 365 Plans</td>
<td></td>
</tr>
<tr>
<td>Office 365 (Plan E1)</td>
<td>827</td>
</tr>
<tr>
<td>Office 365 (Plan E2)</td>
<td></td>
</tr>
<tr>
<td>Office 365 (Plan E3)</td>
<td></td>
</tr>
<tr>
<td>Office 365 (Plan E4)</td>
<td></td>
</tr>
<tr>
<td>Client Access License (CAL). Choose 1 Option.</td>
<td></td>
</tr>
<tr>
<td>☑ Core CAL, including Bridge CAL’s (if applicable)</td>
<td></td>
</tr>
<tr>
<td>Core CAL</td>
<td></td>
</tr>
<tr>
<td>Core CAL Bridge for Office 365</td>
<td>827</td>
</tr>
<tr>
<td>Core CAL Bridge for Windows Intune</td>
<td></td>
</tr>
<tr>
<td>Core CAL Bridge for Office 365 and Windows Intune</td>
<td></td>
</tr>
<tr>
<td>☐ Enterprise CAL (ECAL)</td>
<td></td>
</tr>
<tr>
<td>ECAL</td>
<td></td>
</tr>
<tr>
<td>ECAL Bridge for Office 365</td>
<td></td>
</tr>
<tr>
<td>ECAL Bridge for Windows Intune</td>
<td></td>
</tr>
<tr>
<td>ECAL Bridge for Office 365 and Windows Intune</td>
<td></td>
</tr>
</tbody>
</table>

The Client Access License selection must be the same across the Enterprise. Specify whether licensing per Device or User: User

**Windows Desktop**
- Windows OS Upgrade
- Windows VDA

**Windows Intune**
- Windows Intune
- Windows Intune Add-on

**Other Enterprise Products**
- Microsoft Desktop Optimization Pack (MDOP)
If selecting Windows Desktop or Windows Intune option, Enrolled Affiliate acknowledges the following:

a. The Windows Desktop Operating System Upgrade licenses offered through this Enrollment are not full licenses. The Enrolled Affiliate and any included Affiliates have qualifying operating system licenses for all devices on which the Windows Desktop Operating System Upgrade or Windows Intune licenses are run.

b. In order to use a third party to reimagine the Windows Operating System Upgrade, Enrolled Affiliate must certify that Enrolled Affiliate has acquired qualifying operating system licenses. See the Product List for details.

Step 3. Indicate new Enterprise Products and Online Services Enrolled Affiliate has selected for optional future use where not selected on the initial enrollment order (above):

<table>
<thead>
<tr>
<th>Products</th>
</tr>
</thead>
<tbody>
<tr>
<td>Office Pro Plus for Office 365</td>
</tr>
<tr>
<td>Office 365 (Plan E1)</td>
</tr>
<tr>
<td>Office 365 (Plan E2)</td>
</tr>
<tr>
<td>Office 365 (Plan E3)</td>
</tr>
<tr>
<td>Office 365 (Plan E4)</td>
</tr>
<tr>
<td>Enterprise CAL (ECAL) Step-up, including Bridge CALs</td>
</tr>
<tr>
<td>Windows Intune</td>
</tr>
<tr>
<td>Windows Intune Add-on³</td>
</tr>
</tbody>
</table>

This form must be attached to a signature form to be valid.
Program Signature Form

MBA/MBSA number

Agreement number 01E73529

Note: Enter the applicable active numbers associated with the documents below. Microsoft requires the associated active number be indicated here, or listed below as new.

For the purposes of this form, "Customer" can mean the signing entity, Enrolled Affiliate, Government Partner, Institution, or other party entering into a volume licensing program agreement.

This signature form and all contract documents identified in the table below are entered into between the Customer and the Microsoft Affiliate signing, as of the effective date identified below.

<table>
<thead>
<tr>
<th>Contract Document</th>
<th>Number or Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt;Choose Agreement&gt;</td>
<td></td>
</tr>
<tr>
<td>&lt;Choose Agreement&gt;</td>
<td></td>
</tr>
<tr>
<td>&lt;Choose Agreement&gt;</td>
<td></td>
</tr>
<tr>
<td>&lt;Choose Agreement&gt;</td>
<td></td>
</tr>
<tr>
<td>&lt;Choose Agreement&gt;</td>
<td></td>
</tr>
<tr>
<td>Enterprise Enrollment</td>
<td>X20-10631</td>
</tr>
<tr>
<td>&lt;Choose Enrollment/Registration&gt;</td>
<td></td>
</tr>
<tr>
<td>&lt;Choose Enrollment/Registration&gt;</td>
<td></td>
</tr>
<tr>
<td>&lt;Choose Enrollment/Registration&gt;</td>
<td></td>
</tr>
<tr>
<td>&lt;Choose Enrollment/Registration&gt;</td>
<td></td>
</tr>
<tr>
<td>EA Product Selection Form</td>
<td>X20-03522</td>
</tr>
</tbody>
</table>

By signing below, Customer and the Microsoft Affiliate agree that both parties (1) have received, read and understand the above contract documents, including any websites or documents incorporated by reference and any amendments and (2) agree to be bound by the terms of all such documents.

Customer

Name of Entity (must be legal entity name)* Whatcom County

Signature* ____________________________

Printed First and Last Name* Jack Louws

Printed Title County Executive

Signature Date* December 10, 2014

Tax ID 91-6001383

* indicates required field
<table>
<thead>
<tr>
<th><strong>Microsoft Affiliate</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Microsoft Corporation</strong></td>
</tr>
<tr>
<td><strong>Signature</strong></td>
</tr>
<tr>
<td><strong>Printed First and Last Name</strong></td>
</tr>
<tr>
<td><strong>Printed Title</strong></td>
</tr>
<tr>
<td><strong>Signature Date</strong></td>
</tr>
<tr>
<td>(date Microsoft Affiliate countersigns)</td>
</tr>
<tr>
<td><strong>Agreement Effective Date</strong></td>
</tr>
<tr>
<td>(may be different than Microsoft’s signature date)</td>
</tr>
</tbody>
</table>

**Optional 2nd Customer signature or Outsourcer signature (if applicable)**

<table>
<thead>
<tr>
<th><strong>Customer</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Name of Entity (must be legal entity name)</strong></td>
</tr>
<tr>
<td><strong>Signature</strong></td>
</tr>
<tr>
<td><strong>Printed First and Last Name</strong></td>
</tr>
<tr>
<td><strong>Printed Title</strong></td>
</tr>
<tr>
<td><strong>Signature Date</strong></td>
</tr>
</tbody>
</table>

*indicates required field

<table>
<thead>
<tr>
<th><strong>Outsourcer</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Name of Entity (must be legal entity name)</strong></td>
</tr>
<tr>
<td><strong>Signature</strong></td>
</tr>
<tr>
<td><strong>Printed First and Last Name</strong></td>
</tr>
<tr>
<td><strong>Printed Title</strong></td>
</tr>
<tr>
<td><strong>Signature Date</strong></td>
</tr>
</tbody>
</table>

*indicates required field

If Customer requires physical media, additional contacts, or is reporting multiple previous Enrollments, include the appropriate form(s) with this signature form.

After this signature form is signed by the Customer, send it and the Contract Documents to Customer’s channel partner or Microsoft account manager, who must submit them to the following address. When the signature form is fully executed by Microsoft, Customer will receive a confirmation copy.

**Microsoft Corporation**
Dept. 551, Volume Licensing
6100 Neil Road, Suite 210
Reno, Nevada 89511-1137
USA
WHATCOM COUNTY:
Recommended for Approval:

[Signature] 11/21/2014
IT Manager

Approved as to form:

[Signature] 11/21/14
Prosecuting Attorney
### CompuCom - software quote

Quoted by Jan Edwards, CompuCom 7171 Forest Lane Dallas, TX 75230

Phone 406-295-4548, jedwards@compucom.com

<table>
<thead>
<tr>
<th>Quoted to:</th>
<th>Whatcom County</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Perry Rice</td>
</tr>
<tr>
<td></td>
<td><a href="mailto:price@co.whatcom.wa.us">price@co.whatcom.wa.us</a></td>
</tr>
</tbody>
</table>

**Date 11/20/2014**

MS EA renewal

*Important: Please provide the email address of the recipient designated to receive a CompuCom “order confirmation”*

<table>
<thead>
<tr>
<th>Quantity</th>
<th>Part #</th>
<th>Description</th>
<th>Unit Price</th>
<th>Ext. Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>827</td>
<td>U3J-00028</td>
<td>CoreCALBridgeOff365 ALNG SA MVL UscAL</td>
<td>$13.98</td>
<td>$11,561.46</td>
</tr>
<tr>
<td>827</td>
<td>269-05704</td>
<td>OfficeProPlus ALNG SA MVL</td>
<td>$83.23</td>
<td>$68,828.63</td>
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<tr>
<td>827</td>
<td>T6A-00049</td>
<td>Off365PE1 ShrdSr ALNG SU MVL</td>
<td>$37.56</td>
<td>$31,062.12</td>
</tr>
<tr>
<td>100</td>
<td>7TC-00001</td>
<td>ExchgOnInKsk ShrdSr ALNG SubsVL MVL PerUsr</td>
<td>$18.72</td>
<td>$1,872.00</td>
</tr>
<tr>
<td>1</td>
<td>395-02504</td>
<td>ExchgSvrEnt ALNG SA MVL</td>
<td>$653.81</td>
<td>$653.81</td>
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<tr>
<td>2</td>
<td>312-02257</td>
<td>ExchgSvrStd ALNG SA MVL</td>
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<td>$228.63</td>
</tr>
<tr>
<td>1</td>
<td>H04-00268</td>
<td>SharePointSr ALNG SA MVL</td>
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<td>$1,097.08</td>
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<tr>
<td>10</td>
<td>YJD-01077</td>
<td>CIISstd ALNG SA MVL 2Proc</td>
<td>$270.57</td>
<td>$2,705.70</td>
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<tr>
<td>300</td>
<td>8VC-01254</td>
<td>WinRmtDsktpSrvcSvcsCAL ALNG SA MVL UscAL</td>
<td>$18.92</td>
<td>$5,674.56</td>
</tr>
</tbody>
</table>

**Pass-Through Warranty and Other Rights. As a reseller, end-user warranties and liabilities (with respect to any third party hardware and software products provided by CompuCom) shall be provided as a pass-through from the manufacturer of such products. All software products are subject to the license agreement of the applicable software supplier, as provided with the software packaging or in the software at time of shipment. CompuCom provides no independent warranties, indemnities or liabilities. Public Sector Disclosure: CompuCom may receive incentive fees for public sector EA transactions.**
### 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>Engel</td>
<td>11/14/2014</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Division Head:</td>
<td></td>
<td></td>
<td></td>
<td>12/9/2014</td>
<td>Finance / Council</td>
</tr>
<tr>
<td>Dept. Head:</td>
<td>BDB</td>
<td>11/18/2014</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prosecutor:</td>
<td>KF</td>
<td>11/18/2014</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Purchasing/Budget:</td>
<td>FBB</td>
<td>11/18/2014</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Executive:</td>
<td></td>
<td>12/2/2014</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

#### TITLE OF DOCUMENT:
Contract for Hearing Examiner services with Michael Bobbink Land Use Services

#### ATTACHMENTS:
Contract

#### 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.)

This contract is for Hearing Examiner services in accordance with Whatcom County Code 20.92. This is a one year renewal for the year 2015.

#### COMMITTEE ACTION:

#### COUNCIL ACTION:

#### Related County Contract #: 
20111025

#### 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: Marina Engels
RE: Contract extension for Hearing Examiner services
DATE: November 18, 2014

Enclosed are two (2) originals of a professional services contract between Whatcom County and Michael Bobbink Land Use Services, Inc. for your review and signature.

- **Background and Purpose**
  Michael Bobbink, dba Bobbink Land Use Services, Inc., was the sole respondent to Whatcom County's Request for Proposals for Hearing Examiner services in 2011. He has served as Whatcom County's Hearing Examiner since 1996.

- **Funding Amount and Source**
  Funding for this contract is included in the Hearing Examiner's 2015 budget and includes an increase in compensation of $6,194 annually, per ASR #2015-5152.

- **Differences from Previous Contract**
  This amendment renews the contract for the year 2015 and amends language in 30.2 regarding Assignment and Subcontracting (See Exhibit A).

Please contact me at extension 50730, 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>Council</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract Administrator:</td>
<td>Council Chair</td>
</tr>
<tr>
<td>Contractor's / Agency Name:</td>
<td>Michael Bobbink Land Use Services, Inc.</td>
</tr>
</tbody>
</table>

**Is this a New Contract?**
- Yes ___
- No _x_

**Is this a grant agreement?**
- Yes ___
- No _x_

**Is this contract grant funded?**
- Yes ___
- No _x_

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

<table>
<thead>
<tr>
<th>Contract</th>
<th>RFP 11-89</th>
<th>Cost Center: 1600</th>
</tr>
</thead>
</table>

**Is this contract excluded from E-Verify?**
- No ___

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

**Contract Amount: (sum of orig contract amount and any prior amendments)**
- $247,768.20

**This Amendment Amount:**
- $88,783.40

**Total Amended Amount:**
- $336,551.60

**Scope of Services:** Scope of Services: The Contractor shall perform the following duties in accordance with Whatcom County Code 20.92:
- Review applicable ordinances, statutes, and files in preparation for public hearing.
- Preside over the hearing. Set the order of the testimony and ensure that all relevant material is included in the hearing record. Interrogate staff members and witnesses when appropriate.
- Conduct field inspections and examine the property which is the subject of the hearing, when appropriate.
- Review the facts and the applicable ordinances and statutes to determine whether the standards require issuance of a permit have been met.
- Review administrative determinations appealed to the Hearing Examiner to ensure that the ordinances were correctly applied by the administrator, and that the facts were correctly determined.
- Prepare all written recommendations and decisions of applications for land use permits and administrative appeals within the time frame outlined in Whatcom County Code 20.92.

**Term of Contract: 1 year**

**Expiration Date: 12/31/2015**

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

<table>
<thead>
<tr>
<th>Step</th>
<th>Completed by</th>
<th>Date</th>
<th>Method</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>[sign or initial]</td>
<td>Date 11/12/14</td>
<td>electronic</td>
</tr>
<tr>
<td>2.</td>
<td>[sign or initial]</td>
<td>Date 11/12/14</td>
<td>electronic</td>
</tr>
<tr>
<td>3.</td>
<td>[sign or initial]</td>
<td>Date 11/13/14</td>
<td>electronic</td>
</tr>
<tr>
<td>4.</td>
<td>[sign or initial]</td>
<td>Date [ ]</td>
<td>hard copy printed</td>
</tr>
<tr>
<td>5.</td>
<td>[sign or initial]</td>
<td>Date [ ]</td>
<td>[summary via electronic; hardcopies]</td>
</tr>
<tr>
<td>6.</td>
<td>[sign or initial]</td>
<td>Date [ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>7.</td>
<td>[sign or initial]</td>
<td>Date [ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>8.</td>
<td>[sign or initial]</td>
<td>Date [ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>9.</td>
<td>[sign or initial]</td>
<td>Date [ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>10.</td>
<td>[sign or initial]</td>
<td>Date [ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>11.</td>
<td>[sign or initial]</td>
<td>Date [ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>12.</td>
<td>[sign or initial]</td>
<td>Date [ ]</td>
<td>this form may need to expand to more than one page</td>
</tr>
</tbody>
</table>
Amendment No.3
CONTRACT FOR SERVICES AGREEMENT
Hearing Examiner Services
Michael Bobbink Land Use Services, Inc.

THIS AMENDMENT is to the Contract between Whatcom County and Michael Bobbink Land Use Services, Inc., designated "Whatcom County Contract No. 201111025". In consideration of the mutual benefits to be derived, the parties agree to the following:

This Amendment extends the term of this Agreement through December 31, 2015, and increases the maximum consideration by $88,783.40 to a total consideration of $336,551.60.

This Amendment also amends Section 30.2 Assignment and Subcontracting as shown in Exhibit A.

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

This Amendment takes effect: January 1, 2015, regardless of the date of signature.

IN WITNESS WHEREOF, Whatcom County and Michael Bobbink Land Use Services, Inc. have executed this Amendment on the date and year below written.

DATED this 18th day of Nov., 2014.

CONTRACTOR:

CONTRACTOR

Michael Bobbink, Owner
Michael Bobbink Land Use Services, Inc.

STATE OF WASHINGTON )
COUNTY OF WHATCOM ) ss.

On this 18th day of November, 2014, before me personally appeared Michael Bobbink, to me known to be the owner of the Michael Bobbink Land Use Services, Inc., and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

Nadean E. Hanson
NOTARY PUBLIC in and for the State of Washington, residing at Bellingham, Washington
My commission expires 3-29-16
WHATCOM COUNTY:

Approved as to form:

[Signature]
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 ________________________, 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:

CONTRACTOR

Michael Bobbink, Owner
Michael Bobbink Land Use Services, Inc.
528 Clark Road
Bellingham, WA 98225

Contact Name: Michael Bobbink
Contact Phone: 360-734-9690
EXHIBIT A
(SCOPE OF WORK)

The following section is amended as follows:

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.

30.2 Assignment and Subcontracting:
The performance of all activities contemplated by this Agreement shall be accomplished personally by the Contractor, or by an approved subcontractor. The Contractor shall not assign or subcontract performance to others unless specifically authorized in writing by the County in advance. All terms and conditions of this Agreement shall apply to any approved subcontract or assignment related to this Agreement. The Contractor shall pay any subcontractors out of the compensation provided to the Contractor under this agreement.
TITLE OF DOCUMENT: Purchase of ER&R replacement vehicles for the Sheriff's Department – six marked patrol 2015 Ford Police Interceptor PUVs

ATTACHMENTS: Memo 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 Work Equipment Services is requesting approval to use the Washington State Contract to purchase six marked patrol 2015 Ford Police Interceptor PUVs for the Sheriff’s Department. The total cost is $204,505.06. This is a planned purchase and adequate funds are available in their current budget.
DATE: November 14, 2014
TO: Jack Louws, County Executive
FROM: Brad Bennett, AS Finance Manager
SUBJECT: Approval to Purchase Replacement Sheriff's Dept Marked Patrol Pursuit Utility Vehicles

- **Background & Purpose**

Public Works Equipment Services is requesting approval to purchase six replacement Sheriff's Department marked patrol pursuit utility vehicles, using Washington State Contract #03713. The vendor is Columbia Ford, and the replacement vehicles are 2015 Ford Police Interceptor PUVs. The total price for this purchase is $204,505.06.

- **Funding**

This is a planned expenditure and funds for this purchase were approved in the current ER&R budget. I concur with this request.

[Signature]

AS Finance Manager

Approved as recommended:

__________________________

County Executive

Date ______________________
MEMORANDUM

TO: Brad Bennett, AS Finance Manager
THROUGH: Frank M. Abart, PW Director
FROM: Eric L. Schlehuber, PW Equipment Services Manager
RE: State Bid Contract 03713 (Police Vehicles) – police utility vehicle
DATE: November 6, 2014

- Requested Action
After researching the cost for a full-size police pursuit utility vehicle, I am requesting Executive and Council approval to purchase six 2015 Ford Police Interceptor police utility vehicles from the Washington State Bid Procurement List to replace the following:

<table>
<thead>
<tr>
<th>DEPT</th>
<th>REPLACE UNIT</th>
<th>MAKE / MODEL</th>
<th>EST. MILEAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>SHF</td>
<td>6131</td>
<td>2004 Ford Crown Victoria</td>
<td>121,384</td>
</tr>
<tr>
<td>SHF</td>
<td>6147</td>
<td>2004 Ford Crown Victoria</td>
<td>101,718</td>
</tr>
<tr>
<td>SHF</td>
<td>6166</td>
<td>2006 Ford Crown Victoria</td>
<td>142,137</td>
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<tr>
<td>SHF</td>
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<td>2006 Ford Crown Victoria</td>
<td>124,481</td>
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<tr>
<td>SHF</td>
<td>6168</td>
<td>2006 Ford Crown Victoria</td>
<td>115,700</td>
</tr>
<tr>
<td>SHF</td>
<td>6169</td>
<td>2006 Ford Crown Victoria</td>
<td>137,086</td>
</tr>
</tbody>
</table>

- Background and Purpose
These units were approved as a replacement in the 2013-2014 Equipment Rental and Revolving Capital Equipment Budget. The Sheriff’s Office will use these units in the performance of county business in maintaining public safety. Bids were duly advertised under Bid 14-62, Police Vehicles. No bids were received on Tuesday, November 4, 2014 for this particular vehicle type.

<table>
<thead>
<tr>
<th>VENDOR</th>
<th>MAKE / MODEL</th>
<th>QTY</th>
<th>PRICE FOR 6 (Including Options)</th>
<th>SALES TAX (8.3%)</th>
<th>TOTAL FOR 6</th>
</tr>
</thead>
<tbody>
<tr>
<td>Columbia Ford</td>
<td>2015 Ford Police Interceptor PUV</td>
<td>6</td>
<td>$188,832.00</td>
<td>$15,673.06</td>
<td>$204,505.06</td>
</tr>
</tbody>
</table>

- Funding Amount and Source
This amount has been budgeted during the 2013-2014 Budget process. I am requesting Executive and Council approval to purchase these units from Columbia Ford in Longview, Washington for the total amount of $204,505.06 as there were no bids received under Whatcom County Bid 14-62.

- Recommended Action
Please approve this purchase from the state contract and forward to the Executive and the Whatcom County Council for approval at the November 25, 2014 Whatcom County Council Meeting. Please contact Eric L. Schlehuber at extension 50607, if you have any questions or concerns regarding this request.
**TITLE OF DOCUMENT:** Purchase of ER&R replacement vehicles for the Sheriff’s Department – three unmarked 2015 Ford Police Interceptor PUVs

**ATTACHMENTS:** Memo 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 Work Equipment Services is requesting approval to use the Washington State Contract to purchase three unmarked 2015 Ford Police Interceptor PUVs for the Sheriff’s Department. The total cost is $103,084.27. This is a planned purchase and adequate funds are available in their current budget.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

<table>
<thead>
<tr>
<th>Related County Contract #:</th>
<th>Related File Numbers:</th>
<th>Ordinance or Resolution Number:</th>
</tr>
</thead>
</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).
DATE: November 14, 2014
TO: Jack Louws, County Executive
FROM: Brad Bennett, AS Finance Manager
SUBJECT: Approval to Purchase Replacement Sheriff’s Dept Unmarked Pursuit Utility Vehicles

• Background & Purpose

Public Works Equipment Services is requesting approval to purchase three replacement Sheriff’s Department unmarked pursuit utility vehicles, using Washington State Contract #03713. The vendor is Columbia Ford, and the replacement vehicles are 2015 Ford Police Interceptor PUVs. The total price for this purchase is $103,084.27.

• Funding

This is a planned expenditure and funds for this purchase were approved in the current ER&R budget. I concur with this request.

[Signature]
AS Finance Manager

Approved as recommended:

______________________________________
County Executive

Date ______________________

MEMORANDUM

TO: Brad Bennett, AS Finance Manager

THROUGH: Frank M. Abart, PW Director

FROM: Eric L. Schlehuber, PW Equipment Services Manager

RE: State Bid Contract 03713 (Police Vehicles) – police utility vehicle

DATE: November 6, 2014

- Requested Action
  After researching the cost for a full-size police pursuit utility vehicle, I am requesting Executive and Council approval to purchase three 2015 Ford Police Interceptor police utility vehicles from the Washington State Bid Procurement List to replace the following:

<table>
<thead>
<tr>
<th>DEPT</th>
<th>REPLACE UNIT</th>
<th>MAKE / MODEL</th>
<th>EST. MILEAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>SHF</td>
<td>6073</td>
<td>1999 Ford Crown Victoria</td>
<td>110,875</td>
</tr>
<tr>
<td>SHF</td>
<td>6134</td>
<td>2004 Ford Crown Victoria</td>
<td>101,223</td>
</tr>
<tr>
<td>SHF</td>
<td>6151</td>
<td>2005 Ford Expedition 4x4</td>
<td>147,510</td>
</tr>
</tbody>
</table>

- Background and Purpose
  These units were approved as a replacement in the 2013-2014 Equipment Rental and Revolving Capital Equipment Budget. The Sheriff’s Office will use these units in the performance of county business in maintaining public safety. Bids were duly advertised under Bid 14-62, Police Vehicles. No bids were received on Tuesday, November 4, 2014 for this particular vehicle type.

<table>
<thead>
<tr>
<th>VENDOR</th>
<th>MAKE / MODEL</th>
<th>QTY</th>
<th>PRICE FOR 3 (Including Options)</th>
<th>SALES TAX (8.3%)</th>
<th>TOTAL FOR 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Columbia Ford</td>
<td>2015 Ford Police Interceptor PUV</td>
<td>3</td>
<td>$95,184.00</td>
<td>$7,900.27</td>
<td>$103,084.27</td>
</tr>
</tbody>
</table>

- Funding Amount and Source
  This amount has been budgeted during the 2013-2014 Budget process. I am requesting Executive and Council approval to purchase these units from Columbia Ford in Longview, Washington for the total amount of $103,084.27 as there were no bids received under Whatcom County Bid 14-62.

- Recommended Action
  Please approve this purchase from the state contract and forward to the Executive and the Whatcom County Council for approval at the November 25, 2014 Whatcom County Council Meeting. Please contact Eric L. Schlehuber at extension 50607, if you have any questions or concerns regarding this request.
## TITLE OF DOCUMENT:
Purchase of ER&R replacement vehicles for the Sheriff's Department – two 2015 Chevrolet Tahoe PPVs

## ATTACHMENTS:
Memo 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 Work Equipment Services is requesting approval to use the Washington State Contract to purchase two 2015 Chevrolet Tahoe PPVs for the Sheriff's Department. The total cost is $72,000.01. This is a planned purchase and adequate funds are available in their 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: November 12, 2014
TO: Jack Louws, County Executive
FROM: Brad Bennett, AS Finance Manager
SUBJECT: Approval to Purchase Replacement Sheriff's Department Full-size SUV 4WD

- Background & Purpose

Public Works Equipment Services is requesting approval to purchase two replacement Sheriff’s Department full-size SUV 4WD pursuit vehicles, using Washington State Contract #03713. The vendor is Bud Clary Chevrolet, and the replacement vehicles are 2015 Chevrolet Tahoe PPVs. The total price for this purchase is $72,000.01.

- Funding

This is a planned expenditure and funds for this purchase were approved in the current ER&R budget. I concur with this request.

[Signature]
AS Finance Manager

Approved as recommended:

______________________________________
County Executive

Date ________________________________
MEMORANDUM

TO: Brad Bennett, AS Finance Manager
THROUGH: Frank M. Abart, PW Director
FROM: Eric L. Schlehuber, PW Equipment Services Manager
RE: State Bid Contract 03713 (Police Vehicles) – full-size SUV 4WD
DATE: November 6, 2014

□ Requested Action
After researching the cost for a full-size sport utility vehicle, I am requesting Executive and Council approval to purchase two 2015 Chevrolet Tahoe Police Pursuit Vehicles 4WD from the Washington State Bid Procurement List to replace the following:

<table>
<thead>
<tr>
<th>DEPT</th>
<th>REPLACE UNIT</th>
<th>MAKE / MODEL</th>
<th>EST. MILEAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>SHF</td>
<td>6018</td>
<td>2006 Ford Expedition SSV</td>
<td>135,888</td>
</tr>
<tr>
<td>SHF</td>
<td>6164</td>
<td>2006 Ford Expedition SSV</td>
<td>158,730</td>
</tr>
</tbody>
</table>

□ Background and Purpose
These units were approved as a replacement in the 2013-2014 Equipment Rental and Revolving Capital Equipment Budget. The Sheriff’s Office will use these units in the performance of county business in maintaining public safety. Bids were duly advertised under Bid 14-62, Police Vehicles. No bids were received on Tuesday, November 4, 2014 for this particular vehicle type.

<table>
<thead>
<tr>
<th>VENDOR</th>
<th>MAKE / MODEL</th>
<th>QTY</th>
<th>PRICE FOR 2 (Including Options)</th>
<th>SALES TAX (8.3%)</th>
<th>TOTAL FOR 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bud Clary Chevrolet</td>
<td>2015 Chevrolet Tahoe PPV</td>
<td>2</td>
<td>$66,482.00</td>
<td>$5,518.01</td>
<td>$72,000.01</td>
</tr>
</tbody>
</table>

□ Funding Amount and Source
This amount has been budgeted during the 2013-2014 Budget process. I am requesting Executive and Council approval to purchase these units from Bud Clary Chevrolet in Longview, Washington for the total amount of $72,000.01 as there were no bids received under Whatcom County Bid 14-62.

□ Recommended Action
Please approve this purchase from the state contract and forward to the Executive and the Whatcom County Council for approval at the November 25, 2014 Whatcom County Council Meeting. Please contact Eric L. Schlehuber at extension 50607, if you have any questions or concerns regarding this request.
**TITLE OF DOCUMENT:** Purchase of ER&R replacement vehicles for the Sheriff's Department - two 2014 Ford Police Interceptor Sedans

**ATTACHMENTS:** Memo 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 Work Equipment Services is requesting approval to use the Washington State Contract to purchase two 2014 Ford Police Interceptor sedans for the Sheriff's Department. The total cost is $62,335.31. This is a planned purchase and adequate funds are available in their current budget.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**
DATE: November 12, 2014
TO: Jack Louws, County Executive
FROM: Brad Bennett, AS Finance Manager
SUBJECT: Approval to Purchase Replacement Sheriff's Department Pursuit Sedans

- Background & Purpose

Public Works Equipment Services is requesting approval to purchase two replacement Sheriff's Department police pursuit sedans, using Washington State Contract #03713. The vendor is Columbia Ford, and the replacement vehicles are 2014 Ford Police Interceptor Sedans. The total price for this purchase is $62,335.31.

- Funding

This is a planned expenditure and funds for this purchase were approved in the current ER&R budget. I concur with this request.

\[Signature\]

AS Finance Manager

Approved as recommended:

__________________________

County Executive

Date ______________________
MEMORANDUM

TO: Brad Bennett, AS Finance Manager

THROUGH: Frank M. Abart, PW Director

FROM: Eric L. Schlehuber, PW Equipment Services Manager

RE: State Bid Contract 03713 (Police Vehicles) – police pursuit sedan

DATE: November 6, 2014

Requested Action
After researching the cost for a full-size police pursuit sedan, I am requesting Executive and Council approval to purchase two 2014 Ford Police Interceptor sedans from the Washington State Bid Procurement List to replace the following:

<table>
<thead>
<tr>
<th>DEPT</th>
<th>REPLACE UNIT</th>
<th>MAKE / MODEL</th>
<th>EST. MILEAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>SHF</td>
<td>6120</td>
<td>2002 Ford Crown Victoria</td>
<td>108,690</td>
</tr>
<tr>
<td>SHF</td>
<td>6123</td>
<td>2002 Dodge Intrepid</td>
<td>117,130</td>
</tr>
</tbody>
</table>

Background and Purpose
These units were approved as a replacement in the 2013-2014 Equipment Rental and Revolving Capital Equipment Budget. The Sheriff’s Office will use these units in the performance of county business in maintaining public safety. Bids were duly advertised under Bid 14-62, Police Vehicles. No bids were received on Tuesday, November 4, 2014 for this particular vehicle type.

<table>
<thead>
<tr>
<th>VENDOR</th>
<th>MAKE / MODEL</th>
<th>PRICE FOR 2 (Including Options)</th>
<th>SALES TAX (8.3%)</th>
<th>TOTAL FOR 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Columbia Ford</td>
<td>2014 Ford Police Interceptor Sedan</td>
<td>$57,558.00</td>
<td>$4,777.31</td>
<td>$62,335.31</td>
</tr>
</tbody>
</table>

Funding Amount and Source
This amount has been budgeted during the 2013-2014 Budget process. I am requesting Executive and Council approval to purchase these units from Columbia Ford in Longview, Washington for the total amount of $62,335.31 as there were no bids received under Whatcom County Bid 14-62.

Recommended Action
Please approve this purchase from the state contract and forward to the Executive and the Whatcom County Council for approval at the November 25, 2014 Whatcom County Council Meeting. Please contact Eric L. Schlehuber at extension 50607, if you have any questions or concerns regarding this request.
**TITLE OF DOCUMENT:** Memorandum of Agreement between Washington State University and Whatcom County

**ATTACHMENTS:** MOA, Appendix A

**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.)

A memorandum of agreement provides salary and program support to provide and extension program between January 1 and December 31, 2015.

---

<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>DLB</td>
<td>11/12/14</td>
<td></td>
<td>12/9/14</td>
<td>Finance/Council</td>
</tr>
<tr>
<td>Division Head:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dept. Head:</td>
<td>DLB</td>
<td>11/20/14</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prosecutor:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Purchasing/Budget:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Executive:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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

**Should Clerk schedule a hearing?** ( ) Yes ( x ) NO  
**Requested Date:**

---

**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: Drew Betz, Director
RE: Memorandum of Agreement with Washington State University
DATE: November 12, 2014

Enclosed is the necessary paperwork for a contract extension with Washington State University to continue the jointly sharing of costs for faculty positions in Extension Whatcom County and Washington State University for your review and signature.

- **Background and Purpose**
  - Continue to share costs for faculty positions in WSU Whatcom County Extension serving Whatcom County.
  - Continue cost sharing for Forestry Specialist to serve Whatcom County in 2015.
  - Include the majority of funds from Whatcom County Solid Waste in the WSU Contract. Hiring will be done through WSU to support the goals of the agreement with Solid Waste. The work will be done through our community horticulture program.

- **Funding Amount and Source**
  2015 Whatcom County General Fund Budget for Whatcom County WSU Extension, $104,050.00 and $23,695.00 from the Public Works Department, Solid Waste Division (currently in our budget). These are not new funds, simply a shift in how we are spending them.

- **Differences from Previous Contract**
  $3,695 added for Recycling and Composting Education. We will incorporate these funds into our Community Horticulture program and enhance the training and delivery of this education through the Master Gardener and Community Gardens programs and in cooperation with other programs in our office. There is a $10,508 increase in contributions to faculty salaries to meet the contribution level asked by WSU.

Please contact Drew Betz, WSU Whatcom County Extension, at extension 50285, if you have any questions or concerns regarding the terms of this agreement.

Encl.
<table>
<thead>
<tr>
<th>Originating Department:</th>
<th>WSU Cooperative Extension</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract or Grant Administrator:</td>
<td>Drew Betz</td>
</tr>
<tr>
<td>Contractor's / Agency Name:</td>
<td>Washington State University</td>
</tr>
<tr>
<td>Is this a New Contract?</td>
<td>Yes ☒ No ☐</td>
</tr>
<tr>
<td>If not, is this an Amendment or Renewal to an Existing Contract?</td>
<td>Yes ☒ No ☐</td>
</tr>
<tr>
<td>Yes ☐ No ☒ If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #:</td>
<td>9909009</td>
</tr>
<tr>
<td>Does contract require Council Approval?</td>
<td>Yes ☒ No ☐</td>
</tr>
<tr>
<td>If No, include WCC:</td>
<td>(see Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)</td>
</tr>
<tr>
<td>Is this a grant agreement?</td>
<td>Yes ☒ No ☐</td>
</tr>
<tr>
<td>If yes, grantor agency contract number(s):</td>
<td>CFDA#:</td>
</tr>
<tr>
<td>Is this contract grant funded?</td>
<td>Yes ☒ No ☐</td>
</tr>
<tr>
<td>If yes, Whatcom County grant contract number(s):</td>
<td></td>
</tr>
<tr>
<td>Is this contract the result of a RFP or Bid process?</td>
<td>Yes ☒ No ☐</td>
</tr>
<tr>
<td>If yes, RFP and Bid number(s):</td>
<td>Contract Cost Center:</td>
</tr>
<tr>
<td>Is this agreement excluded from E-Verify?</td>
<td>No ☐ Yes ☒</td>
</tr>
<tr>
<td>If no, include Attachment D Contractor Declaration form.</td>
<td></td>
</tr>
<tr>
<td>If YES, indicate exclusion(s) below:</td>
<td></td>
</tr>
<tr>
<td>☐ Professional services agreement for certified/licensed professional.</td>
<td>☐ Contract for Commercial off the shelf items (COTS).</td>
</tr>
<tr>
<td>☐ Contract work is for less than $100,000.</td>
<td>☐ Work related subcontract less than $25,000.</td>
</tr>
<tr>
<td>☒ Interlocal Agreement between Governments.</td>
<td>☐ Public Works - Local Agency/Federally Funded FHWA.</td>
</tr>
<tr>
<td>Contract Amount:(sum of original contract amount and any prior amendments):</td>
<td>Contracts that require Council Approval (incl. agenda bill &amp; memo)</td>
</tr>
<tr>
<td>$ 1,138,542.90</td>
<td>• Professional Services Agreement above $20,000.</td>
</tr>
<tr>
<td>This Amendment Amount:</td>
<td>• Bid is more than $50,000.</td>
</tr>
<tr>
<td>$ 127,745.00</td>
<td>• Amendments that have either an increase greater than 10% or provide a $10,000 increase in amount (whichever is greater)</td>
</tr>
<tr>
<td>Total Amended Amount:</td>
<td>RENEWALS: Council approval is not required when exercising an option to renew that is provided in the original contract.</td>
</tr>
<tr>
<td>$ 1,266,287.90</td>
<td></td>
</tr>
<tr>
<td>Summary of Scope: This amendment continues the shared faculty costs for WSU Whatcom County Extension for 2015 and includes an additional shared faculty cost of a Forestry Specialist for 2015 and incorporates funding from Whatcom County Solid Waste Division into this contract for 2015</td>
<td></td>
</tr>
<tr>
<td>Term of Contract:</td>
<td>12 months</td>
</tr>
<tr>
<td>Expiration Date:</td>
<td>12/31/2015</td>
</tr>
<tr>
<td>Contract Routing:</td>
<td>1. Prepared by: Drew Betz Date: 11/12/14</td>
</tr>
<tr>
<td></td>
<td>2. Attorney signoff: Date: 11/14/14</td>
</tr>
<tr>
<td></td>
<td>3. AS Finance reviewed: Date: 11/21/14</td>
</tr>
<tr>
<td></td>
<td>4. IT reviewed (if IT related): Date:</td>
</tr>
<tr>
<td></td>
<td>5. Contractor signed: Date: 11/24/14</td>
</tr>
<tr>
<td></td>
<td>6. Submitted to Exec.: Date:</td>
</tr>
<tr>
<td></td>
<td>7. Council approved (if necessary): Date:</td>
</tr>
<tr>
<td></td>
<td>8. Executive signed: Date:</td>
</tr>
<tr>
<td></td>
<td>9. Original to Council: Date:</td>
</tr>
<tr>
<td></td>
<td>Last Edited 060414</td>
</tr>
</tbody>
</table>
Amendment No. 16
Whatcom County Contract No. 9909009
CONTRACT BETWEEN WHATCOM COUNTY AND
Washington State University

THIS AMENDMENT is to the Contract between Whatcom County and Washington State University dated September 22, 1999 and designated "Whatcom County Contract No.9909009". In consideration of the mutual benefits to be derived, the parties agree to the following:

Appendix A to this agreement is amended as set forth in the attached amended Appendix A.

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

This Amendment takes effect: January 1, 2015 regardless of the date of signature.

IN WITNESS WHEREOF, Whatcom County and Washington State University have executed this Amendment on the date and year below written.

DATED this _______________ day of __________________, 2014.

CONTRACTOR:

Washington State University

__________________________________
Daniel Nordquist, AVPRA
Office of Grant and Research Development

STATE OF WASHINGTON  )
COUNTY OF WHITMAN     )

On this __ day of ________, 20___, before me personally appeared ________________________ to me known to be the _______________________
of the __________________________ and who executed the above instrument and who acknowledged to me the
act of signing and sealing thereof.

__________________________________
NOTARY PUBLIC in and for the State of Washington, residing at
____________________________. My commission expires ____________.
WHATCOM COUNTY:

Approved as to form:

[Signature] 11/14/14
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 ________________, 20___, before me personally appeared Jack Louws, to me known to be the Executive of Whatcom County, who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

__________________________________________________________
NOTARY PUBLIC in and for the State of Washington, residing at
__________________________________________________________ My commission expires ____________________

CONTRACTOR INFORMATION:

Daniel G. Nordquist
AVPRA
Office of Grant and Research Development
Washington State University

Mailing Address:
OGRD
Washington State University
Pullman, WA 99164-3140

Contact Name: Dan Nordquist
Contact Phone: (509)335-9661
Contact FAX: (509)335-1676
E-mail: ogrd@wsu.edu
MEMORANDUM OF AGREEMENT

Between

WASHINGTON STATE UNIVERSITY EXTENSION

And

Whatcom County

APPENDIX A

The following individuals and programs will be jointly funded under this Memorandum of Agreement through a Personal Services Contract for the period January 1 through December 31, 2015 to provide an extension program.

<table>
<thead>
<tr>
<th>Number</th>
<th>Description</th>
<th>Amount for County Portion</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>County Director *</td>
<td>$25,929.00</td>
</tr>
<tr>
<td>3</td>
<td>Resident Extension Faculty:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>4H Agent</td>
<td>$22,707.00</td>
</tr>
<tr>
<td></td>
<td>Agricultural Systems Agent</td>
<td>$22,707.00</td>
</tr>
<tr>
<td></td>
<td>Water Resources Agent</td>
<td>$22,707.00</td>
</tr>
<tr>
<td>1</td>
<td>Forestry Faculty</td>
<td>$10,000.00</td>
</tr>
<tr>
<td></td>
<td>Community Horticulture Program</td>
<td>$23,695.00</td>
</tr>
<tr>
<td></td>
<td><strong>Total</strong></td>
<td><strong>$127,745.00</strong></td>
</tr>
</tbody>
</table>

*Includes department head responsibilities for one Extension Educator.

JACK LOUWS, County Executive

---

Richard Koenig  Date  
Associate Dean and Director  
WSU Extension

Daniel G. Nordquist  Date  
AVPRA/Director  
Office of Grant & Research Development  
Washington State University
MEMORANDUM OF AGREEMENT

Between

WASHINGTON STATE UNIVERSITY COOPERATIVE EXTENSION

And

WHATCOM COUNTY

I. Background

The mission of Washington State University Cooperative Extension (WSU-CE) is to assist the people of Washington State in making informed decisions through research and experience-based educational programs, to improve agriculture and protect natural resources, to improve capabilities of individuals and families, to aid communities in developing and adapting to changing conditions, and to provide developmental opportunities for youth. WSU-CE conducts educational programs throughout the state of Washington. Faculty members and support staff are employed to plan, conduct, and evaluate these programs. Counties maintain close coordination and cooperation with WSU-CE to provide constituents with relevant and effective educational programs.

II. Purpose

The purpose of this agreement is to formalize the longstanding relationships between WSU-CE and Whatcom County. This also continues a longstanding, joint funding relationship for county/area Extension agents and designated support staff. It is the intent of this Memorandum of Agreement to provide constituents in Whatcom County with educational programming to better improve capabilities of individuals and families, to aid communities in developing and adapting to changing conditions, and to provide developmental opportunities for youth. The 4-H program is a longstanding youth outreach of WSU-CE jointly conducted with Whatcom County.

III. Under terms of this Memorandum of Agreement, Washington State University Cooperative Extension agrees to:

A. Recruit, employ, and establish salaries for county/area Extension agents and designated WSU-CE support staff for Whatcom County. Employment concurrence will be sought from County Executive before an individual is hired and assigned to the County. WSU-CE shall immediately report to the County Executive when vacancies occur in any County/Area Extension Agent and/or WSU-CE support staff positions.

B. Assure that annual salary increase monies will be available for WSU-CE agents and designated support staff that matches the average percentage appropriated for such purpose by the Washington State Legislature. Annual salary adjustments for Whatcom County Extension agents will be based on merit or whatever criteria is established by the Washington State Legislature.

C. Supplement the funds received from the Whatcom County personal services contract and pay total salary and fringe benefits for each county/area agent and designated staff members.
D. Bill Whatcom County at the beginning of each month for the actual amount of expense incurred in the preceding month. Total amount of billing will not exceed the total amount of Appendix A.

E. Provide fringe benefits to county/area Extension agents as outlined in the WSU Faculty Manual and provide fringe benefits to support staff as outlined by the Washington Personnel Resources Board.

F. Grant annual leave, sick leave, professional leave, other leave, and holidays as outlined in the WSU Faculty Manual for county/area Extension agents or in the Washington Personnel Resources Board handbook for jointly funded or fully WSU-CE funded support staff.

G. Provide in-service education for county/area Extension agents.

H. Provide Whatcom County the resources of Washington State University to support county/area Extension agents to plan and implement educational programs.

I. Ensure that WSU faculty and staff comply with all Whatcom County ordinances, executive orders, union contracts, policies, procedures, and other management directives where appropriate in the administration of Whatcom County Cooperative Extension activities.

IV. Under the terms of this Memorandum of Agreement, Whatcom County will:

A. Pay the amount of the monthly invoice to Washington State University for Extension education services to be rendered in Whatcom County as set forth in Appendix A.

Payments due may include Whatcom County's proportional share of amounts paid to employees for annual leave, sick leave, retraining leave, and professional leave as allowed in Paragraph III.F.

B. Promptly pay the invoice received from Washington State University within 30 (thirty) working days.

C. Furnish office facilities for agents and support staff.

D. Provide an operating budget to carry out Cooperative Extension educational programs for citizens for the County. This budget will cover secretarial and support staff salaries not covered by this Memorandum of agreement, and telephone, office equipment, office supplies, and travel.

V. Washington State University and Whatcom County jointly agree that:

A. Additional program support staff positions may be employed and fully funded by either party to assist in carrying out WSU-CE educational programs in the County.

B. This Memorandum of Agreement is effective upon being signed by appropriate representatives of the two organizations. It may be periodically reviewed or supplemented as may be mutually agreed upon in writing.

C. This Agreement shall continue in effect until terminated following mutual discussion and agreement except in the following circumstance. Should the parties be unable to agree on the level
of support for Extension agents and jointly funded staff in future years, either party may terminate the contract. Written notice of termination must be received before October 1 for termination effective January 1 of the next year.

D. Whatcom County and Washington State University Cooperative Extension each shall assume the risk of, be liable for, and pay all damage, loss, cost and expense of its officers, officials, and employees arising out of any duty performed, or not performed, while acting in good faith within the scope of this agreement.

E. The nondiscrimination clause contained in section 202, Executive Order 11246, as amended by Executive Order 11375, relative to Equal Employment Opportunity for all persons without regard to race, color, religion, sex, or national origin, and the implementing rules and regulations prescribed by the Secretary of Labor are incorporated herein.

VI. **Administration**

A. The Washington State University Cooperative Extension Whatcom County Chair shall be responsible for administering this cooperative undertaking including supervising staff members.

B. Personal property shall be acquired, held and disposed of by the party funding the acquisition. Separate inventories of the property showing ownership shall be maintained. The parties will not jointly acquire any real property in this cooperative undertaking.

**APPROVED:**

**WASHINGTON STATE UNIVERSITY**

Michael J. Tate  
Associate Dean and Associate Director  
Cooperative Extension  
9/21/99

**WHATCOM COUNTY**

Pete Kremen  
Date  
Whatcom County Executive  
9-10-99

Carol Zitches Director  
Office of Grant & Research Development  
9/22/99

Approved as to form:

Karen Frakes, Deputy Prosecuting Attorney  
Whatcom County  

On this **10** day of September 1999, before me personally appeared PETE KREMEN, to me known to be the County Executive of WHATCOM COUNTY, 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 appointment expires **11/3/99**.
APPENDIX A

TO THE

MEMORANDUM OF AGREEMENT

BETWEEN

WASHINGTON STATE UNIVERSITY COOPERATIVE EXTENSION

AND

WHATCOM COUNTY

The following funds will be provided under this Memorandum of Agreement through a Personal Service Contract for the period of October 1, 1999 through December 31, 1999.

<table>
<thead>
<tr>
<th>Position</th>
<th>Monthly</th>
<th>Annually (through 12/31/99)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chair</td>
<td>$1,550</td>
<td>$4,650</td>
</tr>
<tr>
<td>Family Living Agent</td>
<td>$1,242</td>
<td>$3,726</td>
</tr>
<tr>
<td>4-H/Youth Agent</td>
<td>$1,242</td>
<td>$3,726</td>
</tr>
<tr>
<td>Nutrient Management Agent</td>
<td>$1,242</td>
<td>$3,726</td>
</tr>
</tbody>
</table>

WASHINGTON STATE UNIVERSITY

Michael J. Tate
Associate Dean and Associate Director
WSU Cooperative Extension

WHATCOM COUNTY

Date: 9-10-99

Pete Kremen
Whatcom County Executive

Carol Zuches, Director
WSU OGRD

Date: 9-27-99

Date: 9-27-99
**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>
</table>

**RECEIVED**

DEC 02 2014

WHATCOM COUNTY COUNCIL

**TITLE OF DOCUMENT:** 2015-2016 Contract for Services between Whatcom County and the Bellingham Food Bank

**ATTACHMENTS:** Memo and Contract for Services Agreement

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

**SEPA review completed?** ( ) Yes ( ) NO

**Should Clerk schedule a hearing?** ( ) Yes ( ) NO

**Requested Date:**

**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:** (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)

The County Executive requests approval to enter into a 2 year agreement with the Bellingham Food Bank for the provision of nutrient rich foods to be distributed to the low and very low income people in need.

**COMMITTEE ACTION:**

<table>
<thead>
<tr>
<th>COUNCIL ACTION:</th>
</tr>
</thead>
</table>

**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).

580
MEMO:

TO: Whatcom County Council

DATE: December 2, 2014

FROM: Tawni Helms, Administrative Coordinator

RE: Bellingham Food Bank contract for 2015-2016

Enclosed are two (2) originals of a service agreement between Whatcom County and the Bellingham Food Bank for your review and signature.

Background and Purpose:
Hunger remains a real concern for too many families in Whatcom County. The Bellingham Food Bank will continue to use the funds to procure, warehouse and distribute food and other essentials to low and very low income families. Whatcom County has also agreed to contribute $80,000 each year to the Bellingham Food Bank's "Bulk Buy Food Purchase" Program. This program is the most efficient way for large scale anti-hunger purchases. These purchases will be focused on healthy and nutrient rich food items as defined by the Washington State Department of Agriculture.

Funding Amount and Source:
Maximum consideration of the contract is $276,000 for two years. $138,000 is dedicated for year one (2015) and $138,000 for year two (2016). The funding source is the General Fund.

Differences from Previous Contract
The contract is the same as the previous 2013-2014 contract with the addition of an annual $80,000 contribution to the Bulk Buy Food Purchase program.

Please contact Tawni Helms at extension 50124 if you have any questions or concerns regarding the terms of this agreement.
**Whatcom County Contract No.**

<table>
<thead>
<tr>
<th>Originating Department:</th>
<th>Executive Office</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Contract or Grant Administrator:</strong></td>
<td>Tawni Helms</td>
</tr>
<tr>
<td><strong>Contractor’s / Agency Name:</strong></td>
<td>Bellingham Food Bank</td>
</tr>
</tbody>
</table>

**Is this a New Contract?**  Yes ☒ No ☐

**If not, is this an Amendment or Renewal to an Existing Contract?**

**Original Contract #:**

**Does contract require Council Approval?**  Yes ☒ 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 ☒

If yes, grantor agency contract number(s):

**CFDA#:**

**Is this contract grant funded?**  Yes ☐ No ☒

If yes, Whatcom County grant contract number(s):

**Is this the result of a RFP or Bid process?**

**Contract**

**Cost Center:** 4116

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

- Professional services agreement for certified/licensed professional.
- Contract work is for less than $100,000.
- Contract work is for less than 120 days.
- Interlocal Agreement (between Governments).
- Contract for Commercial off the shelf items (COTS).
- Work related subcontract less than $25,000.
- Public Works - Local Agency/Federally Funded FHWA.
- Contracts that require Council Approval (incl. agenda bill & memo)
  - Professional Services Agreement above $20,000.
  - Bid is more than $50,000.
  - Amendments that have either an increase greater than 10% or provide a $10,000 increase in amount (whichever is greater)

**Summary of Scope:** Whatcom County will provide funding in support of the Bellingham Food Bank Bulk Buy Food Purchase and Gleaning projects. The Bellingham Food Bank shall use the funds to procure, warehouse and distribute food to low and very low income people.

**Term of Contract:** Two Years

**Expiration Date:** 12/31/2016

**Contract Routing:**

1. Prepared by: Tawni Helms  
   Date: 11/19/14
2. Attorney signoff:  
   Date: 11/21/14
3. AS Finance reviewed:  
   Date: 11/25/14
4. IT reviewed (if IT related):  
5. Contractor signed:
6. Submitted to Exec.:  
7. Council approved (if necessary):
8. Executive signed:
9. Original to Council:

**Last Edited:** 060414
CONTRACT FOR SERVICES
BELLINGHAM FOOD BANK

Bellingham Food Bank, 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,
Exhibit B (Compensation), pp. 10.

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 1st day of January 2015, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 31st day of December 2016.

The purpose of this contract is to provide funding for the support of the Bellingham Food Bank to collect food from a variety of sources for distribution to the local food banks in Whatcom County and to support the Bulk Buy Special Food Purchase program and the Food Bank’s Gleaning Project 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 $276,000 ($138,000 for year one (2015) and $138,000 for year two (2016). The Contract Number, set forth above, shall be included on all billings or correspondence in connection therewith.

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

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

CONTRACTOR:
Bellingham Food Bank

[Signature]
Mike Cohen
Executive Director

STATE OF WASHINGTON )
) ss.
COUNTY OF WHATCOM )

On this ___ day of ___ 20___, before me personally appeared Mike Cohen to me known to be the Executive Director of the Bellingham Food Bank, and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

[Signature]
Linda M. Salas
NOTARY PUBLIC in and for the State of Washington, residing at

[Stamp]
NOTARY PUBLIC

583
WHATCOM COUNTY:

Approved as to form:

[Signature]
Prosecuting Attorney Date

Approved:
Accepted for Whatcom County:

By: ____________________________
Jack Louws, Whatcom County Executive

STATE OF WASHINGTON  )
COUNTY OF WHATCOM  ) ss

On this _____ day of __________, 20___, before me personally appeared Jack Louws, to me known to be the Executive of Whatcom County, who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

______________________________
NOTARY PUBLIC in and for the State of Washington, residing at
_______________________________. My commission expires ____________________

CONTRACTOR INFORMATION:

BELLINGHAM FOOD BANK

Contact Name: Mike Cohen
Contact Phone: 360-676-0392
Contact Fax: 360-676-0410
Contact Email: mikec@bellinghamfoodbank.org
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 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. 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:
All writings, programs, data, public records or other materials prepared by the Contractor and/or its consultants or subcontractors, in connection with performance of this Agreement, shall be the sole and absolute property of the County.

31.2 Patent/Copyright Infringement:
Contractor will defend and indemnify the County from any claimed action, cause or demand brought against the County, to the extent such action is based on the claim that information supplied by the Contractor infringes any patent or copyright. The Contractor will pay those costs and damages attributable to any such claims that are finally awarded against the County in any action. Such defense and payments are conditioned upon the following:
A. The Contractor shall be notified promptly in writing by the County of any notice of such claim.
B. Contractor shall have the right, hereunder, at its option and expense, to obtain for the County the right to continue using the information, in the event such claim of infringement, is made, provided no reduction in performance or loss results to the County.

32.1 Confidentiality:
The Contractor, its employees, subcontractors, and their employees shall maintain the confidentiality of all information provided by the County or acquired by the Contractor in performance of this Agreement, except upon the prior written consent of the County or an order entered by a court after having acquired jurisdiction over the County. Contractor shall immediately give 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 commercial general liability insurance with the following minimums:
Property Damage - $500,000.00 per occurrence;
Bodily injury- $1,000,000.00 per occurrence.

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 noncontributory and shall waive all rights of subrogation. The County insurance shall not serve as a source of contribution.

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:
Contractor irrevocably waives any existing rights which it may have, by contract or otherwise, to require another person or corporation to refrain from submitting a proposal to or performing work or providing supplies to the County, and contractor further promises that it will not in the future, directly or indirectly, induce or solicit any person or corporation to refrain from submitting a bid or proposal to or from performing work or providing supplies to the County.

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

37.1 Administration of Contract:
This Agreement shall be subject to all laws, rules, and regulations of the United States of America, the State of Washington, and political subdivisions of the State of Washington. The Contractor also agrees to comply with applicable federal, state, county or municipal standards for licensing, certification and operation of facilities and programs, and accreditation and licensing of individuals.
The County hereby appoints, and the Contractor hereby accepts, the Whatcom County Executive, and his or her designee, as the County’s representative, hereinafter referred to as the Administrative Officer, for the purposes of administering the provisions of this Agreement, including the County’s right to receive and act on all reports and documents, and any auditing performed by the County related to this Agreement. The Administrative Officer for purposes of this agreement is:

Linda Salas, Executive Secretary
Whatcom County Executive’s Office
311 Grand Avenue, Suite 108
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.

38.1 Certification of Public Works Contractor's Status under State Law:
Contractor certifies that it has fully met the responsibility criteria required of public works contractors under RCW 39.04.350 (1), which include: (a) having a certificate of registration in compliance with RCW 18.27; (b) having a current state unified business identifier number; (c) if applicable, having industrial insurance coverage for its employees working in Washington as required in Title 51 RCW, an employment security department number as required in Title 50 RCW, and a state excise tax registration number as required in Title 82 RCW; and (d) not being disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065 (3).

38.2 Certification Regarding Federal Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions:
The Contractor further certifies, by executing this contract, that neither it nor its principles is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or Agency.

The Contractor also agrees that it shall not knowingly enter into any lower tier covered transactions (a transaction between the Contractor and any other person) with a person who is proposed for debarment, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, and the Contractor agrees to include this clause titled "Certification Regarding Federal Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction" without modification, in all lower tier covered transactions and in all solicitations for lower tier transactions.

The "General Service Administration List of Parties Excluded from Federal Procurement or Non-procurement Programs" is available to research this information at http://epis.arnt.gov/.

38.3 E-Verify:
The E-Verify contractor program for Whatcom County applies to contracts of $100,000 or more and sub contracts for $25,000 or more if the primary contract is for $100,000 or more. Contractor represents and warrants that it will, for at least the duration of this contract, register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work for Whatcom County. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor/Seller agrees to maintain records of such compliance and, upon request of the County, to provide a copy of each such verification to the County. Contractor/Seller further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Washington. Contractor/Seller understands and agrees that any breach of these warranties may subject Contractor/Seller to the following: (a) termination of this Agreement and ineligibility for any Whatcom County contract for up to three (3) years, with notice of such cancellation/termination being made public. In the event of such termination/cancellation, Contractor/Seller would also be liable for any additional costs incurred by the County due to contract cancellation or loss of license or permit." Contractor will review and enroll in the E-Verify program through this website: www.uscis.gov

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

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

40.2 Contractor Commitments, Warranties and Representations:
Any written commitment received from the Contractor concerning this Agreement shall be binding upon the Contractor, unless otherwise specifically provided herein with reference to this paragraph. Failure of the Contractor to fulfill such a commitment shall render the Contractor liable for damages to the County. A commitment includes, but is not limited to, any representation made prior to
execution of this Agreement, whether or not incorporated elsewhere herein by reference, as to performance of services or equipment, prices or options for future acquisition to remain in effect for a fixed period, or warranties.

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

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

42.1 Disputes:

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

b. Notice of Potential Claims:
The Contractor shall not be entitled to additional compensation which otherwise may be payable, or to extension of time for (1) any act or failure to act by the Administrative Officer or the County, or (2) the happening of any event or occurrence, unless the Contractor has given the County a written Notice of Potential Claim within ten (10) days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the County. The written Notice of Potential Claim shall set forth the reasons for which the Contractor believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. Contractor shall keep full and complete daily records of the work performed, labor and material used, and all costs and additional time claimed to be additional.

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

d. Arbitration:
Other than claims for injunctive relief brought by a party hereto (which may be brought either in court or pursuant to this arbitration provision), and consistent with the provisions hereinabove, any claim, dispute or controversy between the parties under, arising out of, or related to this Agreement or otherwise, including issues of specific performance, shall be determined by arbitration in Bellingham, Washington, under the applicable American Arbitration Association (AAA) rules in effect on the date hereof, as modified by this Agreement. There shall be one arbitrator selected by the parties within ten (10) days of the arbitration demand, or if not, by the AAA or any other group having similar credentials. Any issue about whether a claim is covered by this Agreement shall be determined by the arbitrator. The arbitrator shall apply substantive law and may award injunctive relief, equitable relief (including specific performance), or any other remedy available from a judge, including expenses, costs and attorney fees to the prevailing party and pre-award interest, but shall not have the power to award punitive damages. The decision of the arbitrator shall be final and binding and an order confirming the award or judgment upon the award may be entered in any court having jurisdiction. The parties agree that the decision of the arbitrator shall be the sole and exclusive remedy between them regarding any dispute presented or pled before the arbitrator. At the request of either party made not later than forty-five (45) days after the arbitration demand, the parties agree to submit the dispute to nonbinding mediation, which shall not delay the arbitration hearing date; provided, that either party may decline to mediate and proceed with arbitration.

Unless otherwise specified herein, this Agreement shall be governed by the laws of Whatcom County and the State of Washington.

43.1 Venue and Choice of Law:
In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the courts of the State of Washington in and for the County of Whatcom. This Agreement shall be governed by the laws of the State of Washington.
44.1 **Survival:**
The provisions of paragraphs 11.1, 11.2, 11.3, 21.1, 22.1, 30.1, 31.1, 31.2, 32.1, 33.1, 34.2, 34.3, 36.1, 40.2, 41.2, 42.1, and 43.1, if utilized, shall survive, notwithstanding the termination or invalidity of this Agreement for any reason.

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

BELLINGHAM FOOD BANK PROGRAM AND GLEANING PROJECT

Whatcom County will provide funding in support of the Bellingham Food Bank and Gleaning Project and the Food Bank’s Bulk Buy Food Purchase Network as described below.

BELLINGHAM FOOD BANK PROGRAM - $100,000 ($50,000 per Year)
Bellingham Food Bank shall use the funds to procure, warehouse and distribute food and other essentials to low and very low-income Whatcom County residents through an existing network of neighborhood food banks.

Outcome: To support prevention measures that help to avoid or prevent hunger, and provide food to low and very low income people. To increase residents’ food security and decrease hunger through the provision of free groceries to low income families that visit local food banks.

Indicators: The number of pounds of food delivered to neighborhood food banks from Bellingham Food Bank.

Eligibility: Food will be made available to low and very low income people.

Program Requirements: The Agency agrees to collect, warehouse and distribute food with funds provided under this contract to neighborhood food banks throughout Whatcom County. The funds provided under this contract shall be used to pay for costs associated with the provision of this food. The Agency shall complete all required paperwork related to project activities and outcomes as described below.

Bellingham Food Bank shall submit a Services-Activities Report with each billing invoice that includes actual pounds of food distributed to the local neighborhood food banks and receipts from each of the neighborhood food banks that received the food as detailed on Exhibit B.

GLEANING PROJECT - $16,000 ($8,000 per Year)
The Gleaning Project facilitated under the Bellingham Food Bank is a non profit organization that bridges the gap between local surplus produce that would otherwise be wasted and those who are hungry in Whatcom County.

The Bellingham Food Bank’s Gleaning Project shall use funds to help cover the cost to coordinate the volunteer effort required to gather excess food from farms and gardens for distribution to the local eligible neighborhood food banks in Whatcom County as listed below.

Bellingham Food Bank’s Gleaning Project will submit invoices and receipts to Whatcom County. Receipts will include the hours worked to coordinate the food gleaning from local farms and orchards as detailed on Exhibit B.

BULK BUY FOOD PURCHASE NETWORK - $160,000 ($80,000 per year)
Bulk Buy Food Purchase funds go to purchase fresh and shelf-stable nutrient dense foods such as fruits, vegetables, eggs, milk and chicken. By investing in Bellingham Food Bank’s Bulk Buy Food Purchase Network, Whatcom County expects to reduce hunger and improve nutrition through the provision of healthy, nutrient rich foods to low and very low income people. The contractor will:

- Establish a Food Buying Committee comprised of at least three participating food banks to meet regularly and determine purchasing options based on need and cost efficiency.
- Make all purchases on behalf of the network, receive and distribute the purchased food.
- Provide program oversight to ensure the local food banks included in the Bulk Buy Food Purchase Network distribute food to low income people and adhere to the Emergency Food Assistance Program (EFAP) guidelines.
- Submit monthly invoices that include copies of receipts for all healthy food purchased by the Bulk Buy Food Network.

Bulk Buy Food Purchase Network (Other food banks that meet the requirements listed above may be added upon the discretion of the Food Buying Committee)

<table>
<thead>
<tr>
<th>Bellingham Food Bank</th>
<th>Blaine Food Bank</th>
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</thead>
<tbody>
<tr>
<td>Ferndale Food Bank</td>
<td>Nooksack Valley Food Bank</td>
</tr>
<tr>
<td>Foothills Food Bank (Deming/Kendall)</td>
<td>Salvation Army Food Bank</td>
</tr>
<tr>
<td>Project Hope (Lynden)</td>
<td>Lummi Tribal Food Bank</td>
</tr>
<tr>
<td>Nooksack Tribal Food Bank</td>
<td></td>
</tr>
</tbody>
</table>

Contract for Services
Bellingham Food Bank
v 1.0

Page 10

592
The Contract Number, set forth above, shall be included on all billings.

**Bellingham Food Bank Project**

*Maximum consideration for this portion of the contract shall be $100,000 ($50,000 for year one (2015) and $50,000 for year two (2016).*

Invoices shall be sent to the Whatcom County Executive’s Office. Bellingham Food Bank will provide Whatcom County with an invoice (including supporting documentation of food distributed) as described in Exhibit A. Bellingham Food Bank will also provide a report at the end of the calendar year that details the total pounds delivered to the Food Banks.

**Method of Payment**

- Reimbursement shall be made monthly.
- The County will pay based on .40 per pound of food distributed to the neighborhood food banks.
- Monthly payments may vary based on the actual number of pounds distributed for that month.
- Payment to the Agency may be withheld for any month in which the Agency has not submitted the contractually required reports on the data indicated.
- 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.

**Gleaning Project**

*Maximum consideration for this portion of the contract shall be $16,000 ($8,000 for year one (2015) and $8,000 for year two (2016)).*

As consideration for the services provided pursuant to Exhibit A - Scope of work, the county agrees to compensate the contractor $15.00 per hour plus payroll taxes for the services of the Bellingham Food Bank Gleaning Project Coordinator. Other reasonable expenses incurred in the course of performing the duties herein shall be reimbursed. Mileage at IRS rate, other expenditures such as printing and postage shall be reimbursed at actual cost. Contractor will invoice monthly. Invoices will include employee hours worked by day with tasks accomplished. Requests for reimbursement of expenses must be accompanied by copies of paid invoices itemizing costs incurred. Any work performed prior to the effective date of this contract or continuing after the completion date of the same unless otherwise agreed upon in writing, will be at the contractor’s expense.

The Billing invoice Package is due within ten working days after the end of each month. Invoices shall be sent to the Whatcom County Executive’s Office.

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.

**Bulk Buy Food Purchase Network**

*Maximum consideration for this portion of the contract shall be $80,000 ($80,000 for year one (2015) and $80,000 for year two (2016)).*

Invoices shall be sent to the Whatcom County Executive’s Office. Bellingham Food Bank will provide Whatcom County with an invoice (including supporting documentation of food purchased) as described in Exhibit A. Bellingham Food Bank will also provide monthly reports that detail the pounds of Bulk food Purchased and delivered to the Food Banks and the numbers served at the Food Banks.

**Method of Payment**

- Invoices shall be sent to the Whatcom County Executive’s Office.
- Reimbursement shall be made monthly.
- Invoices will include actual receipts for Bulk Buy Food Purchases.
- The Contractor is responsible for any audit exceptions or disallowed amounts paid as a result of this contract.

The Contractor shall not bill the county for services performed or provided under this contract, and the County shall not pay 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.
Non Profit Insurance Program

CERTIFICATE OF INSURANCE

Issue Date: 11/21/2014

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONVEYS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(s), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(s) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain coverage may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Canfield
451 Diamond Drive
Ephrata, WA 98823

COMPANIES AFFORDING COVERAGE
GENERAL LIABILITY
American Alternative Insurance Corporation

AUTOMOBILE LIABILITY
American Alternative Insurance Corporation

PROPERTY
American Alternative Insurance Corporation
RSUI Group, Inc.

MISCELLANEOUS PROFESSIONAL LIABILITY

INSURED
Alternatives to Hunger
Bellingham Food Bank
1824 Ellis St
Bellingham, WA 98225

COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE COVERAGE PERIOD INDICATED. NOT WITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

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<th>TYPE OF INSURANCE</th>
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<th>POLICY EXP DATE</th>
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<td>AUTOMOBILE LIABILITY</td>
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<td>PROPERTY</td>
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<td>ALL RISK PER OCC EXCL EQ &amp; PL</td>
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<td>FLOOD PER OCC</td>
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</table>

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / SPECIAL ITEMS
Evidence of Insurance.

CANCELLATION
SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

CERTIFICATE HOLDER
Whatcom County
311 Grand Ave
Bellingham, WA 98225

AUTHORIZED REPRESENTATIVE
Montgomery

2904044
E-Verify Declaration
ATTACHMENT “D”

Firm Name: **Bellingham Food Bank**

Proposal/Bid/Invitation/Solicitation No. ____________________________

The undersigned declares, under penalty of perjury under the laws of Washington that:

1. The above named firm is currently enrolled in and using the E-Verify system for all employees hired on or after the contract inception date and will continue to use the E-Verify system for so long as work is being performed on the above named project.

2. I certify that I am duly authorized to sign this declaration on behalf of the above named bidder/proposer.

3. I acknowledge that Whatcom County requires a copy of the Memorandum of Understanding between the contractor listed above and the Department of Homeland Security certifying enrollment in the E-Verify program. Failure to provide the required Memorandum of Understanding could lead to suspension of this contract.

DATE: ____________________________

SIGNATURE: ____________________________

PRINTED NAME: ____________________________
TITLE OF DOCUMENT: Contract between Whatcom County and Bennett Engineering for landfill monitoring services.

ATTACHMENTS:
1. Info Sheet
2. Executive Memo
3. 2 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.)

The purpose of this contract is to provide landfill monitoring services at the Cedarville and Y-Road closed landfill sites.
MEMORANDUM

TO: Jack Louws, County Executive
FROM: Regina A. Delahunt
RE: Bennett Engineering, Landfill Monitoring Services Contract
DATE: November 20, 2014

Enclosed are two (2) originals of a contract between Whatcom County and Bennett Engineering for your review and signature.

- **Background and Purpose**
  Closed landfills at Cedarville and Y Road locations have ongoing programs for monitoring ground and surface water as well as gas emissions to ensure that each site is compliant with federal, State and local laws and regulations. The purpose of this contract is to continue monitoring services in accordance with the Sampling and Analysis Plans and reporting to the Washington Department of Ecology.

- **Funding Amount and Source**
  Funding in the amount of $33,304 for 2015 is from the Whatcom County Solid Waste Fund and is included in the 2015 budget. Council approval is required because this is a professional services contract exceeding $20,000.

- **Differences from Previous Contract**
  This is a new contract resulting from RFP 14-58. However, the scope of work is the same as was performed by Bennett Engineering in 2014 and the budget is reduced by 5%.

Please contact Jeff Hegedus at extension 50895, 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>
</tr>
</thead>
<tbody>
<tr>
<td>Contract or Grant Administrator:</td>
<td>Jeff Hagedus</td>
</tr>
<tr>
<td>Contractor's / Agency Name:</td>
<td>Bennett Engineering, LLC</td>
</tr>
</tbody>
</table>

**Is this a New Contract?**
Yes X No

**If not, is this an Amendment or Renewal to an Existing Contract?**
Yes ___ No ___

**If Amendment or Renewal, Original Contract #**

**Does contract require Council Approval?**
Yes X No

**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 the result of a RFP or Bid process?**
Contract
Yes X No

If yes, RFP and Bid number(s) Cost Center: _14-58___ _140201___

**Is this agreement excluded from E-Verify?**
No ___ Yes 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:(sum of original contract amount and any prior amendments)**

$ 33,304

**This Amendment Amount:**

$ __________

**Total Amended Amount:**

$ __________

**Summary of Scope:**

Perform landfill monitoring services at closed landfills at Cedarville and Y-Road.

**Term of Contract: 1 Year**

**Expiration Date:** 12/31/2015

**Contract Routing Steps & Signoff:**

1. Prepared by: ____________ [sign or initial] Date: 11/4/14 [electronic]
2. Attorney reviewed: ______ rb Date: 11/20/14 [electronic]
3. AS Finance reviewed: ______ [electronic]
4. IT reviewed if IT related __________
5. Attorney signoff: ______ [electronic]
6. Contractor signed: ______ L. D. 
7. Submitted to Exec Office ______ [summary via electronic; hardcopies]
8. Council approved (if necessary) ______
9. Executive signed: ______
10. Contractor Original Returned to dept: ______
11. County Original to Council ______
COUNTY ORIGINAL

CONTRACT FOR SERVICES AGREEMENT
Cedarville & Y-Road Landfill Monitoring Services

Whatcom County Contract No. 2014 11 025

Bennett Engineering, LLC, 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 12,
Exhibit B (Compensation), pp. 13 to 16,
Exhibit C (Certificate of Insurance), p. 17.

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 1st day of January, 2015, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 31st day of December, 2015.

The general purpose or objective of this Agreement is to: provide monitoring services for Cedarville & Y Road Landfills, 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 $33,304. 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 20th day of November 2014.

CONTRACTOR:

Bennett Engineering, LLC

Tom Bennett, P. E. Principal

STATE OF WASHINGTON

COUNTY OF Whatcom

On this 20th day of November 2014, before me personally appeared Tom Bennett to me known to be the Principal of Bennett Engineering, LLC and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

WHATCOM COUNTY:
Recommended for Approval:

[Signature] 11/20/14
John Wolters, Environmental Health Manager

[Signature] 11/21/14
Department Director

Approved as to form:

[Signature] 1/24/14
Prosecuting Attorney

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:

Bennett Engineering, LLC
Thomas E. Bennett, P. E.
2324 James Street
Bellingham, WA 98225
Office: (360)671-2600
tomb@bennettengr.com
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 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. 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 incomplete 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:
All writings, programs, data, public records or other materials prepared by the Contractor and/or its consultants or subcontractors, in connection with performance of this Agreement, shall be the sole and absolute property of the County.

31.2 Patent/Copyright Infringement: Not Applicable

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

33.1 Right to Review:
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
General Liability & Property Damage for bodily injury- $1,000,000.00

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.

a. Professional Liability - $1,000,000 per occurrence
If the professional liability insurance is a claims made policy, and should the contractor discontinue coverage either during the term of this contract or within three years of completion, the contractor agrees to purchase tail coverage for a minimum of three years from the completion date of this contract or any amendment to this contract.

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: Not Applicable

36.1 Waiver of Noncompeting: 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:

Jeff Hegedus
Whatcom County Health Department
509 Girard St.
Bellingham, WA 98225
(360)676-6724 Ext. 50895
JHegedus@co.whatcom.wa.us
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

Cedarville Landfill

Cedarville has been a closed landfill since February 1990. Final closure improvements were completed in October 1993. A leachate management system was constructed in 2012, consisting of a retention pond, aeration and settling vaults, and bio-swale filtration.

All surface water and leachate sampling at the Cedarville landfill shall be in compliance with the Sampling and Analysis Plan (Cedarville SAP) dated January 2013. Included, are sampling parameters and procedures, and reporting requirements. Quarterly surface water monitoring must be conducted at the Downstream Ditch sampling location in accordance with the Cedarville SAP, the current Industrial Stormwater General Permit (ISGP #WAR001280), and the National Pollutant Discharge Elimination System (NPDES) (WA0501490) for the landfill. Discharge monitoring reports and visual inspection reports are to be prepared for each quarterly event.

Y Road Landfills

The Y Road landfills are comprised of two former landfill areas located on the west side (Y-Road I Landfill) and on the east side (Y-Road II Landfill) of Y Road in Whatcom County. All monitoring must be in compliance with the Revised Sampling and Analysis Plan (Y-Road SAP), dated October 2003 and revised in 2013. There are a total of four groundwater wells to be sampled, one surface water sampling location, and seven gas probes installed at the two sites.

The following statement of work has been divided into four primary tasks.

II. Statement of Work

Task 1: Annual Compliance Report - Cedarville Landfill

Task 1.1 Project Management

Project management includes project scoping and setup, invoice review, and meetings and correspondence with the County and outside vendors.

Task 1.2 2015 Annual Compliance Report

Bennett will prepare the 2015 Annual Compliance Report for the Cedarville Landfill, which will include a description of activities performed at the site during the year, summary tables for the data obtained under the ISGP and NPDES Permit, and a brief discussion regarding compliance with permit limits and recommended maintenance items, as necessary. The Annual Compliance Report will be submitted to the Whatcom County Health Department (WCHD) in PDF format via electronic mail prior to December 31, 2015.

Task 2: Surface Water Monitoring - Cedarville Landfill

Task 2.1 Quarterly Sampling and Site Inspection
Stormwater monitoring and inspection will be conducted in accordance with the ISGP for the Site, which calls for quarterly observations for oil sheen, and surface water sampling and analysis of the following parameters: pH (field), turbidity, BOD(5), and total copper and zinc. Visual inspections are performed during the quarterly events, and include observations of uncontrolled discharges to ground, floating materials, visible sheens, discoloration, turbidity, and odor.

Task 2.2 Laboratory Testing

Bennett will hand-deliver water samples to Edge immediately following the sampling events.

Task 2.3 Quarterly Discharge Monitoring Reports and Visual Inspection Reports

Bennett will enter quarterly DMRs into Ecology's WebDMR system prior to the 15th day of the month following the respective quarter. The DMRs are reviewed and validated by Whatcom County staff to complete the submittal process. The Visual Inspection Reports will be submitted to WCHD in PDF format, which will summarize site observations and provide a list of recommended actions, if necessary.

Task 2.4 ISGP Annual Report

Bennett will prepare the 2015 ISGP Annual Report using Ecology's standard form. The report will be submitted to Whatcom County staff for review and comment prior to May 1, 2015. The final report will be submitted to Ecology prior to May 15, 2015 deadline.

Task 3: NPDES Permit Sampling - Cedarville Landfill Leachate Management System

Task 3.1 NPDES Permit Sampling

Monthly sampling of the treated effluent will be performed at the discharge manhole of the effluent pond (Outfall #001). Monthly surface water samples will also be obtained in the regional drainage ditch to determine the turbidity at locations upgradient and down gradient of Outfall #001. Bennett will measure field parameters (pH, conductivity, and temperature) during each sampling event. The scope of work for this task assumes that discharge will occur during the months of January through April, November, and December 2015 (6 sampling events total).

Task 3.2 Discharge Monitoring Reports

DMRs will be entered into Ecology's WebDMR system every month (12 total), regardless of the status of system discharge. County staff will review and validate the DMRs prior to the 15th day of the month following the sampling event.

Task 3.3 Coordination of Annual O&M Work Items

Bennett will develop a list of maintenance work items for the LMS, in accordance with the O&M Manual, dated February 2013. Bennett will provide field support and observation during the maintenance work, and submit associated field reports and photo documentation to the WCPWD following completion of the work.

Task 3.4 Laboratory Analysis

Bennett will submit effluent samples to Edge immediately following the sampling event.
Task 4: Ground Water, Surface Water, and Gas Monitoring- Y-Road Landfills

Landfill monitoring will be performed at the Y-Road Landfills in accordance with the Revised Sampling and Analysis Plan (updated 2013). Several items were deleted from the SAP in 2013, including: leachate sampling from MW-5, duplicate and field blank samples, and dissolved metals analysis. Semi-annual monitoring events are scheduled for January and July 2015.

Task 4.1 Semi-Annual Sampling and Inspection

Ground water sampling will be conducted using low-flow methods, as described below.

1. The depth to water and depth to bottom will be measured to the nearest 0.01 foot in MW-1, 3, 4, 5, 6, 7, 8, and 9 using an electric water level indicator, and recorded in the field data sheets. The bottom elevations will be compared to previous readings to determine the depth of sediment accumulation and evaluate the need for well re-development.

2. Monitoring wells MW-1, 9, 3, and 4 will be purged with a peristaltic pump at approximately 0.51 liter per minute. Purge water will be disposed on the ground. The water level probe will be used to monitor changes in water level during purging. The purge rate will be adjusted to minimize ground water drawdown. Field parameters will be measured with field meters during purging. Sampling will begin when these parameters have stabilized. Ground water samples will be collected directly from the discharge stream of the pump in appropriate sample containers provided by Edge.

3. Field parameter readings, date, time, weather conditions and any special field observations will be recorded on field data sheets for each monitoring well.

4. Sample bottles will be labeled with the date, sample location, sample depth, and sampler's name.

5. Field sampling equipment will be decontaminated between each well.

Surface water sampling in Carpenter Creek will be performed using a polyethylene sample bottle immersed in the water upstream of sampling personnel to avoid possible inclusion of suspended sediment. Surface water samples will be transferred to appropriate sample bottles supplied by Edge. Field parameter readings, date, time, weather conditions and any special field observations will be recorded on the field data sheet.

A visual inspection will also be performed during the semi-annual monitoring events, and will include observations of the following items (at a minimum):

- landfill cover regarding vegetation and indications of erosion, seepage, or subsidence;
- stormwater facilities regarding ponding, obstruction of ditches, and indications of erosion;
- ground water and gas monitoring wells with respect to physical condition; and
- flow in Carpenter Creek.

Task 4.2 Laboratory Analysis

Bennett will hand-deliver water samples to Edge on the day of the monitoring events.

Task 4.3 Semi-Annual Gas Probe Monitoring

Methane gas concentrations will be measured at the seven gas monitoring wells at the Y-Road II Landfill using a combustible gas meter. The gas meter will be calibrated by the vendor using a 25% LEL methane standard and ambient oxygen conditions. Gas pressures will be measured at each well to the nearest 0.01 inches of water column using a
digital manometer. The barometric pressure during the individual sampling events will be obtained from data recorded by the National Weather Service at the Bellingham International Airport.

Task 4.4 Semi-Annual Report

The Semi-Annual Report will include a discussion of site conditions observed during the January event, analytical results, and ground water flow direction and velocity, and summary tables for ground water, surface water, and gas monitoring results. Ground water contour maps for the two landfills, field data sheets, and laboratory results will be attached to the report, along with chain-of-custody documentation. Originals of the Semi-Annual Report will be submitted to Whatcom County within 30 days of receipt of the analytical data.

Task 4.5 2015 Annual Report

The 2015 Annual Report for the Y-Road Landfills will be prepared following the July 2015 event and will include time-series plots for conductivity, chloride, and total barium, iron, and manganese, qualitative analysis of water quality trends, summary tables of historic analytical data, and other data as previously described under Task 4.4 for the Semi-Annual Report. Originals of the 2015 Annual Report will be submitted to the Whatcom County prior to September 30, 2015.

Additional Work
The County may request additional services related to the work of this contract. If required, it is understood that any work performed beyond the tasks outlined above will be charged at the 2015 Schedule of Fees included Exhibit B and specifically authorized by the County contract administrator prior to the work being done. In no instance will Contingency Funds be authorized for Tasks 1-4 outlined above.
EXHIBIT "B"
(COMPENSATION)

I. Budget and Source of Funding: The source of funding for this contract, in the amount not to exceed $33,304, is the Whatcom County Solid Waste Fund.

II. Contract Budget:

<table>
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<tr>
<th>1 ANNUAL COMPLIANCE REPORT - CEDARVILLE LANDFILL</th>
<th>Time</th>
<th>Rate</th>
<th>Total Budget</th>
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<td>Quantity</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Task 2.2 Subtotal</td>
<td></td>
<td></td>
<td></td>
<td>$160.00</td>
</tr>
<tr>
<td>Markup (7.5%)</td>
<td></td>
<td></td>
<td></td>
<td>$12.00</td>
</tr>
<tr>
<td><strong>Task 2.2 Total</strong></td>
<td></td>
<td></td>
<td></td>
<td><strong>$172.00</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>2.3 Quarterly DMRs and Visual Inspection Reports</th>
<th>Events</th>
<th>Time/Event</th>
<th>Rate</th>
<th>Total Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Quarterly Discharge Monitoring Reports</td>
<td>4</td>
<td>1</td>
<td>$105.00</td>
<td>$420.00</td>
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<tr>
<td>Quarterly Visual Inspection Reports</td>
<td>4</td>
<td>1</td>
<td>$105.00</td>
<td>$420.00</td>
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<tr>
<td><strong>Task 2.3 Total</strong></td>
<td></td>
<td></td>
<td></td>
<td><strong>$840.00</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>2.4 ISGP Annual Report</th>
<th>Time</th>
<th>Rate</th>
<th>Total Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>ISGP Annual Report to Ecology - Due May 15, 2015</td>
<td>5</td>
<td>$105.00</td>
<td>$525.00</td>
</tr>
<tr>
<td><strong>Task 2.4 Total</strong></td>
<td></td>
<td></td>
<td><strong>$525.00</strong></td>
</tr>
</tbody>
</table>

**TASK 2 TOTAL:** $3,437.00
### 3 NPDES PERMIT SAMPLING - CEDARVILLE LANDFILL

#### 3.1 NPDES Permit Sampling
- **Field Sampling Events (Jan-April and Nov - Dec 2015)**
  - Events: 6
  - Time/Event: 4
  - Rate: $95.00
  - Total Budget: $2,280.00
- **Peristaltic Pump**
  - Events: 6
  - Time/Event: 1
  - Rate: $50.00
  - Total Budget: $300.00

**Task 3.1 Total**: $2,580.00

#### 3.2 Discharge Monitoring Reports
- **Discharge Monitoring Reports (Jan thru Dec 2015)**
  - Events: 12
  - Time/Event: 2
  - Rate: $105.00
  - Total Budget: $2,520.00

**Task 3.2 Total**: $2,520.00

#### 3.3 Coordination of Annual O&M Work Items
**Work Item Punchlist/Field Observation/Reporting**
- Events: 8
- Time/Event: 8
- Rate: $95.00
- Total Budget: $760.00

**Task 3.3 Total**: $760.00

#### 3.4 Laboratory Testing (Edge Analytical)
- **Task 3.4 Subtotal**: $3,155.00
- **Markup (7.5%)**
  - Total Budget: $237.00

**Task 3.4 Total**: $3,392.00

**TASk 3 TOTAL**: $9,252.00

### 4 GROUND WATER, SURFACE WATER AND LANDFILL GAS MONITORING - Y-ROAD LANDFILLS

#### 4.1 Semi-Annual Sampling and Inspection
- **Sampling Events and Inspection**
  - Events: 2
  - Time/Event: 14
  - Rate: $95.00
  - Total Budget: $2,660.00
- **Sampling Equipment/Supplies (w/7.5% Markup)**
  - Events: 2
  - Time/Event: 14
  - Rate: $300.00
  - Total Budget: $600.00

**Task 4.1 Total**: $3,260.00

#### 4.2 Laboratory Analysis (Edge Analytical)
**4 Monitoring Wells/Carpenter Creek**
- **Task 4.2 Subtotal**: $2,560.00
- **Markup (7.5%)**
  - Total Budget: $192.00

**Task 4.2 Total**: $2,752.00

#### 4.3 Semi-Annual Gas Probe Monitoring
**Gas Monitoring Events**
- Events: 2
- Time/Event: 2
- Rate: $95.00
- Total Budget: $380.00

**Task 4.3 Total**: $380.00

#### 4.4 Semi-Annual Report
- **Report Preparation**
  - Events: 8
  - Time/Event: 8
  - Rate: $105.00
  - Total Budget: $840.00
- **Data Validation/Database Maintenance**
  - Events: 2
  - Time/Event: 2
  - Rate: $95.00
  - Total Budget: $190.00
- **Drafting - Ground Water Contour Maps**
  - Events: 2
  - Time/Event: 2
  - Rate: $78.00
  - Total Budget: $156.00

**Task 4.4 Total**: $1,186.00
4.5 Annual Report

<table>
<thead>
<tr>
<th>Task</th>
<th>Time</th>
<th>Rate</th>
<th>Total Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Report Preparation</td>
<td>14</td>
<td>$105.00</td>
<td>$1,470.00</td>
</tr>
<tr>
<td>Data Validation/Database Maintenance</td>
<td>2</td>
<td>$95.00</td>
<td>$190.00</td>
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<tr>
<td>Time Series Plots</td>
<td>6</td>
<td>$95.00</td>
<td>$570.00</td>
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<tr>
<td>Drafting - Ground Water Contour Maps</td>
<td>2</td>
<td>$78.00</td>
<td>$156.00</td>
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</tbody>
</table>

Task 4.5 Total $2,386.00

TASK 4 TOTAL: $9,964.00

Task 1-4 Total $26,643.00

* Contingency (25%) $6,661.00

TOTAL CONTRACT BUDGET $33,304.00

* Contractor will not expend any contingency funds without prior written authorization of the County.

2015 Schedule of Fees – Bennett Engineering, LLC

The above contract budget is based on the following rates:

<table>
<thead>
<tr>
<th>Personnel</th>
<th>Hourly Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Project Engineer (Norman Scheaffer)</td>
<td>$78.00</td>
</tr>
<tr>
<td>Senior Engineer I</td>
<td>84.00</td>
</tr>
<tr>
<td>Senior Engineer II</td>
<td>95.00</td>
</tr>
<tr>
<td>Project Manager (Thomas Bennett)</td>
<td>105.00</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Equipment</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Disposable Baille, each</td>
<td>$10.00</td>
</tr>
<tr>
<td>Peristaltic Pump, per day</td>
<td>50.00</td>
</tr>
<tr>
<td>Sail Sampling Equipment, per day</td>
<td>50.00</td>
</tr>
<tr>
<td>Field Monitoring Equipment, per day</td>
<td>25.00</td>
</tr>
<tr>
<td>Field Filter/Purge Pump &amp; Assembly, per day</td>
<td>50.00</td>
</tr>
</tbody>
</table>

III. Invoicing

1. The Contractor shall submit itemized invoices on a monthly basis in a format approved by the County. Monthly/quarterly invoices must be submitted by the 15th of the month following the month of service.

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.
EXHIBIT "C"
(CERTIFICATE OF INSURANCE)
**CERTIFICATE OF LIABILITY INSURANCE**

**PRODUCER**
The Unity Group
110 Unity Street
Bellingham WA 98225

**INSURED**
Bennett Engineering LLC
Thomas E Bennett PE
2324 James St
Bellingham WA 98225

**CERTIFICATE NUMBER:** 184763621

---

### GENERAL LIABILITY

<table>
<thead>
<tr>
<th>TYPE OF LIABILITY</th>
<th>POLICY NUMBER</th>
<th>POLICY LIMIT</th>
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</thead>
<tbody>
<tr>
<td>COMMERCIAL</td>
<td>D1C3605686120</td>
<td>$1,800,000</td>
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</table>

### AUTOMOBILE LIABILITY

<table>
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<tr>
<th>TYPE OF LIABILITY</th>
<th>POLICY NUMBER</th>
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<tbody>
<tr>
<td>COMMERICAL</td>
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<tr>
<td>SCHEDULED Autos</td>
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<tr>
<td>NON-SCHEDULED Autos</td>
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</table>

### UMBRELLA LIABILITY

<table>
<thead>
<tr>
<th>TYPE OF LIABILITY</th>
<th>POLICY NUMBER</th>
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<tbody>
<tr>
<td>EXCESS LIABILITY</td>
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</table>

### WORKERS COMPENSATION

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<th>TYPE OF LIABILITY</th>
<th>POLICY NUMBER</th>
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</thead>
<tbody>
<tr>
<td>EMPLOYER'S</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

---

**CERTIFICATE HOLDER**
Whatcom County Public Works Department
322 N. Commercial St, Ste 210
Bellingham WA 98225

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED INSURANCE BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

© 1988-2010 ACORD CORPORATION. All rights reserved.
**WHATCOM COUNTY COUNCIL AGENDA BILL**  
**NO.** 2014-417

<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>pj</td>
<td>11/6/14</td>
<td></td>
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<tr>
<td>Division Head:</td>
<td></td>
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<tr>
<td>Dept. Head:</td>
<td></td>
<td>11/24/14</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prosecutor:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Purchasing/Budget:</td>
<td>niken</td>
<td>11/20/14</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Executive:</td>
<td></td>
<td></td>
<td>12/2/14</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**TITLE OF DOCUMENT:** Intergovernmental Agreement with City of Bellingham

**ATTACHMENTS:**
1. Memo
2. Info Sheet
3. 2 copies of Grant Agreement

**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.)

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

<table>
<thead>
<tr>
<th>Related County Contract #:</th>
<th>Related File Numbers:</th>
<th>Ordinance or Resolution Number:</th>
</tr>
</thead>
</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: Regina A. Delahunt, Director
RE: Agreement with City of Bellingham to fund Mental Health Court Attorneys
DATE: November 21, 2014

Enclosed are two (2) originals of a grant agreement between Whatcom County and the City of Bellingham for your review and signature.

- **Background and Purpose**
  Whatcom County and the City of Bellingham have committed to implement a mental health court program in the Bellingham Municipal Court to divert to treatment and supportive services Whatcom County residents challenged with mental illness and charged with misdemeanor crimes. The goals of the program are to promote public safety, engage and retain defendants in treatment services, reduce contact with the criminal justice system, and efficiently use scarce public resources.

  The purpose of this agreement is to fund the participation of a contracted Special Prosecutor, and a contracted Public Defender in the final design, implementation, and operations of the mental health court program in Bellingham Municipal Court.

- **Funding Amount and Source**
  This contract, in the amount of $32,000 is funded by the Chemical Dependency/Mental Health Program Fund and is included in the 2015 budget. Council approval is required because this is a contract for professional services over $20,000. An agenda bill is attached.

- **Differences from Previous Contract**
  This is a new contract.

Please contact Anne Deacon at extension 50877, if you have any questions regarding this agreement.

Encl.
**WHATCOM COUNTY CONTRACT INFORMATION SHEET**

<table>
<thead>
<tr>
<th>Originating Department:</th>
<th>Health</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract or Grant Administrator:</td>
<td>Anne Deacon</td>
</tr>
<tr>
<td>Contractor's / Agency Name:</td>
<td>City of Bellingham</td>
</tr>
</tbody>
</table>

**Is this a New Contract?** If not, is this an Amendment or Renewal to an Existing Contract? Yes ___ No ____
Yes ___ No ____ If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #____

**Does contract require Council Approval?** Yes ___ No ____ If No, include WCC ____

**Is this a grant agreement?**
Yes ___ No ___
If yes, grantor agency contract number(s) __________ CFDA # __________

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

**Is this contract the result of a RFP or Bid process?**
Yes ___ No ___
If yes, RFP and Bid number(s)_________ Cost Center: __124111__

**Is this agreement excluded from E-Verify?** No ___ Yes ___ If no, include Attachment D Contractor Declaration form.

**If yes, indicate exclusion(s) below:**
- Professional services agreement for certified/licensed professional
- Contract 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 Gov't's)
- Public Works - Local Agency/Federally Funded FHWA

**Contract Amount:** (sum of original contract amount and any prior amendments)
$____20,000____

**This Amendment Amount:**
$

**Total Amended Amount:**
$

**Summary of Scope:**
The purpose of this agreement is to fund the participation of a contracted Special Prosecutor, and a contracted Public Defender in the final design, implementation, and operations of the mental health court program in Bellingham Municipal Court.

**Term of Contract:** 1 Year

**Expiration Date:** 12/31/2015

<table>
<thead>
<tr>
<th>Contract Routing Steps &amp; Signoff: [sign or initial]</th>
<th>[indicate date transmitted]</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Prepared by: ____pj ____</td>
<td>Date 1/14/14</td>
</tr>
<tr>
<td>2. Attorney reviewed: ____rb ____</td>
<td>Date 1/13/14</td>
</tr>
<tr>
<td>3. AS Finance reviewed: ____bb ____</td>
<td>Date 1/20/14</td>
</tr>
<tr>
<td>4. IT reviewed if IT related: ____</td>
<td>Date</td>
</tr>
<tr>
<td>5. Attorney signoff: ____</td>
<td>Date 1/25/14</td>
</tr>
<tr>
<td>6. Contractor signed: ____</td>
<td>Date 1/25/14</td>
</tr>
<tr>
<td>7. Submitted to Exec Office: ____</td>
<td>Date</td>
</tr>
<tr>
<td>8. Council approved (if necessary): ____</td>
<td></td>
</tr>
<tr>
<td>9. Executive signed: ____</td>
<td>Date</td>
</tr>
<tr>
<td>10. Original to Council ____</td>
<td>Date</td>
</tr>
</tbody>
</table>

**Contracts that require Council Approval (incl. agenda bill & memo):**
- Professional Services Agreement above $20,000.
- Bid is more than $50,000.
- Amendments that have either an increase greater than 10% or provide a $10,000 increase in amount (whichever is greater)

**RENEWALS:** Council approval is not required when exercising an option to renew that is provided in the original contract.
INTEGOVERNMENTAL AGREEMENT
BETWEEN
WHATCOM COUNTY
AND
THE CITY OF BELLINGHAM

THIS AGREEMENT is made and entered into by and between the Whatcom County ("Whatcom") and the City of Bellingham ("Bellingham").

I. Purpose

The purpose of this agreement is to fund the participation of a contracted Special Prosecutor, and a contracted Public Defender in the final design, implementation, and operations of the mental health court program in Bellingham Municipal Court.

II. Agreement Period

This Agreement will commence on the 1st day of January, 2015 and shall, unless terminated or renewed as elsewhere provide in Agreement, terminate on the 31st day of December, 2015. The Agreement may be renewed in writing and on terms agreed to by both parties.

III. Additional Terms

1. Termination Notice Required: This Agreement may be terminated by providing thirty (30) days written notice by one party to the other whereupon remaining financial obligations for payment of work performed will be paid in full. An equitable adjustment in the unit prices contained in the Compensation Section herein will be made for partially completed items of work however such adjustment shall not include a provision for loss of anticipated profit on deleted or uncompleted work.

2. 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.

3. Disputes: Differences between Bellingham and County, arising under and by virtue of this agreement, shall be brought to the attention of the Supervisors of each Department at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. If it proves impossible to arrive at a mutually satisfactory solution through this process, the parties agree to submit the dispute to the County Executive for full and final resolution.

4. 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.
IV. Persons Responsible For Administration of the Agreement

Whatcom hereby designates its person responsible for administration of this Agreement as follows:

Anne Deacon, Human Services Division Manager
Whatcom County Health Department
509 Girard St.
Bellingham, WA 98225
360-676-6724 Ext. 50877
ADeacon@co.whatcom.wa.us

Bellingham hereby designates its persons responsible for administration of this Agreement as follows:

Peter Ruffatto, City Attorney (as to prosecutor work)
City of Bellingham
210 Lottie Street
Bellingham, WA 98225

Darlene Petersen, Court Administrator (as to public defender work)
Bellingham Municipal Court
2014 C. St.
Bellingham, WW 98225

V. Scope of Work

1. Background

Current research indicates that about 5% of Americans have a serious mental illness that substantially interferes with their ability to function in society. While these individuals may have been institutionalized in the past, now they are more likely to be part of our community where they are left to manage their physical, mental, social and housing needs as best they can. Individuals with mental illness are three to four times more likely to be incarcerated than the general population. Many times their offenses are petty crimes or a result of displaying their illness in a public setting rather than serious crimes. These national trends are present here in Whatcom County and are contributing to overcrowding in jails, and the rising costs of psychiatric care and medications for mentally ill inmates.

Whatcom County and the City of Bellingham have committed to implement a mental health court program in the Bellingham Municipal Court to divert to treatment and supportive services Whatcom County residents challenged with mental illness and charged with misdemeanor crimes. The goals of the program are to promote public safety, engage and retain defendants in treatment services, reduce contact with the criminal justice system, and efficiently use scarce public resources.

The facts listed below emphasize the critical need for implementation of a Mental Health Court:

a. Approximately 12 – 15% of the Whatcom County jail population suffers from serious mental illness and would be eligible for Mental Health Court

b. Criminal behavior is more likely to continue when serious mental illness is untreated

c. Incarceration may worsen the symptoms of mental illness

d. Jail stays are longer and more expensive for individuals with mental illness

e. Jail must pay for expensive psychotropic medications ~ approximately $142,680 in 2013 alone

f. Mental Health Court participants are significantly less likely to repeat criminal behavior
g. Mental health treatment alone doesn't reduce criminal behaviors – intensive oversight and effective programming is required to address successfully the symptoms of mental illness and the pattern of criminal behavior.

h. According to the Washington State Institute for Public Policy (2014) Mental Health Court benefits are $6.75 for every $1 spent by the public.

Multiple community stakeholders are required for the successful planning and implementation of a mental health court. The purpose of this agreement is to fund the participation of a contracted Special Prosecutor, and a contracted Public Defender in the final design, implementation, and operations of the mental health court program in Bellingham Municipal Court.

2. Statement of Work

This agreement funds two mental health court functions:

1. Mental Health Court's Special Prosecutor (MHCSP): This function will be overseen by the Lead Prosecutor of the Bellingham City Attorney's Office. Bellingham will assure that the MHCSP represents the Bellingham City Attorney’s office in MHC proceedings.

2. Mental Health Court's Public Defender (MHCPD): This function will be overseen by the Bellingham Municipal Court Administrator. Bellingham will assure that the MHCPD represents the Bellingham Office of Public Defender in MHC proceedings.

Bellingham will provide two attorneys to serve in the roles indicated above. In addition to duties described above the attorneys will, subject to fund availability:

1. Work with the mental health court team to design and implement the mental health court program.
2. Provide requested data to assist in the evaluation of the mental health court program.
3. Provide other duties as needed to further the goals of the mental health court program.

3. Reporting Requirements

Bellingham is authorized to sub-contract this work to qualified attorneys. Bellingham will provide a log showing the contracted attorneys’ time spent performing the work of this agreement and direct costs incurred. Standard hourly billing statements from the contract attorneys will satisfy this requirement.
VI. **Compensation**

1. **Budget and Funding**

The budget for this contract in an amount not to exceed $32,000 is funded by the Chemical Dependency/Mental Health Program Fund.

<table>
<thead>
<tr>
<th>Line Item</th>
<th>Units</th>
<th>Total Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Special Prosecutor Services for Mental Health Court</td>
<td>$140/hour</td>
<td>$ 16,000</td>
</tr>
<tr>
<td>Public Defender Services for Mental Health court</td>
<td>$140/hour</td>
<td>$ 16,000</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
<td><strong>$ 32,000</strong></td>
</tr>
</tbody>
</table>

*Funding may be transferred between line items only with prior written consent of the County.*

2. **Invoicing**

1. Bellingham shall submit itemized invoices on a monthly/Quarterly basis in a format approved by the County. Monthly/quarterly invoices must be submitted by the 15th of the month following the month of service. Invoices submitted for payment must include a copy of the attorney’s standard hourly billing statement for the period.

2. Bellingham shall submit invoices to *(include PO #)*:

   Business Office  
   Whatcom County Health Department  
   509 Girard St.  
   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 Bellingham. The County may withhold payment of an invoice if the Contractor submits it more than 60 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. **Duplicate of Billed Costs or Payments for Service**: Bellingham shall not bill the County for services provided under this contract if Bellingham has been or will be paid by any other source. Bellingham is responsible for any audit exceptions or disallowed amounts paid as a result of this contract.
All Parties have read and agreed to the above stated terms.

DEPARTMENT APPROVAL

Anne Deacon, Human Services Manager  
11/21/14  Date

Regina Delahunt, Director, Health Department  
11/24/14  Date

WHATCOM COUNTY

JACK LOUWS  
County Executive

STATE OF WASHINGTON  )
COUNTY OF WHATCOM  )

On this ______ day of __________________, 2014, before me personally appeared Jack Louws, to me known to be the Executive of Whatcom County 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: __________________

APPROVED AS TO FORM  

Royce Buckingham, Civil Deputy Prosecutor  11/24/14  Date
EXECUTED this 25th day of November, 2019, for the City of Bellingham:

[Signature]
Mayor

Attest:
[Signature]
Finance Director

Departmental Approval:
[Signature]

Approved as to form:
[Signature]
Office of the City Attorney
TITLE OF DOCUMENT: Residential Lease Agreement- 5236 Neilson Road (Tennant Lake)

ATTACHMENTS: Lease Agreement

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

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE: (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)

Request authorization for the County Executive to enter into a residential lease agreement with Javier Lozano for the apartment at the Tenant Lake Interpretive Center.

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, Executive
FROM: Michael McFarlane, Director
DATE: November 17th, 2014
RE: Tennant Lake Interpretive Center Residential Lease

Enclosed find two copies of a residential lease for the apartment at the Tennant Lake Interpretive Center for your signature. This is a one year lease agreement for a rate of $750.00 per month that changes to a month to month basis after the initial one year period.

Should you have any questions or need additional information, please contact me at 32072.

Thank you.
**WHATCOM COUNTY CONTRACT INFORMATION SHEET**

<table>
<thead>
<tr>
<th>Originating Department:</th>
<th>Parks &amp; Recreation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract or Grant Administrator:</td>
<td>Christ Thomsen</td>
</tr>
<tr>
<td>Contractor's / Agency Name:</td>
<td>Javier Mauricio Lozano</td>
</tr>
</tbody>
</table>

**Is this a New Contract?**  Yes [☑]  No [☐]  If not, is this an Amendment or Renewal to an Existing Contract?  
Yes [☑]  No [☐]  If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #:  

**Does contract require Council Approval?**  Yes [☑]  No [☐]  If No, include WCC:  
(see Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)

**Is this a grant agreement?**  Yes [☐]  No [☑]  If yes, grantor agency contract number(s):  
CFDA#:  

**Is this contract grant funded?**  Yes [☐]  No [☑]  If yes, Whatcom County grant contract number(s):  

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

**Is this agreement excluded from E-Verify?**  No [☐]  Yes [☑]  If no, include Attachment D Contractor Declaration form.

If YES, indicate exclusion(s) below:

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

**Contract Amount:** (sum of original contract amount and any prior amendments):
$ 725/month  

This Amendment Amount:
$  

Total Amended Amount:
$  

**Contracts that require Council Approval (incl. agenda bill & memo)**
- Professional Services Agreement above $20,000.  
- Bid is more than $50,000.  
- Amendments that have either an increase greater than 10% or provide a $10,000 increase in amount (whichever is greater)

**RENEWALS:** Council approval is not required when exercising an option to renew that is provided in the original contract.

**Summary of Scope:** Residential lease agreement for the Tennant Lake Interpretive Center apartment.

<table>
<thead>
<tr>
<th>Term of Contract:</th>
<th>12 months- then monthly</th>
<th>Expiration Date:</th>
<th>10/31/15</th>
</tr>
</thead>
</table>

**Contract Routing:**

1. Prepared by:  MGM  
2. Attorney signoff:  
3. AS Finance reviewed:  
4. IT reviewed (if IT related):  
5. Contractor signed:  
6. Submitted to Exec.:  
7. Council approved (if necessary):  
8. Executive signed:  
9. Original to Council:  

**Date:** 11/17/14  
**Date:** 11/20/14  
**Date:** 11/25/14  
**Date:**

**Last Edited:** 060414
RESIDENTIAL LEASE AGREEMENT

THIS AGREEMENT, dated as of October 30, 2014, is made and entered into between WHATCOM COUNTY (PARKS & RECREATION DEPARTMENT), a municipal corporation in the State of Washington, hereinafter referred to as "Landlord", and Javier Mauricio Lozano hereinafter referred to as "Tenant".

In consideration of the covenants and agreements hereinafter set forth, Landlord does hereby lease to Tenant those certain premises situated at 5236 Nielsen Avenue, Ferndale, WA, hereinafter referred to as "Premises."

One-bedroom second floor apartment in Tenant Lake Interpretive Center

for a term of one (1) year commencing on November 1, 2014 and ending on October 31, 2015 upon the following terms and conditions. Upon expiration of one (1) year from commencement date, this lease agreement reverts to a monthly lease agreement.

1. OCCUPANCY SHALL BE LIMITED: jointly and severally to the following persons (adults and children).

   Javier Mauricio Lozano and Sandra Botero

   Note: Landlord/agent must approve overnight visitors staying more than 7 consecutive days or a total of over twenty (20) days in any 12-month period. Landlord/agent does not allow for subletting of property.

   Provision for pets/animals: None    no. of vehicles: 1    RV/Boats: None.

2. RENT: Tenant shall pay monthly rent of $725.00 ($642.50 plus $82.50 leasehold tax of 12.84%), in advance on or before the first day of each month to Landlord or to such other person(s) as Landlord from time to time designates in writing.

3. UTILITIES: paid by landlord (checked): XX electric, N/A gas, XX water, N/A sewer, XX garbage, (other) N/A. Tenant must pay all other utilities; failure to promptly call in for service may result in a $35 charge.

4. SECURITY FEE: Tenant to pay a security fee in the amount of $725.00. Of this fee, none shall be retained by Landlord as a non-refundable cleaning fee. Upon termination of this tenancy, all or a portion of the remainder of this deposit may be retained by Landlord, and any refund to the Tenant is conditioned as follows:

   a. Tenant shall have fully performed the obligations hereunder and those set forth in the 1973 Residential Landlord-Tenant Act as amended, or as subsequently amended.

   b. Tenant shall have occupied the premises for a minimum of six months or longer.

   c. Tenant shall have returned to Landlord all keys provided during the tenancy. A charge of $10.00 will be assessed for each key not returned by Tenant.

   d. Tenant shall have cleaned and restored premises to its original condition at commencement of this tenancy, except for normal wear and tear resulting from ordinary use. Cleaning shall include thorough commercial cleaning of all carpets.

   e. Tenant shall have remedied or repaired to Landlord's satisfaction any damage to premises or furnishings.

   f. Within fourteen (14) days after termination of tenancy and vacation of the premises, Landlord will give Tenant a full and specific statement of the basis for retaining any or all of the deposit together with the payment of any refund due.

   Any refundable pre-paid rent shall first apply to final balances due landlord not covered by security fee. Refund checks void if not cashed or deposited within 90 days.
5. **TENANT AGREES AND UNDERSTANDS:** That any of said security fee may not be applied by the tenant toward rent at any time. Any security fee refund or shortage, as per itemized statement (or estimate), shall be processed between 2 and 14 days following rental agreement termination and vacation of premises. The security fee held in trust per RCW 59.18.270.

6. **DELIVERY OF RENT AND NOTICE:** All rent is due on the first day of each monthly rental period, it is absolutely the responsibility of the tenant to mail/deliver rent payment (cash, check, money order/cashier check, at landlord/agent option; checks should be made payable to Whatcom County Parks & Recreation) to the following address or location: Whatcom County Parks & Recreation, 3373 Mt. Baker Highway, Bellingham WA 98226. Landlord/agent will not be responsible for any lost or missing cash payments not personally handed to landlord/agent. If by commencement date, tenant fails to call/show up, get keys, and pay all move-in money due, landlord/agent may immediately terminate agreement with no refunds.

7. **LATE/NSF/DEFAULT RENT:** Any rent due not paid by the 5th day of the monthly rental period is subject to a $75.00 late fee charge. Late fees assessed concurrent with rent due shall be considered rent as due. NSF checks shall be assessed $30.00 each. If tenant defaults in rent payment, is absent from the premises without notice, and there is reason or cause to believe tenant is terminating occupancy, the premises will be considered abandoned, entitling landlord or agent to post notice, take immediate possession, change locks, and store of any remaining items.

8. **NOTICES:** Tenant shall give the landlord or agent at least 20 days’ written notice prior to the end of the rental period of intention to vacate the premises. (Shorter notices, or notices other than for the end of the period, require approval of landlord.) Landlord or agent may also give 20-day no-cause notice to tenant to terminate tenancy. Tenant shall, at the expiration of either and all notices, surrender the premises and keys to the landlord or agent in accordance with this agreement.
   a. Maintenance & Showing: Following proper landlord/agent notice, tenant shall allow access to unit at reasonable times. Tenant failure to so honor access is cause to assess tenant for any service cancellation costs, and $100 per RCW 59.18.150(5).

9. **SIGNS/ACCESS:** Landlord/agent may enter yard and place/maintain business signs/postings (e.g., rent, lease, sale) on the premises as deemed necessary for business operations. Additionally, landlord or agent may enter the tenant’s premises for purposes of: (1) inspection; (2) cleaning, repairs or alterations; (3) other services; or (4) showing premises; **provided,** access is at reasonable times with proper notice (**no notice** required for emergency, end/term or abandonment). Tenant notice to vacate, or request for service or repairs, shall constitute tenant-approved notice of respective access by landlord or agent (in absence of tenant objection).

10. **PUBLIC SAFETY:** Dwelling is equipped with battery-operated smoke/heat detectors, and CO alarms in working order. Tenant is responsible to maintain the devices in working order; tenant failure to comply includes a $200 fine per RCW 43.44.110(4). If any device is later found inoperable, landlord may charge tenant $50 compliance fee/each. Unless attached or noted, the building does not have a smoking policy, nor an emergency notification, relocation or evacuation plan for occupants. Report any suspicious activities to police. Tenant will not knowingly/freely give unit keys to outsiders, nor allow entry of any felon, law violator or repeat abuser...
without landlord written approval. Intentional and malicious property damage, impair, removal or deface by tenant is a criminal offense under 9A.52 RCW.

11. CHANGE IN TERMS OR RENT: Changes in terms or rent are effective anytime upon written approval of all affected parties, or upon 30 days written notice by landlord/agent effective at the end of the corresponding rental month. All other provisions shall remain intact.

12. INSURANCE/REPAIRS: Tenant is not insured under Landlord’s insurance (Landlord/agent is not responsible for damaged/missing tenant property). Tenants should obtain insurance on their personal property to include theft, vandalism, pests, accident, storm, cold or heat, mold, flood, water, and electrical damages, as a minimum. Landlord/agent will promptly respond to tenant written requested repairs, but will not be monetarily responsible for: (1) tenant disruptions or inconveniences during habitable periods of repair, drying, scheduling or bidding of same; (2) tenant/guest injuries incurred in or around obvious areas of maintenance, repair, or construction; nor (3) housing or other costs incurred by tenant during good-faith periods of landlord repairs or other activities.

13. ATTORNEY’S FEES: In the event suit shall be brought regarding the performance of the terms and provisions of this Agreement or because of a breach of any of Tenant's obligations, then Tenant agrees to pay to Landlord reasonable attorney's fees as authorized by R.C.W. Chapter 59.18.

14. PREMISES USE: Tenant shall not use said or neighboring premises for any illegal purpose, or for any other purpose than that of a residence. No excessive traffic or visitors (e.g. more than 3-4 drive-ups or walk-ins per day) without landlord/agent approval. Tenant shall not allow entry of anyone in violation of court protection orders. Tenant to conform to all covenants, codes, statutes, ordinances; and landlord/agent rules regarding occupancy. Absolutely no unlawful drugs, excessive drinking, public disturbances, verbal abuse, spiteful threats, unauthorized pets/firearms/smoking on premises. Violations are cause for eviction.

15. OPERATION, MAINTENANCE, STORAGE, ALTERATIONS TO PREMISES: On a continuing basis, tenant agrees to:

   a. Keep premises in a clean, neat, and sanitary condition; no parking, storage or accumulation of debris on lawn or yard;

   b. Dispose of all rubbish, garbage, and waste in a clean and sanitary manner—at reasonable intervals—and assume all costs of extermination and fumigation for infestation caused by tenant; not feed straying pets or animals; not temporarily host pets;

   c. Properly ventilate and operate all electrical, gas, heating, plumbing, septic, facilities, fixtures, doors, windows, locks, and

   d. No portable kerosene/gas/incense burning; keep hot water tank at 120 degree maximum; limit candle burning; no excessive odorous chemicals/sprays/vapors; restrict toilets to biological waste and tissue paper; keep drains clear;

   e. No BBQs or open fires in units or under eaves, canopies, balcony over-heads, in public areas, or under building structures or covers; (Note: Carbon monoxide (CO) is a very poisonous combustion gas that cannot be seen or smelled, and can afflict or kill!)

   f. Pay for, replace or repair in a landlord-approved manner, all items (including doors, windows, locks, smoke/heat/CO alarms) damaged or made inoperable during occupancy; correct or repair plumbing
and fixtures clogged or broken by misuse or neglect; and where applicable, *use due precaution* against freezing or stoppage of water pipes in and around the premises;

g. *Report all* plumbing/roof/water leaks, *and* all mold, code and other hazardous conditions to landlord/agent within 48 hours to avoid charges for inspections, presumptive damages, and increased utility fees *caused by* lack of timely reporting to landlord;

h. *Not deface, damage, impair, or remove* any property, facilities, equipment, and appliances; *not install* TV/radio antennas, decorations, signs, postings, nor other equipment without landlord/agent approval except as authorized under FCC regulations; For any installations, landlord/agent may assess an added refundable $250 security fee to cover removal costs;

i. *Not grow* medically-approved or other marijuana in or around the premises; *Limit supply* for own medical purposes per RCW 69.51A.040; *Not smoke/vaporize* same anywhere inside premises, nor within 25 feet of a public facility; nor in any unauthorized outside or pubic areas.

j. *Not make unauthorized alterations*, climb ladders/roofs, paint/wallpaper, change fixtures/locks, or run dangerous equipment; any alteration must be pre-approved in writing by the Parks Operations Manager or their designee.

k. *Not store non-operating vehicles*, nor boats, RV's, motor cycles, trailers, firearms, equipment, tools, hazardous materials, liquids, paints, fuels/oils, chemicals, waste or non-using items on premises without landlord/agent approval; no waterbeds;

l. *Maintain reasonable peace and quiet* with other tenants/neighbors and *pay* for any caused damages therein; no fireworks; No disturbing TV’s, sound systems, musical instruments, or other disturbing activities; No fireworks of any kind.

m. *No posting* of any political, advertising, or other signs on park property, including in windows that are visible to the public. Whatcom County recognizes the Tenant's right to free speech, but given the public nature of park property it is imperative that the public not conclude that Whatcom County Parks & Recreation is endorsing a particular candidate or political position, or is advertising a particular product or service.

16. **MOLD/LEAD PAINT:** **XX** Copy of State-approved mold information hand-out is provided per RCW 59.18.060(12). For pre-1978 housing, **XX** a federal-approved pamphlet on lead poison prevention is also provided. **BEWARE:** Touching, breathing or eating lead paint chips/construction dust can be hazardous to people...especially children!

17. **YARD/OUTSIDE PREMISES:** Keep own driveways, walks, porches, and garages clean and clear of obstructions. Failure to comply following notice will result in charges to tenant for necessary remedy. Landlord/agent may reasonably enter yard/buildings without notice to service common areas and outside yard/structures. No trampolines, swimming pools, swing or climbing sets, or other such “attractive nuisances” without written approval of landlord/agent. Unauthorized parking, storage, or accumulation of waste may be assessed up to $10.00 per day per violation.
18. FURNISHINGS PROVIDED: Included (if checked) are XX stove, XX refrigerator, _drapes, _shades, _curtains, XX blinds, XX smoke/CO alarms, and also the following:

19. CONDITION REPORT UP-DATE: Tenant to complete and return any/all condition report up-dates by 30 days of move in.

20. DELIVERY OF POSSESSION: If for any reason landlord or agent fails to deliver possession of these premises at the start of this agreement, rent shall be abated until tenant possession. All other aspects of this agreement shall remain in full force. In no event shall landlord or agent be liable for damages caused by failure to deliver possession of the premises. If possession is not given tenant within 7 days of the start date, tenant may terminate this agreement with full refund by giving written notice.

21. EVICTION PURSUANT TO WRIT OF RESTITUTION: Tenant(s) HEREBY OBJECTS to the storage of their personal property. Tenant(s) understand this will result in their property being placed on the nearest public right-of-way.

22. RECEIPT OF MONEY PAID: Tenant has paid $725.00 in ______________ for security fee; and paid $725.00 in ______________ for rent covering period November 1, 2014 through November 30, 2014.

23. TENANT'S DEFAULT AND LANDLORD'S RE-ENTRY: The occurrence of any of the following constitutes a material default and breach of this agreement:
   a. Failure to pay rent.
   b. Failure to observe and perform any other required provisions of this agreement.
   c. Committing waste, maintaining a nuisance, being declared a sex-offender or convicted of a crime; tenants and or guests which cause law enforcement contact as a result of a violation of the law which results in an arrest.
   d. Landlord may terminate tenancy prior to the end of the agreement if Tenant receives three notices for “3-day pay or vacate” or three notices for “10-day comply-or-vacate” within a 12-month period.

24. LANDLORD'S DUTY: Landlord agrees to keep the shared and common premises clean and fit for human habitation and to comply with all state and local laws regarding maintenance and repair of the premises, unless otherwise agreed to in this agreement.

25. OTHER CONDITIONS: This agreement also is subject to these other conditions:
   a. Road access to the Tenant Lake Apartment is at times subject to severe weather/flooding and may limit access to the apartment. Tenant shall not be entitled to any abatement of Rent or damages by reason of severe weather/flooding conditions.

26. NO WAIVER: Failure of Landlord to insist upon the strict performance of the terms, covenants, agreements and conditions herein contained, or any of them, shall not constitute or be construed as a waiver or relinquishment of Landlord's right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.

27. HOLD HARMLESS: Tenants shall indemnify and hold Landlord harmless from claims of loss or damage to real and personal property and of injury or death to persons caused by the acts or negligence or wrongful acts of Tenants, Tenants’ family, guests, licensee or invitees. Tenants expressly releases Landlord from any and all
liability for any loss or damage to property or effects arising out of water leakage, breaking in or theft, or other causes beyond the reasonable control of Landlord. There is no warrant that there will be no criminal acts or that Tenants will be free from the violent tendencies of third parties.

28. JOINT AND SEVERAL LIABILITY: It is understood and agreed that each party signing this Agreement as Tenant is liable for the full amount of rent provided herein. The obligation of Tenants is joint and several.

29. SEVERABILITY: The construction validity and effect of this Agreement shall be governed by the laws of the State of Washington. Any provision of this agreement prohibited by such laws shall be ineffective to the extent of such prohibition without invalidating the remaining provisions thereof.

30. KEYS: Two (2) keys will be provided at time of possession. Keys may not be duplicated or provided to other persons, nor locks replaced, without the permission of the Landlord.

31. REPORT TO CREDIT/TENANT AGENCIES: Tenants are hereby notified that a nonpayment, late payment or breach of any of the terms of this residential lease agreement may be submitted/reported to a credit and/or tenant reporting agency, and may create a negative credit record on your credit report.

32. ADDENDA TO AGREEMENT: The following Exhibits may be attached as separate addenda:

   a. NOTICE TO TENANT OF LOCATION IN FLOOD HAZARD AREA
   b. PROTECT YOUR FAMILY FROM LEAD IN YOUR HOME
   c. GOT MOLD? FREQUENTLY ASKED QUESTIONS ABOUT MOLD
Tenants acknowledge that they have read this agreement and will abide by its terms and will comply with all rules and regulations adopted by Landlord.

**TENANTS**

Javier Mauricio Lozano

Phone(s): 360 540 828

Email: javierlozano74@yahoo.com

STATE OF WASHINGTON)
COUNTY OF WHATCOM )

On this 4th day of Nov., 2014, before me personally appeared Javier Mauricio Lozano and______ to me known to be the individual(s) described in and who executed the within and foregoing instrument, and acknowledges that they signed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this 4th day of Nov., 2014.

Karen M. Dykstra

NOTARY PUBLIC in and for the State of Washington, residing at 4251 Meridian St

Bellingham, WA 98226

My Commission expires:

May 29, 2017

Executed as of the date first written above.
LANDLORD

WHATCOM COUNTY

Jack Louws, 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 County Executive of WHATCOM COUNTY and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

Given under my hand and official seal this ___ day of ____________, 2014.

NOTARY PUBLIC in and for the State of Washington,
residing at Bellingham
My Commission expires:

WHATCOM COUNTY/PARKS & RECREATION

Michael McFarlane, Director

APPROVED AS TO FORM:

Deputy Prosecuting Attorney

Rental Lease Template 10 30 2014
NOTICE TO TENANT OF LOCATION
IN FLOOD HAZARD AREA

Notice is hereby given that the following described real property is located within a flood hazard area.

(Put in address of property being leased or rented)

5236 Nielsen Avenue, Ferndale, WA

Dated this: 30th day of October 2014

Signature of Owner/Agent

ACKNOWLEDGEMENT OF TENANT

The undersigned tenant(s) of the above described real property hereby acknowledge receipt of notice that such property is located within a flood hazard area.

Dated this: 30th day of October 2014

Signature of Tenant(s)

Renters Flood Insurance: The owner’s insurance does not insure the tenant against loss of personal property or injury. Renter’s insurance including flood insurance is available to cover losses of property or injury caused by flooding, wind damage or other casualty loss. Consult with an insurance professional of your choice.
Got Mold?

Frequently Asked Questions About Mold

What are molds?
Molds are tiny microscopic organisms that digest organic matter and reproduce by releasing spores. Molds are a type of fungi and there are over 100,000 species. In nature, mold helps decompose or break-down leaves, wood and other plant debris. Molds become a problem when they go where they are not wanted and digest materials such as our homes.

What makes molds grow in my home?
Mold enters your home as tiny spores. The spores need moisture to begin growing, digesting and destroying. Molds can grow on almost any surface, including; wood, ceiling tiles, wallpaper, paints, carpet, sheet rock, and insulation. The mold grows best when there is lots of moisture from a leaky roof, high humidity, or flood. There is no way to get rid of all molds and mold spores from your home. But you can control mold growth by keeping your home dry.

Can I be exposed to mold?
When molds are disturbed, they release spores into the air. You can be exposed by breathing air containing these mold spores. You can also be exposed through touching moldy items, eating moldy food or accidental hand to mouth contact.

Do molds affect my health?
Most molds do not harm healthy people. But people who have allergies or asthma may be more sensitive to molds. Sensitive people may experience skin rash, running nose, eye irritation, cough, nasal congestion, aggravation of asthma or difficulty breathing. People with an immune suppression or underlying lung disease, may be at increased risk for infections from molds.

A small number of molds produce toxins called mycotoxins. When people are exposed to high levels of mold mycotoxins they may suffer toxic effects, including fatigue, nausea, headaches, and irritation to the lungs and eyes. If you or your family members have health problems that you suspect are caused by exposure to mold, you should consult with your physician.

When is mold a problem?
You know you have mold when you smell the “musty” odor or see small black or white specks along your damp bathroom or basement walls. Some mold is hidden growing behind wall coverings or ceiling tiles. Even dry, dead mold can cause health problems, so always take precautions when you suspect mold.

Mold is often found in areas where water has damaged building materials and furniture from flooding or plumbing leaks. Mold can also be found growing along walls where warm moist air condenses on cooler wall surfaces, such as inside cold exterior walls, behind dressers, headboards, and in closets where articles are stored against walls. Mold often grows in rooms with both high water usage and humidity, such as kitchens, bathrooms, laundry rooms, and basements. If you notice mold or know of water damaged areas in your home, it is time to take action to control its growth.

When should I sample for mold?
You don’t need to sample for mold because in most cases you can see or smell mold. Even a clean, dry house will have some mold spores, but not enough to cause health problems. If you smell mold it may be hidden behind wallpaper, in the walls or ceiling or under the carpet. If you suspect you have hidden mold be very careful when you investigate, protect yourself from exposure in the same manner as you would for a clean-up.
What cleans up moldy furniture?
How to clean you moldy furniture depends on how it reacts to water. See chart below:

<table>
<thead>
<tr>
<th>Reaction to Water</th>
<th>Items</th>
<th>Recommendations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Doesn’t absorb water and is washable.</td>
<td>Wood, metal, plastic, glass, and ceramics objects.</td>
<td>Wipe with a solution of lukewarm water and laundry detergent.</td>
</tr>
<tr>
<td>Absorbs water and is washable.</td>
<td>Clothes and bedding.</td>
<td>Wash in laundry.</td>
</tr>
<tr>
<td>Absorbs water but not washable.</td>
<td>Beds, sofas and other furniture.</td>
<td>These items may have to be discarded. Or, try to save by vacuuming well and allowing to air out. If there is no odor it may be okay. Mold can come back, so watch for any mold growth or mold related health problems. Discard the item if you suspect mold is growing inside or outside the item.</td>
</tr>
</tbody>
</table>

Should I paint over mold?
No. Don’t paint or caulk over mold. The mold will grow under the paint and the paint will peel.

Must landlords tell tenants about mold?
Yes! In 2005, the Washington State legislature approved Senate Bill 5049 which requires landlords to notify their tenants about mold. See our resources landlords can use to comply with this mold notification requirement at www.doh.wa.gov/ehp/ts/iaq/renter.htm.

Who are my local contacts for more information about mold?
In Washington, you can contact your county health department (www.doh.wa.gov/LHJMap/LHJMap.htm) for more information about mold. If you live outside of Washington State, try contacting your county or state health department (www.doh.wa.gov/Links/links2.htm#State).

Need more mold information?
- CDC has frequently asked questions, identifying mold problems and cleanup, and workplace resources at www.cdc.gov/mold.
- EPA offers resources for homeowners, schools, and building managers at www.epa.gov/mold.
- Northwest Clean Air Agency “Mold in Your Home” videos are available in English and Spanish at www.nwcleanair.org/aqPrograms/indoorAir.htm.
Simple Steps To Protect Your Family From Lead Hazards

If you think your home has high levels of lead:

- Get your young children tested for lead, even if they seem healthy.
- Wash children's hands, bottles, pacifiers, and toys often.
- Make sure children eat healthy, low-fat foods.
- Get your home checked for lead hazards.
- Regularly clean floors, window sills, and other surfaces.
- Wipe soil off shoes before entering house.
- Talk to your landlord about fixing surfaces with peeling or chipping paint.
- Take precautions to avoid exposure to lead dust when remodeling or renovating (call 1-800-424-LEAD for guidelines).
- Don't use a belt-sander, propane torch, high temperature heat gun, scraper, or sandpaper on painted surfaces that may contain lead.
- Don't try to remove lead-based paint yourself.
Are You Planning To Buy, Rent, or Renovate a Home Built Before 1978?

Many houses and apartments built before 1978 have paint that contains high levels of lead (called lead-based paint). Lead from paint, chips, and dust can pose serious health hazards if not taken care of properly.

Owners, buyers, and renters are encouraged to check for lead (see page 6) before renting, buying or renovating pre-1978 housing.

Federal law requires that individuals receive certain information before renting, buying, or renovating pre-1978 housing:

Landlords have to disclose known information on lead-based paint and lead-based paint hazards before leases take effect. Leases must include a disclosure about lead-based paint.

Sellers have to disclose known information on lead-based paint and lead-based paint hazards before selling a house. Sales contracts must include a disclosure about lead-based paint. Buyers have up to 10 days to check for lead.

Renovators disturbing more than 2 square feet of painted surfaces have to give you this pamphlet before starting work.
Lead Gets in the Body in Many Ways

**People can get lead in their body if they:**

- Breathe in lead dust (especially during renovations that disturb painted surfaces).
- Put their hands or other objects covered with lead dust in their mouths.
- Eat paint chips or soil that contains lead.

**Lead is even more dangerous to children under the age of 6:**

- At this age children's brains and nervous systems are more sensitive to the damaging effects of lead.
- Children's growing bodies absorb more lead.
- Babies and young children often put their hands and other objects in their mouths. These objects can have lead dust on them.

**Lead is also dangerous to women of childbearing age:**

- Women with a high lead level in their system prior to pregnancy would expose a fetus to lead through the placenta during fetal development.
Where Lead-Based Paint Is Found

Many homes built before 1978 have lead-based paint. The federal government banned lead-based paint from housing in 1978. Some states stopped its use even earlier. Lead can be found:

- In homes in the city, country, or suburbs.
- In apartments, single-family homes, and both private and public housing.
- Inside and outside of the house.
- In soil around a home. (Soil can pick up lead from exterior paint or other sources such as past use of leaded gas in cars.)

Checking Your Family for Lead

To reduce your child's exposure to lead, get your child checked, have your home tested (especially if your home has paint in poor condition and was built before 1978), and fix any hazards you may have. Children's blood lead levels tend to increase rapidly from 6 to 12 months of age, and tend to peak at 18 to 24 months of age.

Consult your doctor for advice on testing your children. A simple blood test can detect high levels of lead. Blood tests are usually recommended for:

- Children at ages 1 and 2.
- Children or other family members who have been exposed to high levels of lead.
- Children who should be tested under your state or local health screening plan.

Your doctor can explain what the test results mean and if more testing will be needed.
Checking Your Home for Lead

Just knowing that a home has lead-based paint may not tell you if there is a hazard.

You can get your home tested for lead in several different ways:

◆ A paint inspection tells you whether your home has lead-based paint and where it is located. It won't tell you whether or not your home currently has lead hazards.

◆ A risk assessment tells you if your home currently has any lead hazards from lead in paint, dust, or soil. It also tells you what actions to take to address any hazards.

◆ A combination risk assessment and inspection tells you if your home has any lead hazards and if your home has any lead-based paint, and where the lead-based paint is located.

Hire a trained and certified testing professional who will use a range of reliable methods when testing your home.

◆ Visual inspection of paint condition and location.

◆ A portable x-ray fluorescence (XRF) machine.

◆ Lab tests of paint, dust, and soil samples.

There are state and federal programs in place to ensure that testing is done safely, reliably, and effectively. Contact your state or local agency (see bottom of page 11) for more information, or call 1-800-424-LEAD (5323) for a list of contacts in your area.

Home test kits for lead are available, but may not always be accurate. Consumers should not rely on these kits before doing renovations or to assure safety.
Reducing Lead Hazards In The Home

Removing lead improperly can increase the hazard to your family by spreading even more lead dust around the house.

Always use a professional who is trained to remove lead hazards safely.

In addition to day-to-day cleaning and good nutrition:

◆ You can temporarily reduce lead hazards by taking actions such as repairing damaged painted surfaces and planting grass to cover soil with high lead levels. These actions (called “interim controls”) are not permanent solutions and will need ongoing attention.

◆ To permanently remove lead hazards, you should hire a certified lead “abatement” contractor. Abatement (or permanent hazard elimination) methods include removing, sealing, or enclosing lead-based paint with special materials. Just painting over the hazard with regular paint is not permanent removal.

Always hire a person with special training for correcting lead problems—someone who knows how to do this work safely and has the proper equipment to clean up thoroughly. Certified contractors will employ qualified workers and follow strict safety rules as set by their state or by the federal government.

Once the work is completed, dust cleanup activities must be repeated until testing indicates that lead dust levels are below the following:

◆ 40 micrograms per square foot ($\mu g/ft^2$) for floors, including carpeted floors;
◆ 250 $\mu g/ft^2$ for interior windowsills; and
◆ 400 $\mu g/ft^2$ for window troughs.

Call your state or local agency (see bottom of page 11) for help in locating certified professionals in your area and to see if financial assistance is available.
Other Sources of Lead

While paint, dust, and soil are the most common sources of lead, other lead sources also exist.

- **Drinking water.** Your home might have plumbing with lead or lead solder. Call your local health department or water supplier to find out about testing your water. You cannot see, smell, or taste lead, and boiling your water will not get rid of lead. If you think your plumbing might have lead in it:
  - Use only cold water for drinking and cooking.
  - Run water for 15 to 30 seconds before drinking it, especially if you have not used your water for a few hours.

- **The job.** If you work with lead, you could bring it home on your hands or clothes. Shower and change clothes before coming home. Launder your work clothes separately from the rest of your family's clothes.

- Old painted **toys** and **furniture**.

- Food and liquids stored in **lead crystal** or **lead-glazed pottery or porcelain**.

- **Lead smelters** or other industries that release lead into the air.

- **Hobbies** that use lead, such as making pottery or stained glass, or refinishing furniture.

- **Folk remedies** that contain lead, such as "greta" and "azarcon" used to treat an upset stomach.
EPA Regional Offices

Your Regional EPA Office can provide further information regarding regulations and lead protection programs.

EPA Regional Offices

Region 1 (Connecticut, Massachusetts, Maine, New Hampshire, Rhode Island, Vermont)
Regional Lead Contact
U.S. EPA Region 1
Suite 100 (CPT)
One Congress Street
Boston, MA 02114-2023
1 (888) 372-7341

Region 2 (New Jersey, New York, Puerto Rico, Virgin Islands)
Regional Lead Contact
U.S. EPA Region 2
2890 Woodbridge Avenue
Building 209, Mail Stop 225
Edison, NJ 08837-3679
(732) 321-6671

Region 3 (Delaware, Maryland, Pennsylvania, Virginia, Washington DC, West Virginia)
Regional Lead Contact
U.S. EPA Region 3 (3WC33)
1650 Arch Street
Philadelphia, PA 19103
(215) 814-5000

Region 4 (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee)
Regional Lead Contact
U.S. EPA Region 4
61 Forsyth Street, SW
Atlanta, GA 30303
(404) 562-8998

Region 5 (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin)
Regional Lead Contact
U.S. EPA Region 5 (DT-8J)
77 West Jackson Boulevard
Chicago, IL 60604-3666
(312) 886-6003

Region 6 (Arkansas, Louisiana, New Mexico, Oklahoma, Texas)
Regional Lead Contact
U.S. EPA Region 6
1445 Ross Avenue, 12th Floor
Dallas, TX 75202-2733
(214) 665-7577

Region 7 (Iowa, Kansas, Missouri, Nebraska)
Regional Lead Contact
U.S. EPA Region 7
(ARID-RLU)
901 N. 5th Street
Kansas City, KS 66101
(913) 551-7020

Region 8 (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming)
Regional Lead Contact
U.S. EPA Region 8
999 18th Street, Suite 500
Denver, CO 80202-2466
(303) 312-6021

Region 9 (Arizona, California, Hawaii, Nevada)
Regional Lead Contact
U.S. Region 9
75 Hawthorne Street
San Francisco, CA 94105
(415) 947-4164

Region 10 (Alaska, Idaho, Oregon, Washington)
Regional Lead Contact
U.S. EPA Region 10
Toxics Section WCM-128
1200 Sixth Avenue
Seattle, WA 98101-1128
(206) 553-1985
TITLE OF DOCUMENT: Interlocal Agreement between Whatcom County and City of Bellingham

ATTACHMENTS: Memo and Interlocal Agreement

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

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE: (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)

Approval and authorization for the County Executive to enter into an Interlocal Agreement between Whatcom County and the City of Bellingham, for the purposes of providing for the joint usage of the Vector Waste Site Facility from January 1, 2015 through December 31, 2015.

COMMITTEE ACTION:

COUNCIL ACTION:

Related County Contract #: Related File Numbers: Ordinance or Resolution Number:

Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: www.co.whatcom.wa.us/council.
MEMORANDUM

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

THROUGH: Frank M. Abart, PW Director

FROM: Jeff Gollen, PW Maintenance & Operations Superintendent

RE: 2015 Interlocal Agreement - City of Bellingham Joint Usage of the Vactor Waste Transfer Facility

DATE: November 21, 2014

- Requested Action
Enclosed for your review and signature are two (2) Interlocal Agreement originals between Whatcom County Public Works and City of Bellingham.

- Background and Purpose
Whatcom County and the City of Bellingham first entered into an Interlocal Agreement, dated November 5, 2001 (Whatcom County Contract 200110028, City Contract 2001-0295) to establish the terms and conditions under which they mutually agreed to provide for the joint installation and maintenance of a beneficial re-use facility for street waste over a ten-year period.

New agreement was approved on December 6, 2011 (Whatcom County Contract 201111036) with subsequent contracts through December 31, 2014.

- Funding Amount and Source
Adequate funding exists within the 2015-2016 County Road Fund budget.

- Differences from Previous Contract
This replaces Interlocal Agreement 2011311020, which expires December 31, 2014. During 2012-2013 there was no price increase from the City’s $36.77/ton disposal rate and annual Whatcom County expenditures of approximately $50,000.

For the 2014 rate, the City reviewed the actual expenses over the last two+ years and determined that a rate increase was necessary based primarily on the current cost of outside disposal of the material at $57.75/ton. Vactor waste is dried at the facility resulting in a 15% reduction in weight. The 2014 rate established by the City was $54.36 per ton, this includes $4.47 per ton for operating the site and 2% allowance for increase cost of outside disposal.

There is no price increase from 2014 to 2015.

- Recommended Action
Please approve this agreement and forward to the Executive and the Whatcom County Council for approval at the December 9, 2014 Whatcom County Council Meeting. Interlocal Agreement will be run concurrently between both councils for approval, City of Bellingham on December 8, 2014 and Whatcom County on December 9, 2014; signatures will be obtained once this agreement has been approved through both councils. Please contact Jeff Gollen at extension 50660, if you have any questions or concerns regarding the terms of this agreement.

Enclosures
**WHATCOM COUNTY CONTRACT INFORMATION SHEET**

<table>
<thead>
<tr>
<th>Originating Department:</th>
<th>Public Works / Equipment Services Division</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract or Grant Administrator:</td>
<td>Jeff Gollen, Maintenance &amp; Operations Superintendent</td>
</tr>
<tr>
<td>Contractor's / Agency Name:</td>
<td>City of Bellingham</td>
</tr>
</tbody>
</table>

**Is this a New Contract?**  
Yes [ ] No [X]  
If not, is this an Amendment or Renewal to an Existing Contract?  
Yes [ ] No [X]  
If Amendment or Renewal (per WCC 3.08.100(a)), Original Contract #

**Does contract require Council Approval?**  
Yes [ ] No [X]  
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 [ ] No [X]  
If yes, RFP and Bid number(s) ______  
Cost Center: 108100

**Is this agreement excluded from E-Verify?**  
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)  
- Contract work is all performed outside U.S.  
- Work related subcontract less than $25,000  
- Interlocal Agreement (between Gov't's)  
- Public Works – Local Agency/Federally Funded FHWA

**Contract Amount (sum of original contract amount and any prior amendments):**  
$50,000.00

**This Amendment Amount:**  
$0.00

**Total Amended Amount:**  
$50,000.00

**Summary of Scope:**  
Provide for the continued joint usage of the Vector Waste Transfer Facility between Whatcom County and the City of Bellingham.

**Term of Contract: 1 year**  
Expiration Date: December 31, 2015

**Contract Routing Steps & Signoff: sign or initial**

1. Prepared by: Eric Schlehuber  
   Date 11/21/14
2. Attorney reviewed: Daniel L. Gibson  
   Date 11/21/14
3. AS-Finance reviewed: [signature]  
   Date 11/25/14
4. IT reviewed if IT related:  
   Date
5. Corrections made:  
   Date 11/21/14
6. Attorney signoff: Daniel L. Gibson  
   Date 11/25/14
7. Contractor signed:  
   Date
8. Submitted to Exec Office:  
   Date 11/25/14
9. Council approved (if necessary):  
   Date
10. Executive signed:  
    Date
11. Contractor Original Returned to dept:  
    Date
12. Original to Council:  
    Date
INTERLOCAL AGREEMENT
CITY OF BELLINGHAM – WHATCOM COUNTY VACTOR WASTE FACILITY USE

Pursuant to the Washington State Interlocal Cooperative Act, RCW Chapter 39.34, and to other provisions of law, this Interlocal Agreement is entered into by and between THE CITY OF BELLINGHAM (City), a municipal corporation of the State of Washington, and WHATCOM COUNTY (the County), a municipal corporation of the State of Washington located in Whatcom County, Washington, for the purpose of utilization of certain operational services, to the mutual advantage of each jurisdiction.

WHEREAS, the County desires to utilize the City’s vactor waste facility located at 2140 Division Street, Bellingham, WA for the purposes of disposing or recycling of their street sweeping and vactor waste,

WHEREAS, the City has available capacity at this time to store and process The County’s street sweeping and vactor waste,

WHEREAS, the County is being required by the Department of Ecology (DOE) and Whatcom County Department of Health (DOH) to dispose of this waste in a manner deemed appropriate by those agencies,

WHEREAS, RCW 39.34 permits governmental entities to enter into Interlocal Agreements to accomplish mutually beneficial purposes in the public interest;

NOW, THEREFORE, THE CITY OF BELLINGHAM AND WHATCOM COUNTY AGREE AS FOLLOWS:

1. PURPOSE: The purpose of the Interlocal Agreement is to authorize and to define the terms under which the City will provide certain services to the County as further delineated herein.

2. TERM: The term of this Interlocal Agreement shall commence upon full execution of this document by all parties and the filing of this Interlocal Agreement as set forth in RCW 39.34.040. This Interlocal Agreement shall terminate on the 31st Day of December, 2015, unless terminated or renewed as elsewhere provided in the Interlocal Agreement.

3. SCOPE OF SERVICES: The scope of services is as provided in Exhibit A of this Interlocal Agreement, which is attached and incorporated herein, as may be amended from time to time.

4. PAYMENT: Payment to the City for services will be on a per ton basis and as outlined in Exhibit A, which is attached and incorporated herein, as may be amended from time to time.

Upon receipt of an invoice from the City, the County shall remit the above amount on a monthly basis to the City of Bellingham Public Works, Financial Services Division, 2221 Pacific Street, Bellingham, WA 98229 for the duration of the Term of this Interlocal Agreement.
The County shall be responsible for payment of any taxes due to the Washington State Department of Revenue on any payments made under this Interlocal Agreement.

The City shall submit invoices to the County on a monthly basis for services performed the prior month. The invoice shall reference this Interlocal Agreement.

The City shall keep clearly detailed records covering all services authorized under this Interlocal Agreement.

5. RELATIONSHIP TO THE PARTIES: The parties agree that they are each independent entities operating pursuant to the terms and conditions of this Interlocal Agreement. No agent, employee, servant or representative of any party shall be deemed to be an employee, agent, servant or representative of any other party for any purpose. Each party will be solely and entirely responsible for its acts and for the acts of its agents, employees, and servants during the term of this Interlocal Agreement.

6. MUTUAL INDEMNIFICATION: To the extent permitted by law, the County agrees to indemnify and hold harmless the City, its officials, employees and agents from any and all damages, demands, causes of action, suits or claims, including attorneys’ fees and costs, brought by any person, including The County’s employees or agents or third parties, for damage or injury to person or property, including The County’s employees or property, arising, directly or indirectly, from that may arise directly or indirectly out of, or are incident to, the County’s exercise of its rights pursuant to this Interlocal Agreement or are due to any actual or alleged negligence, intentional act or breach of duty by The County, except to the extent such damage or injury is caused or arises, directly or indirectly from the negligence of the City. For purposes of this Interlocal Agreement, “person” includes individuals, companies, corporations, partnerships, or any other similar entity however defined.

   To the extent permitted by law, the City agrees to indemnify and hold harmless the County, its officials, employees and agents from any and all damages, demands, causes of action, suits or claims, including attorneys’ fees and costs, brought by any person, including the City’s employees or agents or third parties, for damage or injury to person or property, including the City’s employees or property, arising, directly or indirectly, from that may arise directly or indirectly out of, or are incident to, the City’s exercise of its rights pursuant to this Interlocal Agreement or are due to any actual or alleged negligence, intentional act or breach of duty by the City, except to the extent such damage or injury is caused or arises, directly or indirectly from the negligence of the County. For purposes of this Interlocal Agreement, “person” includes individuals, companies, corporations, partnerships, or any other similar entity however defined.

7. EXTENT OF AGREEMENT: This Interlocal Agreement contains all of the terms and conditions agreed upon by the parties. The parties agree that there are no other understandings, oral or otherwise, regarding the subject matter of this Interlocal Agreement.

8. MODIFICATION: No changes or modifications of this Interlocal Agreement shall be valid or binding upon either party to this Interlocal Agreement unless such changes or modifications are in writing and executed by authorized representatives of both parties.
9. RESPONSIBLE PERSONS: The persons responsible for administration of this Interlocal Agreement on behalf of each party shall be the Bellingham Director of Public Works, and the Whatcom County Director of Public Works. All correspondence, letters or other notices shall be directed to the foregoing parties at the following addresses/phone numbers, or to their established agency designee:

Superintendent of Maintenance  
City of Bellingham Public Works  
2221 Pacific Street  
Bellingham, WA 98229  
(360) 778-7700

Superintendent of Maintenance  
Whatcom County Public Works  
901 West Smith Road  
Bellingham, WA 98226  
(360) 676-6759

10. TERMINATION: This Interlocal Agreement may be terminated by either party upon the giving of ninety (90) days' written notice to the other, at which time any remaining financial obligations for services rendered prior to termination shall be paid in full.

11. CONSEQUENTIAL DAMAGES: In no event and under no circumstances shall the City be liable to the County for any interest, loss of anticipated revenue, increased expense of operations, loss by reason of shutdown or non-operation, or for any consequential, indirect or special damages.

12. DIRECTION AND CONTROL: The parties hereto do not intend to create any separate or legal administrative entity by this Interlocal Agreement but, rather, intend for this mutual Interlocal Agreement to govern for the purposes contained herein.

13. PROPERTY AND EQUIPMENT: The ownership of all property and equipment utilized in association with this Interlocal Agreement shall remain with the original owner unless specifically and mutually agreed to by both parties.

14. STATUS OF AGREEMENT: This Interlocal Agreement is in addition to, and is not intended to replace, substitute, modify or otherwise amend any other agreement between the City and the County. This Interlocal Agreement is only limited to the purposes stated herein. Any other agreements continue in effect according to the specific terms of those agreements.

15. COMPLIANCE WITH LAW: All parties to this Interlocal Agreement shall comply with all applicable federal, state and local laws, rules and regulations in carrying out the terms and conditions of this Interlocal Agreement.

16. FURTHER COOPERATION: The parties shall fully and completely cooperate with one another in good faith at all times, so that the terms and spirit of this Interlocal Agreement may be fully implemented. All parties have had the ability to negotiate the terms of this Interlocal Agreement on an equal basis. This Interlocal Agreement shall be reasonably interpreted and not weighed in favor of or against any party.
17. SURVIVABILITY: All covenants, promises, and performances which are not fully performed as of the date of termination shall survive termination as binding obligations.

18. WAIVER: No failure by any of the foregoing parties to insist upon the strict performance of any covenant, duty, agreement, or condition of this Interlocal Agreement, 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. Any party hereto, by notice, and only by notice as provided herein may, but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenant of any other party hereto. No waiver shall affect or alter this Interlocal Agreement, and each and every covenant, agreement, term, and condition of this Interlocal Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

19. SEVERABILITY: If any provision of this Interlocal Agreement is held to be invalid, illegal or unenforceable for any reason, that holding shall not affect or impair, in any manner, the validity, legality or enforcement of the remainder of this Interlocal Agreement.

CITY OF BELLINGHAM

Dated this ___ day of ___________ 2014

Kelli Linville, Mayor

Attest:

Finance Director

Department Approval:

Director of Public Works

Approved as to form:

Office of the City Attorney

WHATCOM COUNTY

Dated this ___ day of ___________ 2014

Jack Louws, County Executive

Department Approval:

Director of Public Works

Approved as to form:

Civil Deputy Prosecuting Attorney
STATE OF WASHINGTON  
COUNTY OF WHATCOM  

I CERTIFY that I know or have satisfactory evidence that KELLI LINVILLE is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as the MAYOR of the CITY OF BELLINGHAM to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

_________________________  
DATED

_________________________  
SIGNATURE OF NOTARY PUBLIC

NAME PRINTED

Notary Public

TITLE

_________________________  
MY APPOINTMENT EXPIRES

STATE OF WASHINGTON  
COUNTY OF WHATCOM  

I CERTIFY that I know or have satisfactory evidence that JACK LOUWS is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the EXECUTIVE of WHATCOM COUNTY to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

_________________________  
DATED

_________________________  
SIGNATURE OF NOTARY PUBLIC

NAME PRINTED

Notary Public

TITLE

_________________________  
MY APPOINTMENT EXPIRES
EXHIBIT A

Vector Waste Facility Use

In consideration for the use of the City of Bellingham’s (“City”) Vector Waste Facility (“Facility”), Whatcom County, located at 901 West Smith Road, Bellingham, WA 98226 (hereinafter the “User”), covenants and agrees to comply with the following terms and conditions:

“Users”:
Contact Person: __________________________

Phone Number: __________________________

Email Address: __________________________

Section 1 – Purpose

The purpose of this Interlocal Agreement is to allow public sector use of the Facility. As further described herein, User’s ability to use the Facility requires full compliance with this Interlocal Agreement’s terms and conditions, including but not limited to:

- Dumping only “ACCEPTABLE WASTE” (Section 2 – ACCEPTABLE WASTE)
- Dumping in an appropriate manner (Section 3 – DUMPING OPERATION)
- Obtaining Training (Section 4 – REQUIRED TRAINING)
- Complying with Safety Rules and Regulations (Section 5 – SAFETY)
- Payment (Section 6 – COST OF SERVICE)
- Such other terms and conditions as contained herein.

Section 2 – Acceptable Waste

2.1 User shall be solely responsible to ensure that only Acceptable Waste is deposited at the facility. For purposes of this Interlocal Agreement “Acceptable Waste” is defined herein as:

- Street sweepings are wastes collected by utilizing a street sweeper to collect grit, dirt, vegetative waste and litter from roadway surfaces.
- Vector wastes includes, grit, dirt and vegetative waste collected by an eductor truck during the cleaning of storm water catch basins.

2.2 Any materials that are odorous or are from a chemical spill are specifically not considered Acceptable Waste products and shall not be deposited at the Facility. For the purposes of the Agreement, “odorous” is defined as: Odor that is beyond what is normal and expected for street sweepings and vector wastes based on industry standards for like sweepings and waste.
2.3 In the event unacceptable waste or materials are dumped at the Facility, the responsible party shall pay all costs associated with the proper removal and deposition of the contaminated materials. Removal and depositing of unacceptable waste or materials shall be in accordance with the approved practices and regulations of the State of Washington, including but not limited to the Washington State Department of Ecology, and the Whatcom County Health Department.

2.4 The City reserves the right to find any waste or material unacceptable in its sole discretion. Given however, that this discretion must be exercised in a reasonable manner. Disposing of unacceptable materials may result in the loss of the privilege to use the Facility.

Section 3 – Dumping Operation

3.1 The Facility has a limited capacity to accept Acceptable Waste products and User acknowledges that the City, State of Washington and Whatcom County, as the primary public users, have preference over all other users. In the event that the Facility capacity should become an issue all other users will be directed to cease usage of the site. The City shall have no obligation or duty to provide advance warning of this circumstance.

3.2 Prior to depositing Acceptable Waste at the Facility, User agrees to follow the following “dumping operation”:

3.2.1 Eductor vehicles shall decant excess water prior to depositing Acceptable Waste at the Facility. Decanting shall occur either prior to arriving at the Facility, or by backing into the Facility and decanting into the settling trough;

3.2.2 After excess water is removed, the truck shall be weighed to obtain the net weight of the material. A copy of the weight slip shall be placed in the drop box of every load dumped at the facility. Weight slips shall clearly identify: gross weight, tare weight, and billable weight. Weight slips will be checked against the gate entry log. If there is no slip, the customer will be charged for a full load based upon the capacity of the vehicle. Users are not to use the site other than to dump. Gate access shall be monitored for billing purposes. If a user accesses the facility and there is no weight slip present for that access the user shall be billed for a full load of the vehicle assigned to that access card; AND

3.2.3 After weighing the remaining portion of the load, it shall be dumped, as far back in the facility as is practical to limit the amount of material that may spew out into the parking lot.

3.3 In addition to any other remedies that may be available to the City, the City may terminate this Interlocal Agreement and bar User from any future use of the Facility for failure to follow the procedures outlined in Section 3.2.
Section 4 – Required Training

In order to ensure the proper and safe use of the Facility, training is required prior to use of the Facility. Training consists of a walkthrough of the Facility with a representative of the City to explain how the Facility operates and what is expected from those who use the Facility. The City shall issue a letter of fulfillment (“Letter”) that documents that the User has completed the training requirement. User shall not be allowed to use the Facility until completing this training and receiving the Letter. Further, User shall not allow any of its employees or agents to use the Facility without receiving the training and Letter required hereunder.

Section 5 – Safety

All personal injury, including first aid incidents, or damage to vehicles or buildings must be reported immediately to the Safety Specialist at Bellingham Public Works (778-7700). Users shall follow all Washington State safety policies and regulations while inside the Facility. It is encouraged that a ground guide be used whenever operating a vehicle inside the Facility. The City shall not be responsible in any manner for User’s use of the Facility, except to the extent of the City’s sole negligence.

Section 6 – Cost for Service

The cost of depositing one ton of wet Acceptable Wastes is $54.36 for 2015. These amounts are subject to change at the end of each calendar year. If a price change is announced, this Agreement may be terminated or modified in the manner provided. The User will be billed monthly by invoice and User agrees to pay the bill in full within 30 calendar days of the date of the bill.

In addition to any other remedies that may be available, User’s failure to pay the bill after 60 calendar days shall automatically suspend this Interlocal Agreement and cause User to forfeit the privilege to use the Facility until resolved.

Section 7 – Term

Unless otherwise terminated sooner as otherwise provided herein, this Interlocal Agreement shall remain valid until December 31, 2015. One year (annual) extensions are allowed with mutual written agreement by both parties as to term of extension and any adjustments in Cost of Service.

Section 8 – Waiver

The City’s failure to insist upon the User’s strict performance of any covenant, duty, agreement, or condition of this Interlocal Agreement or the City’s failure to exercise any right or remedy for breach thereof shall not constitute a waiver of any such breach or any other covenant, agreement, term or condition.
**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>Twh</td>
<td>11.19.14</td>
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<td>Prosecutor:</td>
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<td></td>
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<tr>
<td>Purchasing/Budget:</td>
<td>12.25.14</td>
<td></td>
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</tbody>
</table>

**EXECUTIVE:**

**TITLE OF DOCUMENT:** Whatcom Humane Society Service Agreement

**ATTACHMENTS:** Memo, Contract

<table>
<thead>
<tr>
<th>SEPA review required?</th>
<th>Yes</th>
<th>No</th>
<th>Should Clerk schedule a hearing?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>SEPA review completed?</td>
<td>Yes</td>
<td>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.)

Whatcom County intends to obtain animal control services from the Whatcom Humane Society. Services include but are not exclusive to: housing, administering regulations, enforcement and penalties pursuant to County ordinances, statutes and local code as described in Exhibit A.

Beginning January 1, 2015 and ending December 31, 2016 the contractor is to be paid $30,058.96 per month for animal control services provided as described in Exhibit A.

Total compensation for a 12 month service contract shall not exceed $360,707.52. Total compensation for this two year agreement shall not exceed $721,415.04

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

<table>
<thead>
<tr>
<th>Related County Contract #:</th>
<th>Related File Numbers:</th>
<th>Ordinance or Resolution Number:</th>
</tr>
</thead>
</table>

Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: www.co.whatcom.wa.us/council.
MEMORANDUM

TO: Jack Louws, County Executive
FROM: Tawni Helms, Administrative Coordinator
RE: Whatcom Humane Society Service Agreement
DATE: October 29, 2014

Enclosed are two (2) originals of a Service Agreement between Whatcom County and Whatcom Humane Society for your review and signature.

- Background and Purpose
Whatcom County will contract with Whatcom Humane Society for the purpose of providing animal control and shelter services in compliance with Whatcom County Code and statutes as described in Exhibit A.

- Funding Amount and Source
Beginning January 1, 2015 through December 31, 2016 an annual sum not to exceed Three Hundred Sixty Thousand Seven Hundred Seven Dollars and Fifty Two cents ($360,707.52) to be paid in 12 monthly installments.

Total compensation for a 2 year service contract shall not exceed $360,707.52 per year, for a total not to exceed $721,415.04 in 2 years. Additional cost for vehicles, fuel, maintenance and building maintenance are not included in this contract but are covered by the County at the amount of over $37,010 for 2015 and $37,010 for 2016.
**WHATCOM COUNTY CONTRACT INFORMATION SHEET**

<table>
<thead>
<tr>
<th>Originating Department:</th>
<th>Executive Office</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract or Grant Administrator:</td>
<td>Tawni Helms</td>
</tr>
<tr>
<td>Contractor's / Agency Name:</td>
<td>Whatcom Humane Society</td>
</tr>
</tbody>
</table>

Is this a New Contract? Yes ☑ No ☐
If not, is this an Amendment or Renewal to an Existing Contract? Yes ☐ No ☐
If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: ____________

Does contract require Council Approval? Yes ☐ No ☑ If No, include WCC: ________
(see Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)

Is this a grant agreement? Yes ☐ No ☑ If yes, grantor agency contract number(s): ____________ CFDA#: ____________

Is this contract grant funded? Yes ☐ No ☑ If yes, Whatcom County grant contract number(s): ____________

Is this the result of a RFP or Bid process? Yes ☑ No ☐ If yes, RFP and Bid number(s): 12-48
Contract Cost Center: 4300

Is this agreement excluded from E-Verify? Yes ☐ No ☑ If no, include Attachment D Contractor Declaration form.

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

Contract Amount:(sum of original contract amount and any prior amendments):
$ 721,415.04

This Amendment Amount:
$ ____________

Total Amended Amount:
$ ____________

Summary of Scope: The general purpose of this agreement is to provide animal control and shelter services for Whatcom County consistent with Washington State Statutes and County Codes.

<table>
<thead>
<tr>
<th>Term of Contract:</th>
<th>Two years</th>
</tr>
</thead>
<tbody>
<tr>
<td>Expiration Date:</td>
<td>12/31/2016</td>
</tr>
</tbody>
</table>

Contract Routing:
1. Prepared by: Twh
2. Attorney signoff: Daniel J. Richardson
3. AS Finance reviewed: Blum
4. IT reviewed (if IT related):
5. Contractor signed: ____________ Date: 11/10/14
6. Submitted to Exec.: ____________ Date: 11/26/14
7. Council approved (if necessary): ____________ Date: 11/26/14
8. Executive signed: ____________ Date: ____________
9. Original to Council: ____________ Date: ____________

Contracts that require Council Approval (incl. agenda bill & memo)
- Professional Services Agreement above $20,000.
- Bid is more than $50,000.
- Amendments that have either an increase greater than 10% or provide a $10,000 increase in amount (whichever is greater)

RENEWALS: Council approval is not required when exercising an option to renew that is provided in the original contract.

Last Edited 060414
CONTRACT FOR SERVICES
Whatcom Humane Society Service Agreement

Whatcom Humane Society, hereinafter called Contractor, and Whatcom County, hereinafter referred to as County, agree and contract as set forth in this Agreement, including:

- General Conditions, pp 3 to 7
- Exhibit A (Scope of Work), pp 8 to 12
- Exhibit B (Compensation), pp 13 to 15
- Exhibit C (Program Budget) pp 16
- Exhibit D (Declaration Form) pp. 17
- Exhibit E (Certificate of Insurance) pp 18

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

The term of this Agreement shall commence on the 1st day of January 2015, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 31st day of December 2016.

The general purpose or objective of this Agreement is to provide animal control and shelter services for Whatcom County consistent with Washington State Statutes and County Codes, 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 $721,415.04. The Contract Number, set forth above, shall be included on all billings or correspondence in connection therewith.

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

IN WITNESS WHEREOF, the parties have executed this Agreement this _____ day of ________________, 2014.

CONTRACTOR:

Whatcom Humane Society

Laura Clark, Executive Director

STATE OF WASHINGTON } ss.
COUNTY OF WHATCOM } ss.

On this 15th day of December, 2014, before me personally appeared Laura Clark to me known to be the Executive Director of Whatcom Humane Society) and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

LINDA M. SALAS
WHATCOM COUNTY:

Approved as to form:

Daniel Leibson 11/25/14
Prosecuting Attorney Date

Approved:
Accepted for Whatcom County:

By: ______________________
Jack Louws, Whatcom County Executive

STATE OF WASHINGTON )
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 __________________.

CONTRACTOR INFORMATION:

Whatcom Humane Society

Address:
2172 Division Street
Bellingham, WA 98226

Contact Name: Laura Clark, Executive Director
Phone: (360) 733-2080x3026
FAX: (360) 733-4746
Email: director@whatcomhumane.org

Contract for Services
Whatcom Humane Society Services Agreement 2
GENERAL CONDITIONS

ANIMAL CONTROL SERVICES AGREEMENT
BETWEEN WHATCOM COUNTY
AND WHATCOM HUMANE SOCIETY

THIS AGREEMENT is made this ________ day of December, 2014, by and between WHATCOM COUNTY, a municipal corporation, hereinafter referred to as the “County”, and Whatcom Humane Society, hereinafter referred to as the “Contractor” for the purpose of animal control services as described herein.

1. **Intent**: The intent of this document is for the County to obtain animal control services such as housing, administering regulations, enforcement and penalties pursuant to the following statutes and local code:

   - RCW 9.08 Crimes Relating to Animals
   - RCW 16.04 Trespass of Animals
   - RCW 16.08 Dogs
   - RCW 16.10 Dogs-Licensing- Control Zones
   - RCW 16.24 Stock Restricted Areas
   - RCW 16.52 Prevention of Cruelty to Animals
   - RCW 16.54 Abandoned Animals
   - RCW 16.68 Disposal of Dead Animals
   - RCW 16.70 Control Of Pet Animals Infected With Disease Communicable To Humans
   - WCC 6.04 Animal Control
   - WCC 6.08 Restriction of Livestock

2. **Description of Services**: The Contractor agrees to provide and the County agrees to accept the services as described in Exhibit A attached hereto and incorporated herein by reference.

3. **Consideration**: As consideration for the services provided, the County agrees to reimburse the Contractor as set forth in Exhibit B attached hereto and incorporated herein by reference.

4. **Term and Extensions**: The term of this Agreement shall be for a period of twenty four months beginning January 1, 2015. The term shall be as stated regardless of the date of signature. At the conclusion of the contract, the County may extend the agreement for two additional years. At the conclusion of the contract and any extension, the contract shall be reopened for bidding. The County reserves the right to terminate the contract at any time for substandard performance or non-compliance with contract terms.

5. **Records and Reports**: The Contractor agrees to maintain all books, records, documents, reports and other evidence of accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended and services performed under this Agreement, including a complete system of records that shall show the kinds and number of animals in its custody obtained from the unincorporated areas of Whatcom County, the locations where such animals were found, the reasons for confinement and final disposition. On a quarterly basis the Contractor shall provide the County Executive, or his or her designee, a report detailing all fees collected and all expenses and cash balances, with a comprehensive year-end report due thirty (30) days after the end of the fiscal year. The Contractor also agrees to provide the County Executive, or his or her designee, a quarterly report detailing the levels of service provided over the quarter, together with a report on the license program in accordance with Section 3.1 in Exhibit A.

   All income and expenditures shall be recorded in accordance with generally accepted accounting principles. The financial records shall be subject to audit by any governmental agency with jurisdiction at a time and place mutually convenient to the parties.
6. **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 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.

7. **Contracts with other Governmental Jurisdictions:** The County agrees to permit the Contractor to extend its services within Whatcom County. The County does not agree to provide a financial subsidy, either directly or indirectly to any city or any other local government. The Contractor guarantees that it will manage its affairs so that any agency contracting with it for services bears that agency’s pro-rata share of costs incurred.

8. **Licensing:** The contractor 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 Contractor shall also be responsible for obtaining any necessary approvals and permits and shall be given a reasonable period of time to bring operations into compliance with all laws and standards.

9. **Communications:** Communications between the Contractor and the County shall be addressed to the regular places of business. In the case of the Contractor, the address shall be:
   
   Laura Clark  
   Whatcom Humane Society  
   2172 Division Street  
   Bellingham, WA 98226

In the case of the County, communications shall be sent to:
   
   Tawny Helms, Administrative Coordinator  
   311 Grand Ave, Suite 108  
   Bellingham, WA 98225

10. **Administration of Agreement:**

   a. The Sheriff’s office, Prosecuting Attorney and County Executive or designee shall have administrative authority to establish policies and procedures pertaining to:

   1. Training of animal control officers regarding proper conduct and enforcement actions.
   2. Setting guidelines regarding legal and enforcement issues and standards for the limited deputization of Contractor enforcement personnel.
   3. How and when citations will be issued and notifications of same shall be made.

   b. The County Executive’s office shall administer all other aspects of this Agreement and shall receive all reports and documents related to this Agreement from the Contractor.

11. **Relationship to Parties:** The parties intend that an independent Contractor/County relationship will be created by the Agreement. The County is interested only in the results to be achieved; the implementation of services will lie solely with the Contractor. Neither the Contractor, nor any agent, employee or representative of the Contractor shall be deemed to be
an agent, employee, or representative of the County for any purpose. Employees of the Contractor are not entitled to any of the benefits the County provides for County employees. The Contractor will be solely and entirely responsible for its acts, and for the acts of its agents, employees, subcontractors or others during the performance of this Agreement. In the performance of services herein contemplated, the Contractor is an Independent Contractor as to the performance of the details of the work; however, the results of the work contemplated herein must meet the approval of the County and shall be subject to the County’s general rights of inspection and review to secure the satisfactory completion thereof.

12. **Indemnification and Hold Harmless:** The Contractor agrees and covenants to indemnify, defend and save harmless the County and those persons who were, now are, or shall be duly elected or appointed officials or members or employees thereof, hereinafter referred to as the County, against and from any loss, damage, cost, charge, expense, liability, claim, demand or judgment, of whatsoever kind or nature, whether to persons or property, arising wholly or partially out of any act, action, neglect, omission or default on the part of the Contractor, his subcontractors, and/or employees, except to the extent such injury or damage shall have been caused by or resulted from the negligence of the County. In case any suit or cause of action shall be brought against the County on account of any act, action, neglect, omission or default on the part of the Contractor, his agents, subcontractors, and/or employees, the Contractor hereby agrees and covenants to appear and assume the defense thereof and to pay any and all costs, charges, attorney’s fees and other expenses and any and all judgments that may be incurred or obtained against the County.

In the event the County is required to institute legal action and/or participate in legal action to enforce this indemnification and hold harmless clause, the Contractor agrees to pay the County’s legal fees, costs and disbursements incurred in establishing the right to indemnification.

13. **Social Security and Other Taxes:** Contractor assumes full responsibility for the payment of all payroll taxes, use, sales, income, other form of taxes, fee, licenses, excises, or payments required by any City, County, Federal or State legislation which are now or may, during the term of this Agreement, be enacted as to the Contractor and all persons employed by the Contractor as to all duties, activities, and requirements by the Contractor in performance of the work pursuant to this Agreement and shall assume exclusive liability therefore, and meet all requirements thereunder pursuant to any rules and regulations that are now and may be promulgated in connection therewith.

14. **Proof of Insurance:** The Contractor shall maintain the following insurance coverage and shall provide the County with certificates of insurance, naming the County as additional insured on all the following policies:

a. **General Liability:** Comprehensive general liability, premises, operations, contractual and personal injury coverage, for a minimum of $1,000,000.

b. **Automobile Liability:** Comprehensive bodily injury and property damage combined limit of at least $1,000,000.

c. **Automobile Collision:** Coverage adequate to replace vehicles.

c. **Law Enforcement Professional:** False arrest, assault and battery, and related coverage, for a combined policy limit of at least $1,000,000.

The Contractor’s insurance shall be considered primary, and it shall waive all rights of subrogation. The County’s insurance shall not be required to contribute in any way.

15. **Suspension/Termination:** The County reserves the right to terminate the Agreement at any time for substandard performance or non-compliance with the terms of this Agreement. If the Contractor fails to comply fully with the terms and conditions of this Agreement, the County may pursue such remedies as are legally available, including but not limited to, the suspension or termination of the Agreement in the manner specified herein.
a. Suspensions: If either party is unable to substantiate full compliance with the provisions of this Agreement, or full cooperation in its performance, the non-breaching party may suspend the Agreement pending corrective acts or investigation, which suspension shall be effective upon seven (7) days written notification to the other party.

b. Termination – Just cause: For just cause, this Agreement may be terminated by either party hereto upon thirty (30) days advance written notice to the other party unless circumstances warrant the immediate termination of the Agreement. Said written notice shall include a detailed statement of "just cause."

16. 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, Vietnam-era or disabled veteran status, or disability. 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, Vietnam-era or disabled veteran status, or disability, 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, Vietnam-era or disabled veteran status, or disability, 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 without employees.

17. Non-Discrimination in Client Services: The Contractor shall not discriminate on the grounds of race, color, creed, religion, national origin, sex, age, marital status, Vietnam-era or disabled veteran status, or disability, 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 of any service or services or other benefits provided under this Agreement; or, deny an individual or business an opportunity to participate in any program provided by this Agreement.

18. Assignment and/or 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.

19. Modification: No change or addition to this Agreement shall be valid or binding upon either party unless such change or addition is in writing, executed by both parties.

20. 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.

21. 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.
22. **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.

23. **E-Verify:** The E-Verify contractor program for Whatcom County applies to contracts of $100,000 or more and subcontracts for $25,000 or more if the primary contract is for $100,000 or more. Contractor represents and warrants that it will, for at least the duration of this contract, register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work for Whatcom County. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor/Seller agrees to maintain records of such compliance and, upon request of the County, to provide a copy of each such verification to the County. Contractor/Seller further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Washington. Contractor/Seller understands and agrees that any breach of these warranties may subject Contractor/Seller to the following: (a) termination of this Agreement and ineligibility for any Whatcom County contract for up to three (3) years, with notice of such cancellation/termination being made public. In the event of such termination/cancellation, Contractor/Seller would also be liable for any additional costs incurred by the County due to contract cancellation or loss of license or permit." Contractor will review and enroll in the E-Verify program through this website: www.uscis.gov

24. **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.
A-1. **Description of Services:** The Contractor agrees to provide the following described services:

A1.1. **Operate Animal Shelter Facility:** The Contractor shall provide and operate such animal control shelter and care facilities as may be necessary to receive, maintain, care for and provide for the appropriate disposition of all animals that come within the legal animal control authority and responsibility of the County.

A1.2. **Conduct Animal-Related Investigations and Enforcement:** The Contractor shall provide all necessary investigation, enforcement, testimony, follow up and administrative services, including hearings, as may be required to fulfill the County's legal responsibility regarding animals, violations of law and animal control issues.

A1.3. **Conduct Animal Control Patrol and Impoundment:** The Contractor shall provide all necessary services associated with the control of strays, dangerous or unsupervised animals including receiving reports, responding to complaints, addressing animal-related issues, receiving and impounding animals and conducting such activities as may be reasonably necessary to ensure the effective control of animals that come under the legal authority and responsibility of the County.

A1.4. **Administer Animal Licensing Programs:** The Contractor shall provide for the administration and operation of all animal licensing programs necessary for the County to fulfill its legal licensing responsibility under state law or county ordinance.

A-2. **Legislation:** The Contractor shall provide continuing assistance and advice to the County on the updating and revision of its animal control code.

A-3. **Animal License Program:** The Contractor is solely responsible for administration of all licensing programs.

A3.1. **License Issuance:** The Contractor shall issue animal licenses as required by the Whatcom County Code, shall collect the required fees, and shall maintain a comprehensive set of records on all animal licenses issued by it. At the close of each month the Contractor shall submit a report to the County Executive of licenses issued. The report shall include a list of each license sold showing the name and address of the owner, any associated fees received by the Contractor and the description of the animal licensed. Similar information shall be submitted for all animals impounded.

A3.2. **Stray Animal Licenses:** Stray animals picked up in the County and sold or adopted to private individuals residing in the County shall not be released to their new owners until a valid County license is obtained.

A3.3. **Education:** Education programs for the general public to encourage the licensing of dogs shall be conducted at the discretion of the Contractor at no additional cost to the County.

A3.4. **Purchase Point:** The Contractor shall have an outlet where people may purchase required licenses for their animals.

A-4. **Animal Shelter Facility and Operations:**

A4.1. **Shelter Hours:** The shelter or a shelter representative shall be available for contact 24 hours a day, seven days a week on an emergency-response basis. The shelter must be open at least thirty (30) hours per week on a normal basis. Normal hours the animal shelter facility shall be open to the public are Wednesday through Saturday from 10:00 a.m. to 6:00 p.m. and Sundays and Mondays from 11:00 a.m. through 5 p.m. The animal shelter will be closed to the public on Tuesdays and major holidays. Animal care staff and animal control staff are in the building 7 days a week, 365 days per year.

A4.2. **Telephones:** Telephones must be answered during regular business hours and there must be an emergency number or rotating contact whereby the shelter may be contacted 24 hours a day, seven days a week on an emergency-response basis.

A4.3. **Animal Shelter Facility:** The shelter shall have an adequate number of dog kennels and cat cages, isolation facilities for sick dogs and cats, quarantine facilities for biting, dangerous or injured animals which are not necessarily sick, and
access to large animal housing. The animal shelter shall be maintained in a clean and sanitary condition and the Contractor will not permit any condition to exist which might constitute a public nuisance. The kennel shall comply with the standards set forth in the Humane Society's Uniform Standards Guidelines (HSUS) for the operation of the animal shelter. The Contractor shall provide a facility that has year round fenced and drained hard surface pads to be used as outdoor exercise yards for the animals. At a minimum there shall be two (2) exercise yards with minimum dimensions of 8 x 20 feet that comply with HSUS guidelines. The outside exercise areas are to be located within viewable distance of Contractor's employees to maintain security of the animals within. The facility site shall be in conformance with the local zoning regulations and shall comply with all federal, state and local regulations.

A4.4. Acceptance and Care of Animals: The best possible care and treatment shall be given to all animals held in custody. Adequate housing and food shall be provided and the shelter shall not be overpopulated. The Contractor shall be responsible for the care, medical treatment, medication and inoculation required to assure the humane treatment of the animals received into the Contractor’s facility. Any injured animals coming in to the shelter must be seen by a veterinarian for treatment or decision regarding euthanasia within 24 hours of entry. The shelter shall accept unwanted small domestic pets (i.e., dogs and cats) from County residents, including strays and owner-released animals for humane euthanasia. The Contractor shall also accept pigs, goats, sheep, cattle, horses, ferrets, llamas, rabbits, hamsters, guinea pigs, snakes and domestic birds and other animals as circumstances require.

A4.5. Adoption: The Contractor shall be responsible for making every reasonable effort to prepare and present animals for adoption by the public and to facilitate the same. All animals released for adoption shall be vaccinated and either spayed or neutered. Spaying or neutering may be suspended depending on the health and age of the animal at the discretion of a licensed veterinarian associated with the Contractor.

A4.6. Disposal of Unclaimed Animals: The Contractor shall provide for the humane disposal of unclaimed animals after holding them for no fewer than 72 hours, unless sickness or injury requires earlier disposal. Under no circumstances shall unadopted animals be sold for purposes of medical research or other activities, which may harm them. The Contractor shall be responsible for maintaining animals beyond the minimum 72-hour period as may be required for the completion of any judicial process or to the extent required by law.

A4.7. Euthanasia: Humane euthanasia and disposal of unwanted animals must be by lethal injection of sodium pentobarbital or other approved method administered by a licensed veterinarian or by an agency which has obtained a Washington State and Federal Drug License and certification for staff to administer same.

A4.8. Certification: The Contractor assumes full responsibility for complying with all licensing, certification, or accreditation as required by law including regulation of facilities, programs, and euthanasia certification and licensing. All animal control and animal care managers and supervisors, and the executive director will be certified to assist with euthanasia under the direction of a veterinarian.

A4.9 Volunteer Program: The Contractor will actively promote a volunteer program to assist with the animals, supported through the shelter as described below. Any and all volunteer programs outlined herein, created during the term of the agreement, and/or affiliated with the Contractor must be in compliance with state employment laws, and subject to any and all special insurance requirements.

1. Volunteers must be at least 12 years of age to volunteer at the shelter.
2. Students between the ages of 12 and 16 must be accompanied by an adult.
3. All volunteers must attend a two hour volunteer orientation and complete animal handling classes before working directly with the shelter animals.
4. Volunteers are supervised and managed by the WHS Volunteer Coordinator.

A-5. Enforcement and Field Operations: The Contractor shall be fully responsible for taking animals into custody, transportation of animals, administration and enforcement of animal control regulations, investigation of animal control complaints, as well as imposing penalties in accordance with Whatcom County Code and the Revised Code of Washington. Full services are
required in all of rural Whatcom County, including Point Roberts, Lummi Island, and Newhalem. Dog control zones are established in all of the unincorporated areas of Whatcom County except areas designed R-5, R-10 and AG.

A5.1. Enforcement Hours: The Contractor shall provide for a minimum/maximum range of field operation services each week to include patrol, enforcement, investigation of complaints and impoundment of animals, including Sheriff approved after-hours call-outs. The County recognizes that the amount of field operation hours may vary and, therefore, requires that the Contractor’s animal control officers provide a minimum of 80 hours of field operation services per week and be capable and responsive to levels of activity, including Sheriff approved call-outs, that may require up to 120 hours per week, as need dictates. Within this inclusive range, the Contractor shall be responsible for all such services.

A5.2. Emergency Response: With regard to animal control enforcement, the Contractor shall be available twenty-four (24) hours a day, seven (7) days a week, on an emergency-response basis. Emergency response shall be for:

1. Vicious animals, animals running at large, or animals that may reasonably constitute a hazard to persons or other animals or threaten public safety.
2. Injured or very sick domestic animals.
3. Domestic animals in distress, such as those caught in traps.
4. Hardship cases or law enforcement (Sheriff) assistance matters.

Note: The Sheriff’s shift sergeant or duty staff officer shall review and authorize any questioned after-hours call-out of Contractor’s staff.

A5.3. Complaints and Referrals: The Contractor shall investigate and follow up on all animal control complaints referred to it by the public, appropriate officers, health services or other entities where the complaints constitute violations of Whatcom County Code Title 6.

A5.4. Distressed Animals: Animals in distress, including hardship cases such as owner arrest or house fires, must be taken to the shelter facilities. Vicious animals at large must be impounded. If distressed or vicious animals cannot be safely impounded, they may be destroyed.

A5.5. Hazard Removal: Dead domestic animals whose owners are unknown and which constitute traffic hazards on County roadways must be removed. In other instances where violations of the Code are observed, the animal shall be impounded.

A5.6. Disposal of Dead Animals: The Contractor shall pick up and dispose of small or large dead domestic animals from County roads within 24 hours of notification.

A5.7. Vehicles and Equipment: The County will provide, either directly or through reimbursement to Contractor, animal transport vehicles and related equipment as are required for Contractor’s operation of the facility. All such items shall be addressed within the County approved budget for the Contractor (see Item B-2 within Exhibit B of this Agreement). Any items falling outside of said approved budget must be authorized in advance by the County. The Contractor shall be responsible for keeping accurate inventory of all equipment purchased by the County, either directly or through reimbursement to Contractor, and Contractor shall not remove, destroy or otherwise alter said equipment without prior approval by the County. The County may, at its discretion, “asset tag” certain items to keep on their inventory rolls as well. The Contractor shall be responsible for maintaining, or causing to be maintained, all equipment in good working order. The County’s Equipment Services Division will dictate appropriate maintenance on all vehicles supplied and Contractor will ensure the availability of the vehicles for such service. Additionally, the County’s Equipment Services Division will provide to the Contractor appropriate cards to enable Contractor access to fuel for these vehicles.

A5.8. Vehicle Insurance and Use: Contractor shall maintain appropriate insurance on all vehicles. Vehicles are only to be utilized by Contractor’s personnel for official business and may not carry passengers.
A5.9. Court Appearances: The Contractor's personnel may, on occasion, be required to appear in court in support of enforcement action. The Contractor shall not receive additional compensation under this Agreement for these appearances.

A5.10. Quarantine Services: The Contractor shall provide quarantine services within incorporated and unincorporated areas of Whatcom County in accordance with the procedures outlined in WCC 6.04.140 Control of Rabid or Potentially Rabid Animals, when requested by the Health Department or when an animal of a species which may transmit disease through its saliva, bites and breaks the skin of any person. Specifically, the Contractor shall:

1. Notify the Health Department of:
   • unusual behavior of a recently captured domestic animal;
   • unusual behavior or death of a quarantined domestic animal; or
   • any non-domestic animal bite report if it is of a species which may transmit disease through its bite.
2. Notify caretakers of a quarantined animal of their duty to report unusual behavior or the death of a quarantined animal.
3. Follow-up on the status of a quarantined animal at the end of the quarantine period.
4. Obtain authorization from the Health Department prior to euthanizing any quarantined animal.
5. Remove and transport the head of any potentially rabid animal only as directed by the Health Department.
6. Assist in the capture and transport of potentially rabid bats upon request of the Health Department.

A-6. Animal Control Officers:
   A6.1. Authority: The Contractor shall act as an agency on behalf of the County for the enforcement of animal control and related ordinances and statutes.

   A6.2. Qualifications and Training: The Contractor assumes full responsibility for the selection, qualification, and training of its animal control officers.

   A6.3. Patrol Strength: The Contractor shall provide at least a minimum of eighty (80) hours and up to one hundred twenty (120) hours weekly of field service time to carry out its obligations under this Agreement and shall ensure that sufficient staff and vehicles are available Monday through Saturday between the hours of 9:00 a.m. and 5:00 p.m. or on an alternate schedule approved by the County Executive.

A-7. Other:
   A7.1. From time to time, special assistance may be required to respond to unique circumstances and/or animal care needs. Normally, such special assistance or care shall be the responsibility of the Contractor. Excessive cases may be addressed to the Executive's Office for special consideration.

   A7.2. The Contractor will make every reasonable effort to establish and maintain a positive working relationship with all organizations concerned with animal welfare in Whatcom County. The Contractor shall afford other animal welfare organizations reasonable opportunities to review and receive any viable animal from the Contractor for purpose of adoption prior to its euthanasia.

   A7.3. The Contractor shall represent the County as its primary animal control service provider for the unincorporated areas of Whatcom County. As such, the Contractor will be expected to provide excellent customer service and public relations. The Contractor shall not be expected to operate beyond the scope of this Agreement in the County's interest unless specifically requested to do so by an appropriate representative of the County. The County will not agree to any expense beyond the terms of this Agreement without preauthorization by an official of the County empowered to so bind the County.

A-8. Activities Not Covered: The Contractor shall not be responsible under the terms of this agreement for the following items:
   A8.1. Receiving wild, non-domestic animals into the shelter facility or care of the Contractor.

   A8.2. Responding to complaints or incidents involving wild animals, except where it is in the interest of public safety. Contractor will stand by to assist a state agency, law enforcement agency or any wild life animal rescue group when the presence Contract for Services
Whatcom Humane Society Services Agreement  11
of a wild animal, dead or alive, is on a public roadway or within the right-of-way. Contractor will attempt to move the animal from the right of way traffic lanes.

A8.3. Rehabilitating and restoring to health animals that have been injured, neglected or abused that is not required by state law or county ordinance.

A8.4. Responding to non-emergent calls or complaints that have not been reviewed and approved for after-hours call-out by the Sheriff’s office.

A8.5. Providing other services or activities that are not reasonably related to the contracted services or the intent of this Agreement, and that create an undue finance burden on the Contractor.
EXHIBIT "B"
(COMPLEMENTATION)

As consideration for the services provided pursuant to Exhibit A, Scope of work, the county agrees to compensate the contractor $30,058.96 per month consistent with exhibit C, Program Budget. Contractor will provide quarterly activity reports and upon request provide source documents such as payroll summaries identifying employee, hours worked and amount of compensation. Compensation shall not exceed a total of $721,415.04 for the two years, 2015 and 2016.

Any work performed prior to the effective date of this contract or continuing after the completion date of the same unless otherwise agreed upon in writing, will be at the contractor’s expense.

B-1. Animal Control & License Fees:

B1.1. The following animal control and license fees are authorized in the Whatcom County Unified Fee Schedule, effective January 1, 2013 by Executive Order ______:

<table>
<thead>
<tr>
<th>Description</th>
<th>Fee</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adoption Fee - Cat</td>
<td>$115</td>
<td></td>
</tr>
<tr>
<td>Adoption Fee - Dog</td>
<td>$115</td>
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<tr>
<td>Board/Care - Domestic Animals</td>
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<td>Per Day</td>
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<tr>
<td>Board/Care - Large Livestock</td>
<td>$40</td>
<td>Per Day after 24 hours</td>
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<tr>
<td>Board/Care - Small Livestock</td>
<td>$40</td>
<td>Per Day after 24 hours</td>
</tr>
<tr>
<td>Boarding Fee/Special Requirements</td>
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<td>Per Day</td>
</tr>
<tr>
<td>Call Out Fee (Livestock at Large)</td>
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<tr>
<td>Impoundment - Cats and other small animals 1st - Altered and wearing ID</td>
<td>$25</td>
<td>Per Imp/12 mo period</td>
</tr>
<tr>
<td>Impoundment - Cats and other small animals 2nd - Altered and wearing ID</td>
<td>$45</td>
<td>Per Imp/12 mo period</td>
</tr>
<tr>
<td>Impoundment - Cats and other small animals 3rd - Altered and wearing ID</td>
<td>$65</td>
<td>Per Imp/12 mo period</td>
</tr>
<tr>
<td>Impoundment - Cats and other small animals 4th + - Altered and wearing ID</td>
<td>$100</td>
<td>Per Imp/12 mo period</td>
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<tr>
<td>Impoundment - Cats and other small animals 1st - Altered and w/o ID</td>
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<tr>
<td>Impoundment - Cats and other small animals 2nd - Unaltered and wearing ID</td>
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<tr>
<td>Impoundment - Cats and other small animals 4th + - Unaltered and wearing ID</td>
<td>$120</td>
<td>Per Imp/12 mo period</td>
</tr>
<tr>
<td>Impoundment - Cats and other small animals 1st - Unaltered and w/o ID</td>
<td>$65</td>
<td>Per Imp/12 mo period</td>
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<tr>
<td>Impoundment - Dogs 3rd - Altered and wearing current license</td>
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<td>Per Imp/12 mo period</td>
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<td>Per Imp/12 mo period</td>
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<tr>
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<td>Per Imp/12 mo period</td>
</tr>
<tr>
<td>Impoundment - Dogs 4th + - Altered and unlicensed or not wearing license</td>
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<tr>
<td>Impoundment - Dogs 2nd - Unaltered and wearing current license</td>
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</tr>
<tr>
<td>Impoundment - Dogs 3rd - Unaltered and wearing current license</td>
<td>$100</td>
<td>Per Imp/12 mo period</td>
</tr>
<tr>
<td>Impoundment - Dogs 4th + - Unaltered and unlicensed or not wearing license</td>
<td>$170</td>
<td>Per Imp/12 mo period</td>
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<tr>
<td>Impoundment - Large Livestock 1st</td>
<td>$75</td>
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Contract for Services
Whatcom Humane Society Services Agreement 13
<table>
<thead>
<tr>
<th>Service Description</th>
<th>Cost</th>
<th>Additional Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Impoundment - Large Livestock 2nd</td>
<td>$100</td>
<td>Per Imp/12 mo period</td>
</tr>
<tr>
<td>Impoundment - Large Livestock 3rd</td>
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<td>Impoundment - Small Livestock 3rd</td>
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<td>Per Imp/12 mo period</td>
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<tr>
<td>Impoundment - Small Livestock 4th +</td>
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<td>Per Imp/12 mo period</td>
</tr>
<tr>
<td>License Fee - Wild or Exotic Animal - Initial License</td>
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<tr>
<td>License Fee - Wild or Exotic Animal - Annual Renewal</td>
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<td>License Fee - Altered Dog</td>
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<td>License Fee - Unaltered Dog</td>
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<td>License Fee - Past Due - Additional</td>
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<td>Added to License Fee</td>
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<td>Multi-Dog License</td>
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<td>Owner Release Fee</td>
<td>$50</td>
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<tr>
<td>Owner Release Fee - Additional for Litter w/Mother</td>
<td>$10</td>
<td></td>
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<tr>
<td>Pickup/Disposition Fee</td>
<td>$55</td>
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<tr>
<td>Pickup/Disposition Fee - Each Additional Animal and/or Litter w/Mother</td>
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<td>Same trip</td>
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<tr>
<td>Registration Fee - Potentially Dangerous Dog</td>
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<tr>
<td>Registration Fee - Dangerous Dog</td>
<td>$150</td>
<td></td>
</tr>
<tr>
<td>Veterinarian Fees and Medications during Boarding/Impoundment if required</td>
<td>Cost</td>
<td>Actual Costs Charged</td>
</tr>
</tbody>
</table>

B1.2. Accounting requirements imposed by the State of Washington require that all fees included in the Unified Fee Schedule be appropriately accounted for. To comply with this requirement the Contractor will be required to submit a monthly report detailing all fees collected. This report will be delivered to the County Executive.

B1.3. Contractor's Fees: The Contractor shall report the amount of fees collected on the quarterly report submitted to the County. The Contractor shall be solely responsible for the collection of the following fees as approved through the County Unified Fee Schedule:

1. License fees.
2. Spay/neuter clinic revenue paid to the Contractor/veterinarian.
3. Purchase charges related to the adoption of animals.
4. Vaccination clinic revenue paid to the Contractor/veterinarian.
5. Other similar or like fees as approved by the County.

B1.4. The County shall assist the Contractor in recovering exceptional costs from owners or other responsible parties, for the care of animals taken into custody or maintained by the Contractor, on behalf of the County. The appropriateness and the extent of action taken or to be taken by the County shall be determined by and at the sole discretion of the County.

B-2. Consideration: As consideration for the services provided the County agrees to reimburse the Contractor as follows:

B2.1. An annual sum not to exceed:

- January 1, 2015 to December 31, 2016 Seven Hundred Twenty One Thousand Four Hundred Fifteen and Four Cents ($721,415.04) to be paid in 24 equal monthly installments of $30,058.96.
- Total reimbursement for a 2 year service contract shall not exceed $721,415.04

B2.2. Unless specifically approved by County Council as a part of animal control and license fees, the Contractor shall be responsible for the administration of any and all animal licensing programs. All animal control and license fees, listed in Section B1.1 will be collected and retained by the Contractor as outlined in B1.3 and reported to the County as outlined in B1.2.

B2.3. The Contractor shall not receive any additional compensation for after-hours call-outs. Necessity for questioned after-hours call-outs shall be determined and authorized by the Sheriff's sergeant, shift supervisor, or duty staff officer.
B.2.4. All payments under this Agreement are considered reimbursement for services rendered. Request for each monthly payment shall be by invoice showing what services were rendered so as to comply with auditing requirements. The County agrees to make payment for services provided promptly in accordance with the County's customary procedures.
## WHATCOM HUMANE SOCIETY

**Budget Narrative**

<table>
<thead>
<tr>
<th>Item</th>
<th>Budget 2015</th>
<th>Budget 2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wages-Shelter Services</td>
<td>168,267.19</td>
<td>168,267.19</td>
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<tr>
<td>Wages-Animal Control &amp; Licensing</td>
<td>179,376.48</td>
<td>179,376.48</td>
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<tr>
<td>Wages-Administration</td>
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<td>57,738.85</td>
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<tr>
<td><strong>Subtotal-Wages</strong></td>
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<td><strong>399,382.52</strong></td>
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<tr>
<td>Animal Food</td>
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<td>5,500.00</td>
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<tr>
<td>Disposal-Dead Animals</td>
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<td>4,000.00</td>
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<tr>
<td>Insurance</td>
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<tr>
<td>Insurance-Animal Control &amp; Licensing</td>
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<tr>
<td>Postage</td>
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<tr>
<td>Professional Services-Shelter Services</td>
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<td>8,625.00</td>
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<tr>
<td>Professional Services-Animal Ctrl &amp; Lic</td>
<td>200.00</td>
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<tr>
<td>Professional Services-Administration</td>
<td>5,250.00</td>
<td>5,250.00</td>
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<tr>
<td>Radio/Pager-Animal Control</td>
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<td>2,500.00</td>
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<tr>
<td>Supplies-Medical</td>
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<tr>
<td>Supplies-Shelter Services</td>
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<tr>
<td>Supplies-Animal Control &amp; Licensing</td>
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<td>Telephone-Animal Control</td>
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<td>Uniforms</td>
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<td>Utilities</td>
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<td><strong>Subtotal-Expenses</strong></td>
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**Income**

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<tr>
<th>Item</th>
<th>Budget 2015</th>
<th>Budget 2016</th>
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<tbody>
<tr>
<td>License</td>
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<td>Impound</td>
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<tr>
<td>Board</td>
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<tr>
<td>Owner Release</td>
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<tr>
<td>Dog Adoptions</td>
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<td>Cat Adoptions</td>
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<td>Microchip</td>
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<td>Other Animal Adoption</td>
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<td>Trap Rental</td>
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<td><strong>Total</strong></td>
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**TOTAL**

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<thead>
<tr>
<th>Item</th>
<th>Budget 2015</th>
<th>Budget 2016</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total</strong></td>
<td><strong>360,710.52</strong></td>
<td><strong>360,710.52</strong></td>
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</tbody>
</table>
EXHIBIT D
Whatcom County Contractor's Declaration Form

I. CONTRACTOR INFORMATION

<table>
<thead>
<tr>
<th>Contractor Name:</th>
<th>Phone:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contact Person:</td>
<td>Fax:</td>
</tr>
<tr>
<td>Address:</td>
<td></td>
</tr>
</tbody>
</table>

II. E-VERIFY ENROLLMENT (check box and submit copy of MOU for verification)
Contractors with funded contracts of $100,000 or more must be enrolled in E-Verify system. Work related subcontract is $25,000 or higher. www.uscis.gov/e-verify

☐ Contractor is enrolled in E-Verify; copy of the signed E-Verify Memorandum of Understanding is attached.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

Signature

Name

Date

Title

Contract for Services
Whatcom Humane Society Services Agreement 17
### Company Information

<table>
<thead>
<tr>
<th>Field</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Company Name:</strong></td>
<td>Whatcom Humane Society</td>
</tr>
<tr>
<td><strong>Company ID Number:</strong></td>
<td>377428</td>
</tr>
<tr>
<td><strong>Doing Business As (DBA) Name:</strong></td>
<td></td>
</tr>
<tr>
<td><strong>DUNS Number:</strong></td>
<td></td>
</tr>
</tbody>
</table>

**Physical Location:**

<table>
<thead>
<tr>
<th>Field</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address 1</td>
<td>2172 Division Street</td>
</tr>
<tr>
<td>Address 2</td>
<td></td>
</tr>
<tr>
<td>City</td>
<td>Bellingham</td>
</tr>
<tr>
<td>State</td>
<td>WA</td>
</tr>
<tr>
<td>Zip Code</td>
<td>98226</td>
</tr>
<tr>
<td>County</td>
<td>WHATCOM</td>
</tr>
</tbody>
</table>

**Mailing Address:**

<table>
<thead>
<tr>
<th>Field</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address 1</td>
<td></td>
</tr>
<tr>
<td>Address 2</td>
<td></td>
</tr>
<tr>
<td>City</td>
<td></td>
</tr>
<tr>
<td>State</td>
<td></td>
</tr>
<tr>
<td>Zip Code</td>
<td></td>
</tr>
</tbody>
</table>

**Additional Information:**

- **Employer Identification Number:** 910677564
- **Total Number of Employees:** 20 to 99
- **Parent Organization:**
- **Administrator:**

**Organization Designation:**

- **Employer Category:** None of these categories apply

**NAICS Code:** 812 - PERSONAL AND LAUNDRY SERVICES

**Total Hiring Sites:** 1

**Total Points of Contact:** 3
### 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>N</td>
<td>11/26/14</td>
<td></td>
<td>12/09/14</td>
<td>Finance/Council</td>
</tr>
<tr>
<td>Division Head:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dept. Head:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prosecutor:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Purchasing/Budget:</td>
<td>12/26/14</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Executive:</td>
<td></td>
<td>12/2/14</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**TITLE OF DOCUMENT:** Purchase of ER&R replacement front loader

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

<table>
<thead>
<tr>
<th>SEPA review required?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>SEPA review completed?</td>
<td>Yes</td>
<td>No</td>
</tr>
</tbody>
</table>

**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:** (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)

Public Work Equipment Services is requesting approval to use the Washington State Contract to purchase a replacement front loader. The total cost is $147,978.79. This is a planned purchase and adequate funds are available in their current budget.

**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).
DATE: November 26, 2014
TO: Jack Louws, County Executive
FROM: Brad Bennett, AS Finance Manager
SUBJECT: Approval to Purchase Front Loader

• Background & Purpose

Public Works Equipment Services is requesting approval to purchase a 2014 John Deere 444K front loader, using Washington State Contract #16904. The vendor is Pape Machinery, and the replacement front loader is a 2014 John Deere 444K. The total price for this purchase is $147,978.79. Public Works will use this unit on county road projects as part of the road maintenance program.

• Funding

This is a planned expenditure and funds for this purchase are available in the current ER&R budget. I concur with this request.

[Signature]
AS Finance Manager

Approved as recommended:

____________________
County Executive

Date __________________
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: State Bid Contract 16904 (Front Loaders – Various Sizes)

DATE: November 24, 2014

- Requested Action
After researching cost for a commercial loader, I am requesting Executive and Council approval to purchase one 2014 John Deere 444K Loader from the Washington State Bid Procurement List to replace the following:

<table>
<thead>
<tr>
<th>DEPT</th>
<th>REPLACE UNIT</th>
<th>MAKE / MODEL</th>
<th>EST. HOURS</th>
</tr>
</thead>
<tbody>
<tr>
<td>PW-M&amp;O</td>
<td>302</td>
<td>1991 Caterpillar Loader with Forks</td>
<td>4,079.0</td>
</tr>
</tbody>
</table>

- Background and Purpose
This unit was approved as a replacement in the 2013-2014 Equipment Rental and Revolving Capital Equipment Budget. Public Works Maintenance & Operations Division will use this unit in the performance of county business on county road projects and road maintenance as part of the road maintenance program.

<table>
<thead>
<tr>
<th>VENDOR</th>
<th>MAKE / MODEL</th>
<th>PRICE EACH (including Fees)</th>
<th>SALES TAX (6.5%)</th>
<th>TOTAL FOR 1</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pape Machinery</td>
<td>2014 John Deere 444K Loader</td>
<td>$136,465.57</td>
<td>$11,513.22</td>
<td>$147,978.79</td>
</tr>
</tbody>
</table>

- Funding Amount and Source
This amount was originally budgeted in the amount of $90,000 during the 2013-2014 Budget process. The remaining amount of $57,978.79 will come out of the unused 2014 budgeted amount of $210,000 for replacement of a 1984 John Deere 850 Dozer (Eq. #360), which will not be replaced this year. I am requesting Executive and Council approval to purchase this unit from Pape Machinery in Mount Vernon, Washington for the total amount of $147,978.79.

- Recommended Action
Please approve this purchase from the state contract and forward to the Executive and the Whatcom County Council for approval at the December 9, 2014 Whatcom County Council Meeting. Please contact Eric L. Schlehuber at extension 50607, if you have any questions or concerns.
Northwest Regional Council (NWRC) Jail’s Nursing Services Contract

Northwest Regional Council (NWRC) will oversee the activities of the Jail Health Program (JHP) at the Whatcom County Jail and Work Center. The JHP is a team of health care professionals consisting of nurses, a nurse program manager and medical assistants. The JHP is responsible to coordinate the delivery of health care to the inmates at the Whatcom County Facilities. The activities of the JHP shall be limited to providing or facilitating direct medical, psychiatric or dental care to the inmates housed at either facility.

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: Bill Elfo, Sheriff
RE: Contract for Nursing Services with Northwest Regional Council
DATE: 11/24/14

Enclosed are two (2) originals of a Contract for Jail Nursing and Medical Administration Services between the Whatcom County Jail and Northwest Regional Council (NWRC) for your review and signature.

- Background and Purpose

This Contract will provide nursing services for jail inmates from January 1, 2015 through December 31, 2015. This contract is the result of an RFP process.

- Funding Amount and Source

Funding for this Contract will be from cost center 118160.6635.003 and is included in the submitted 2015 budget. The maximum compensation to the Contractor for this 12 month period shall not exceed $1,082,800.00. This amount is $26,225.00 less than last year.

- Differences from Previous Contract

The compensation rate is decreasing from $46.50 per hour to $43.87 and the total hours are increasing from 23,850 to 24,682. This will make nurses available to do all medication passes at the main jail.

Please contact Wendy Jones at x50470 if you have any questions or concerns regarding this agreement.

Encl.
## WHATCOM COUNTY CONTRACT INFORMATION SHEET

**Originating Department:** Sheriff/Corrections  
**Contract or Grant Administrator:** Laurie Reid  
**Contractor’s / Agency Name:** Northwest Regional Council

- **Is this a New Contract?** Yes ☒ No ☐  
- **Does contract require Council Approval?** Yes ☒ No ☐
- **Is this a grant agreement?** Yes ☐ No ☒
- **Is this contract grant funded?** Yes ☒ No ☐
- **Is this the result of a RFP or Bid process?** Yes ☒ No ☐
- **Is this agreement excluded from E-Verify?** No ☐ Yes ☒

**Contract Amount:** $1,082,800.00  
**Summary of Scope:** Northwest Regional Council (NWRC) will oversee the activities of the Jail Health Program (JHP) at the Whatcom County Jail and Work Center. The JHP is a team of health care professionals consisting of nurses, a nurse program manager and medical assistants. The JHP is responsible to coordinate the delivery of health care to the inmates at the Whatcom County Corrections Facilities. The activities of the JHP shall be limited to providing or facilitating direct medical, psychiatric or dental care to the inmates housed at either facility.

**Term of Contract:** 1 year  
**Expiration Date:** December 31, 2015

**Contract Routing:**  
1. Prepared by: LR  
2. Attorney signoff:  
3. AS Finance reviewed:  
4. IT reviewed (if IT related):  
5. Contractor signed: ✓  
6. Submitted to Exec.: ✓  
7. Council approved (if necessary):  
8. Executive signed:  
9. Original to Council:  

**Contracts that require Council Approval (incl. agenda bill & memo):**  
- Professional Services Agreement above $20,000.  
- Bid is more than $50,000.  
- Amendments that have either an increase greater than 10% or provide a $10,000 increase in amount (whichever is greater)

**RENEWALS:** Council approval is not required when exercising an option to renew that is provided in the original contract.

**Last Edited:** 060414
CONTRACT FOR SERVICES AGREEMENT  
For Nursing Services at the Whatcom County Jail and Work Center  

Northwest Regional Council, hereinafter called Contractor, and Whatcom County, hereinafter referred to as County, agree and contract as set forth in this Agreement, including:  

General Conditions, pp. 3 to 7,  
Exhibit A (Scope of Work), pp. 8 to 10,  
Exhibit B (Compensation), pp. 11 to 11,  

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 1st of January, 2015, regardless of date of signature and shall terminate on the 31st day of December, 2015. The term of this Agreement may be renewed for up to four (4) one-year terms for a total of five (5) years by mutual agreement of the parties. Notice of intent to extend the Agreement shall be presented in writing by either party on or before November 15th of any year.  

The general purpose or objective of this Agreement is to provide nursing services and Jail Health Program oversight for the Whatcom County Jail and Work Center, 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 this agreement shall not exceed $1,082,800.00  
The Contract Number, set forth above, shall be included on all billings or correspondence in connection therewith.  

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

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

CONTRACTOR:  

Northwest Regional Council  

[Signature]

Dan Murphy, Executive Director  

STATE OF WASHINGTON ) ) ss.  

COUNTY OF )  

On this day of , 20 before me personally appeared Dan Murphy to me known to be the Executive Director of Northwest Regional Council and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof. 

[Signature]

LESLEY G. MORRISON  
NOTARY PUBLIC  
STATE OF WASHINGTON  
09.13.2015.  

1 Nursing Services
WHATCOM COUNTY:
Recommended for Approval:

[Signature] 11/24/14
Sheriff Bill Elfo  Date

Approved as to form:

[Signature] 11/25/14
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 _________, 20 ____, before me personally appeared Jack Louws, to me known to be the Executive of Whatcom County, who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

NOTARY PUBLIC in and for the State of Washington, residing at ______________. My commission expires ______________.

CONTRACTOR INFORMATION:

Northwest Regional Council
Dan Murphy, Executive Director

Address:
600 Lakeway Drive, Suite 100
Bellingham, WA 98225

Mailing Address:
Same as above

Contact Phone: 360-676-6749

Contact Fax: 360-738-2451

Contact Email: MurphyDK@dshs.wa.gov
GENERAL CONDITIONS

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.

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.

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, after providing notice of such default to the Contractor and fifteen (15) days to cure such default, terminate the contract by depositing written notice to the Contractor in the U.S. mail, first class postage prepaid, 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 for work not performed or where payment is withheld under Section 22.1.

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."

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 County may determine the amount necessary to cure the default. On cure of any default by Contractor, County shall pay Contractor amounts due. 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.

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, and 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 any sales and use and Business and Occupation taxes collected by the State of Washington, as required.
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.

30.3 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.

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; provided however, County recognizes that Contractor provides services to third parties and has confidentiality obligations to those parties that may prevent the Contractor from providing County access to certain information, records, materials and communications to the County. 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 County's 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 County's 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:
Worker's Compensation insurance as required by law.
Property Damage per occurrence - $500,000.00
Comprehensive General Liability & Property Insurance for bodily injury- $1,000,000.00, to include, but not be limited to the following: premises/operation; independent contractors; personal injury; contractual liability with a combined single limit for bodily injury and property damage of $1,000,000.00
The Certificate of such insurance must provide proof of the following: The Certificate must identify and name Whatcom County, its elected officers and employees, as an additional insured. This insurance shall be considered as primary and shall waive all rights of subrogation. The County insurance shall be non-contributory. The Certificate will be attached hereto as Exhibit "C".

34.3 Defense & Indemnity Agreement: To the extent of its comparative liability, each party agrees to indemnify, defend and hold the other party, its elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease or death and for any
damage to or destruction of any property (including the loss of use resulting therefrom) which are alleged or proven to be caused by an act or omission, negligent or otherwise, of its elected and appointed officials, employees, agents or volunteers.

A Party shall not be required to indemnify, defend, or hold the other Party harmless if the claim, damage, loss or expense for personal injury, for any bodily injury, sickness, disease or death or for any damage to or destruction of any property (including the loss of use resulting therefrom) is caused by the sole act or omission of the other Party.

In the event of any concurrent act or omission of the parties, negligent or otherwise, each party shall pay its proportionate share of any damages awarded based upon comparative liability. The parties agree to maintain a consolidated defense to claims made against them and to reserve all indemnity claims against each other until after liability to the claimant and damages, if any, are adjudicated. If any claim is resolved by voluntary settlement and the parties cannot agree upon apportionment of damages and defense costs, they shall submit apportionment to binding arbitration.

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.

Each party shall promptly notify the other of any claim for which indemnity is sought, and shall cooperate fully with the other part in the investigation, defense and settlement of such claim. The indemnifying party shall have the sole discretion to defend and settle such claim.

The County will notify the Contractor if the County becomes aware of a possible claim from any incident involving offender health care or services provided by the Contractor under this contract. The notification must be in writing and in no more than 60 days from the date such claims are filed. Notification must include the names and addresses of the possible claimant and witnesses and a description of the actual or alleged incident, and copies of any demands, notices, summonses, or legal papers received under the claim or suit. The County shall authorize the Contractor to obtain records and other information as needed to investigate any claim or suit where Contractor services may be involved, provided Federal and State medical confidentiality laws are followed as they pertain to offender health records.

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, sexual orientation, 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 sexual orientation, or veteran status, except where such constitutes a bona fide occupational qualification.

Furthermore, in those cases in which the Contractor is governed by such laws, the Contractor shall take affirmative action to insure that applicants are employed, and treated during employment, without regard to their race, color, creed, religion, national origin, sex, age, marital status, disability, sexual orientation 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 any 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, sexual orientation, 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.

36.2 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:

**COUNTY**
Wendy Jones, Chief Corrections Deputy
Whatcom County Sheriff’s Office/Corrections
311 Grand Avenue
Bellingham, WA 98225

**CONTRACTOR**
Dan Murphy, Executive Director
Northwest Regional Council
600 Lakeway Drive, Suite 100
Bellingham, WA 98225

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.

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 one hundred and eighty (180) 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.

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, 22.1, 30.1, 33.1, 34.3, 42.1, and 43.1, if utilized, shall survive, notwithstanding the termination or invalidity of this Agreement for any reason.

45.1 Entire Agreement:
This written Agreement, comprised of the writings signed or otherwise identified and attached hereto, represents the entire Agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.
EXHIBIT "A"
(SCOPE OF WORK)

I. CONTRACTOR RESPONSIBILITIES:
The Contractor shall:

1. Supervise the activities of the Jail Health Program (JHP) at the Whatcom County Jail and Jail Work Center. The JHP is a team of health care professionals consisting of nurses, a nurse program manager, and medical assistants. It is the JHP’s responsibility to coordinate the delivery of health care to the inmates at the Whatcom County Jail and Jail Work Center. The activities of the JHP staff shall be limited to providing or facilitating direct medical, psychiatric or dental care to inmates at the Whatcom County Jail and Jail Work Center.

2. Provide a team of health care professionals to provide health care to the Jail and Jail Work Center inmates for a total of 24,682 hours over the length of the contract. Services will include direct nursing, medication delivery, administrative and limited quality assurance services.

3. Review and follow-up on health receiving/screening information taken at booking by corrections staff. The JHP staff may be available to provide a second level health screen at the time of booking as necessary and as scheduled during the hours provided herein for JHP services.

4. Take health histories of those inmates in need of medical attention; obtain orders for medications for continuing care in the jail setting; suggest special housing arrangements and determine other therapeutic needs of the inmate. The JHP and Corrections Department staff shall work together to meet each inmate’s medical needs.

5. Offer a screening physical examination to inmates prior to, or on, their 14th day of consecutive incarceration. Inmates will be offered an additional screening physical examination after every consecutive 12 months of incarceration.

6. Respond to inmates’ written request for medical attention within 1 working day.

7. Refer inmates in need of medical or psychiatric treatment to the appropriate resource or facility. These include: jail physicians, nurse practitioner, jail dentist, St. Joseph Hospital Emergency Department, Designated Crises Responder (DCR), Community Designated Mental Health Professional (CDMP) or other community resources.

8. Coordinate and schedule jail health care services including clinics conducted by the nurse, physician, psychiatrist, dentist and nurse practitioners.

9. Screen inmates for tuberculosis, as indicated, and refer those with positive results to the Whatcom County Health Department.

10. Work cooperatively with the Whatcom County Health Department to identify, treat and manage communicable diseases, including, but not limited to; notification of all reportable conditions as soon as they are identified, facilitation of identification of potential contacts, assist in testing, coordinating treatment.

11. Screen inmates to determine need for HIV testing, counseling and STD testing, at the 14 day screening physical exam.

12. Maintain a confidential medical record for all inmates treated by the JHP. JHP staff shall augment these records with information from outside providers when necessary.

13. Maintain a manual of health care policies and procedures and treatment guidelines for nurses and medical assistants.

14. Review the jail first aid policies and procedures when requested.
15. Arrange for safe delivery, storage and administration of medications. This shall include making available prescription and non-prescription medication for delivery to inmates. The JHP staff and the Corrections Department share responsibility in providing a medication delivery system.

16. Participate in the orientation of new Corrections Department staff to the JHP and medication administration policies and procedures. Additional in-service education shall be provided to the Corrections Department staff by the JHP staff on issues involving inmate health care as requested.

17. Arrange for monthly medical peer review, nursing quality assurance audit, medication system audit and controlled drug count.

18. Provide JHP services seven days per week, from 7:00 AM to 9:00 PM, including legal holidays. Provided JHP services on Saturday and Sunday are restricted to the main jail, limited clinic services and medication delivery. Nurse’s clinic services for the Work Center are Tuesday through Friday, 4-6 hours a day, on a flexible schedule to accommodate the need. This schedule may be adjusted by mutual agreement between the Corrections Department and the Contractor.

19. Upon request, provide the Corrections Department with a copy of an inmate’s medical record to be transferred with the inmate to a receiving institution.

20. Be administratively responsible to the Administrative Physician and the Contractor’s designated manager. The nurses are subject to all of the Contractor’s personnel procedures. The Contractor shall provide ongoing in-service education and other continuing education to the JHP staff.

21. Arrange for all contract staff to be processed for the Jail and Jail Work Center security clearance prior to regular access to any County Corrections Facility.

22. Arrange the quarterly administrative meetings between the JHP staff, jail staff, chief of corrections, corrections lieutenants, sheriff, physicians, dentists, mental health practitioners, pharmacists and provide documentation of these meetings.

23. Prepare an annual statistical report of services rendered.

24. Assist the Corrections staff in meeting the established standards for Health Services for Jails put forth by the National Commission on Correctional Health Care (NCCHC) in order to maintain the jail’s accreditation by the NCCHC.

II. CORRECTIONS DEPARTMENT STAFF RESPONSIBILITIES:

The Corrections Bureau staff shall:

1. Provide initial health receiving/screening as the inmate is booked into jail and forward this information to the JHP staff for follow up.

2. Determine if an inmate’s request for medical attention is of an emergent nature. Arrange for further medical triage or emergency care through the JHP staff or St. Joseph Hospital Emergency Department. Non-emergent request for health care shall be forwarded directly to the JHP staff.

3. Deliver medications per instructions from the jail health care staff or other qualified medical personnel.

4. Provide transportation of inmates and their medical records to outside facilities when requested by a practitioner or the JHP staff.

5. Notify the JHP staff when an inmate with significant health care needs is transferred to another institution. The JHP staff shall prepare a copy of the inmate’s medical records, documentation of current medications, and other information that shall facilitate the continuity of health care between institutions. If JHP staff is not on duty, the Corrections Bureau staff shall copy and send these documents.
6. Provide names of inmates who have been incarcerated for more than fourteen (14) days due to health care staff for a health screening exam.

7. Provide timely escort of inmates within the jail to promote the smooth operation of various practitioner clinics.

8. Provide security stand-by for inmates needing additional supervision.

9. Forward copies of reports detailing information that may affect inmate’s healthcare to JHP staff.

10. Employ the jail physician and provide oversight and supervision to him/her, who shall supervise the provision of medical services by medical staff.
IV. BILLING FOR SERVICES RENDERED:

1. As consideration for the services provided and described in this agreement, the County agrees to reimburse the Contractor upon submission of an itemized bill for services rendered at the end of each month.

2. The full range of Contractor’s services shall be billed at the rate of $43.87 per hour for each hour worked by each JHP staff member working in the jail, with the maximum annual compensation under this agreement in the amount of ONE MILLION EIGHTY TWO THOUSAND, EIGHT HUNDRED DOLLARS ( $1,082,800).
### WHATCOM COUNTY COUNCIL AGENDA BILL

**NO.** 2014-423

<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>
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<tbody>
<tr>
<td>Originator:</td>
<td>twh</td>
<td>11.17.14</td>
<td></td>
<td>12.9.14</td>
<td>Finance Consent</td>
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<tr>
<td>Division Head:</td>
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<tr>
<td>Dept. Head:</td>
<td></td>
<td>12/01/14</td>
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<tr>
<td>Prosecutor:</td>
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<td>12/1/14</td>
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<td>Purchasing/Budget:</td>
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<tr>
<td>Executive:</td>
<td></td>
<td></td>
<td>12/2/14</td>
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</tbody>
</table>

**TITLE OF DOCUMENT:** Contract Amendment

**ATTACHMENTS:** Memo and contract amendment

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

**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:** (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)

Requesting authorization to enter into a two year agreement with the Northwest Regional Council for the provision of Meals on Wheels program.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:**

Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: www.co.whatcom.wa.us/council.
MEMO:

TO: Whatcom County Council
DATE: November 26, 2014
FROM: Tawni Helms, Administrative Coordinator
RE: Northwest Regional Council – Meals on Wheels Program

Background and Purpose:
The Northwest Regional Council contracts with the Council on Aging to facilitate the Meals on Wheels program to Whatcom County residents. With 70 dedicated volunteers helping prepare, serve and deliver meals the program is able to provide food security to hundreds of home bound individuals in need.

Funding Amount and Source:
The 2015-2016 budget has allocated $40,000 for each year through the General Fund.

Differences from Previous Contract:
Due to deep Federal budget reductions, Council approved an increase in funding in the amount of $30,000 for 2014 (Ord. 2013-069). In previous years the service agreement allowed for $10,000 each year. Since 2014, Federal funding has not been reinstated. $40,000 is required to continue providing Meals on Wheels Services at the same level of service to residents in need.
### WHATCOM COUNTY CONTRACT INFORMATION SHEET

**Originating Department:**

Executive

**Contract or Grant Administrator:**

Tawni Helms/Linda Salas

**Contractor’s / Agency Name:**

Northwest Regional Council-Meals on Wheels

<table>
<thead>
<tr>
<th>Is this a New Contract? Yes ☑ No ☐</th>
<th>If not, is this an Amendment or Renewal to an Existing Contract? Yes ☑ No ☐</th>
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</thead>
<tbody>
<tr>
<td>If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____________________________</td>
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<tr>
<th>Does contract require Council Approval? Yes ☐ No ☑</th>
<th>If No, include WCC: _____________________________</th>
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<tbody>
<tr>
<td>(see Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)</td>
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<tr>
<th>Is this a grant agreement? Yes ☑ No ☐</th>
<th>If yes, grantor agency contract number(s): _____________________________</th>
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<td>CFDA#: _____________________________</td>
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</table>

<table>
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<tr>
<th>Is this contract grant funded? Yes ☑ No ☐</th>
<th>If yes, Whatcom County grant contract number(s): _____________________________</th>
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</table>

<table>
<thead>
<tr>
<th>Is this contract the result of a RFP or Bid process? Yes ☑ No ☐</th>
<th>Contract Cost Center: 4240</th>
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<tbody>
<tr>
<td>If yes, RFP and Bid number(s): _____________________________</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Is this agreement excluded from E-Verify? Yes ☑ No ☐</th>
<th>If no, include Attachment D Contractor Declaration form.</th>
</tr>
</thead>
</table>

If YES, indicate exclusion(s) below:

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

<table>
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<th>Contract Amount: (sum of original contract amount and any prior amendments): $ 80,000</th>
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<tbody>
<tr>
<td>This Amendment Amount: $ _____________________________</td>
</tr>
<tr>
<td>Total Amended Amount: $ _____________________________</td>
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</table>

**Summary of Scope:** Funding to support Meals on Wheels services as administered by Northwest Regional Council.

**Term of Contract:** January 1, 2015

**Expiration Date:** December 31, 2016

<table>
<thead>
<tr>
<th>Contract Routing:</th>
<th>Prepared by: Linda Salas</th>
<th>Date: 11/7/14</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Prepared by:</td>
<td>Linda Salas</td>
<td>Date: 11/7/14</td>
</tr>
<tr>
<td>2. Attorney signoff:</td>
<td>Daniel L. Edson</td>
<td>Date: 13/1/14</td>
</tr>
<tr>
<td>3. AS Finance reviewed:</td>
<td></td>
<td>Date: 12/1/14</td>
</tr>
<tr>
<td>4. IT reviewed (if IT related):</td>
<td></td>
<td>Date:</td>
</tr>
<tr>
<td>5. Contractor signed:</td>
<td></td>
<td>Date:</td>
</tr>
<tr>
<td>6. Submitted to Exec.:</td>
<td></td>
<td>Date: 12/1/14</td>
</tr>
<tr>
<td>7. Council approved (if necessary):</td>
<td></td>
<td>Date:</td>
</tr>
<tr>
<td>8. Executive signed:</td>
<td></td>
<td>Date:</td>
</tr>
<tr>
<td>9. Original to Council:</td>
<td></td>
<td>Date:</td>
</tr>
</tbody>
</table>

**Last Edited 060414**
CONTRACT FOR SERVICES
NORTHWEST REGIONAL COUNCIL - MEALS ON WHEELS

Northwest Regional Council, 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 9,
Exhibit A (Scope of Work), pp. 10,
Exhibit B (Compensation), pp. 11.
Exhibit C (Certificate of Insurance).

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

The term of this Agreement shall commence on the 1st day of January, 2015, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 31st day of December, 2016.

The general purpose or objective of this Agreement is to: support Meals on Wheels Services as administered by Northwest Regional Council, 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 $80,000 ($40,000 for year one (2015) and $40,000 for year two (2016)). The Contract Number, set forth above, shall be included on all billings or correspondence in connection therewith.

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

IN WITNESS WHEREOF, the parties have executed this Agreement this ______ day of __________________, 20____.

CONTRACTOR:
Northwest Regional Council

_________________________________________
Dan Murphy, Executive Director

STATE OF WASHINGTON
) ss.
COUNTY OF WHATCOM

On this ______ day of __________________, 20____, before me personally appeared Dan Murphy, to me known to be the Executive Director of Northwest Regional Council and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

_________________________________________
NOTARY PUBLIC in and for the State of Washington, residing at __________________. My commission expires __________________.
WHATCOM COUNTY:

Approved as to form:

Daniel L. Gibson 12/01/14
Prosecuting Attorney Date

Approved:
Accepted for Whatcom County:

By: ____________________________
Jack Louws, Whatcom County Executive

STATE OF WASHINGTON )
COUNTY OF WHATCOM ) ss

On this ______ day of __________, 20______, before me personally appeared Jack Louws, to me known to be the Executive of Whatcom County, who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

__________________________________________
NOTARY PUBLIC in and for the State of Washington, residing at
________________________. My commission expires ____________________

CONTRACTOR INFORMATION:

NORTHWEST REGIONAL COUNCIL

Dan Murphy, Executive Director

600 Lakeway Drive
Bellingham, WA 98225

Contact Phone:  360.676.6749
Contact Fax:  360.738.2451
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 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. 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:
All writings, programs, data, public records or other materials prepared by the Contractor and/or its consultants or subcontractors, in connection with performance of this Agreement, shall be the sole and absolute property of the County.

31.2 Patent/Copyright Infringement:
Contractor will defend and indemnify the County from any claimed action, cause or demand brought against the County, to the extent such action is based on the claim that information supplied by the Contractor infringes any patent or copyright. The Contractor will pay those costs and damages attributable to any such claims that are finally awarded against the County in any action. Such defense and payments are conditioned upon the following:
A. The Contractor shall be notified promptly in writing by the County of any notice of such claim.
B. Contractor shall have the right, hereunder, at its option and expense, to obtain for the County the right to continue using the information, in the event such claim of infringement, is made, provided no reduction in performance or loss results to the County.

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

33.1 Right to Review:
This contract is subject to review by any Federal, State or County auditor. The County or its designee shall have the right to review and monitor the financial and service components of this program by whatever means are deemed expedient by the Administrative Officer or by the County Auditor's Office. Such review may occur with or without notice and may include, but is not limited to, on-site inspection by County agents or employees, inspection of all records or other materials which the County deems pertinent to the Agreement and its performance, and any 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 commercial general liability insurance with the following minimums:
Property Damage - $500,000.00 per occurrence;
Bodily Injury- $1,000,000.00 per occurrence.

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 non-contributory, and shall waive all rights of subrogation. The County insurance shall not serve as a source of contribution.

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:
Contract for Services
Northwest Regional Council – Meals on Wheels
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:
Contractor irrevocably waives any existing rights which it may have, by contract or otherwise, to require another person or corporation to refrain from submitting a proposal to or performing work or providing supplies to the County, and contractor further promises that it will not in the future, directly or indirectly, induce or solicit any person or corporation to refrain from submitting a bid or proposal to or from performing work or providing supplies to the County.

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

37.1 Administration of Contract:
This Agreement shall be subject to all laws, rules, and regulations of the United States of America, the State of Washington, and political subdivisions of the State of Washington. The Contractor also agrees to comply with applicable federal, state, county or municipal standards for licensing, certification and operation of facilities and programs, and accreditation and licensing of individuals.
The County hereby appoints, and the Contractor hereby accepts, the Whatcom County Executive, and his or her designee, as the County’s representative, hereinafter referred to as the Administrative Officer, for the purposes of administering the provisions of this Agreement, including the County’s right to receive and act on all reports and documents, and any auditing performed by the County related to this Agreement. The Administrative Officer for purposes of this agreement is:

Linda Salas, Executive Secretary
Whatcom County Executive’s Office
311 Grand Avenue, Suite 108
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.

38.1 Certification of Public Works Contractor’s Status under State Law:
Contractor certifies that it has fully met the responsibility criteria required of public works contractors under RCW 39.04.350 (1), which include: (a) having a certificate of registration in compliance with RCW 18.27; (b) having a current state unified business identifier number; (c) if applicable, having industrial insurance coverage for its employees working in Washington as required in Title 51 RCW, an employment security department number as required in Title 50 RCW, and a state excise tax registration number as required in Title 82 RCW; and (d) not being disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065 (3).

38.2 Certification Regarding Federal Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions:
The Contractor further certifies, by executing this contract, that neither it nor its principles is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or Agency.

The Contractor also agrees that it shall not knowingly enter into any lower tier covered transactions (a transaction between the Contractor and any other person) with a person who is proposed for debarment, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, and the Contractor agrees to include this clause titled "Certification Regarding Federal Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction" without modification, in all lower tier covered transactions and in all solicitations for lower tier transactions.

The "General Service Administration List of Parties Excluded from Federal Procurement or Non-procurement Programs" is available to research this information at http://epis.anet.gov/.

38.3 E-Verify:
The E-Verify contractor program for Whatcom County applies to contracts of $100,000 or more and sub contracts for $25,000 or more if the primary contract is for $100,000 or more. Contractor represents and warrants that it will, for at least the duration of this contract, register and participate in the status verification system for all newly hired employees. The term “employee” as used herein means any person that is hired to perform work for Whatcom County. As used herein, “status verification system” means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor/Seller agrees to maintain records of such compliance and, upon request of the County, to provide a copy of each such verification to the County. Contractor/Seller further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Washington. Contractor/Seller understands and agrees that any breach of these warranties may subject Contractor/Seller to the following: (a) termination of this Agreement and ineligibility for any Whatcom County contract for up to three (3) years, with notice of such cancellation/termination being made public. In the event of such termination/cancellation, Contractor/Seller would also be liable for any additional costs incurred by the County due to contract cancellation or loss of license or permit." Contractor will review and enroll in the E-Verify program through this website: www.uscis.gov

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

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

40.2 Contractor Commitments, Warranties and Representations:
Any written commitment received from the Contractor concerning this Agreement shall be binding upon the Contractor, unless otherwise specifically provided herein with reference to this paragraph. Failure of the Contractor to fulfill such a commitment shall render the Contractor liable for damages to the County. A commitment includes, but is not limited to, any representation made prior to execution of this Agreement, whether or not incorporated elsewhere herein by reference, as to performance of services or equipment, prices or options for future acquisition to remain in effect for a fixed period, or warranties.

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

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

42.1 Disputes:

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

b. Notice of Potential Claims:
The Contractor shall not be entitled to additional compensation which otherwise may be payable, or to extension of time for (1) any act or failure to act by the Administrative Officer or the County, or (2) the happening of any event or occurrence, unless the Contractor has given the County a written Notice of Potential Claim within ten (10) days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the County. The written Notice of Potential Claim shall set forth the reasons for which the Contractor believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. Contractor shall keep full and complete daily records of the work performed, labor and material used, and all costs and additional time claimed to be additional.

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

d. Arbitration:
Other than claims for injunctive relief brought by a party hereto (which may be brought either in court or pursuant to this arbitration provision), and consistent with the provisions hereinafter, any claim, dispute or controversy between the parties under, arising out of, or related to this Agreement or otherwise, including issues of specific performance, shall be determined by arbitration in Bellingham, Washington, under the applicable American Arbitration Association (AAA) rules in effect on the date hereof, as modified by this Agreement. There shall be one arbitrator selected by the parties within ten (10) days of the arbitration demand, or if not, by the AAA or any other group having similar credentials. Any issue about whether a claim is covered by this Agreement shall be determined by the arbitrator. The arbitrator shall apply substantive law and may award injunctive relief, equitable relief (including specific performance), or any other remedy available from a judge, including expenses, costs and attorney fees to the prevailing party and pre-award interest, but shall not have the power to award punitive damages. The decision of the arbitrator shall be final and binding and an order confirming the award or judgment upon the award may be entered in any court having jurisdiction. The parties agree that the decision of the arbitrator shall be the sole and exclusive remedy between them regarding any dispute presented or pled before the arbitrator. At the request of either party made not later than forty-five (45) days after the arbitration demand, the parties agree to submit the dispute to nonbinding mediation, which shall not delay the arbitration hearing date; provided, that either party may decline to mediate and proceed with arbitration.

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

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

45.1 **Entire Agreement:**
This written Agreement, comprised of the writings signed or otherwise identified and attached hereto, represents the entire Agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.
EXHIBIT "A"
(SCOPE OF WORK)

Funds will be used by Northwest Regional Council for support services for the Meals on Wheels meal program:

**Meals on Wheels Program**

It is expected that this $80,000 funding support will be used to purchase approximately 3,900 home delivered meals annually for 2015 and 2016 respectively for eligible Whatcom County residents. The cost of these meals is budgeted at approximately $2.56 per meal. Meals on Wheels provides one nutritious meal per day, tailored to meet Daily Recommended Intakes of the average senior (age 51-70 +). Each client is assessed for eligibility, vulnerability, food security and nutritional risk by our registered dietitian. If needed the participant may be referred to appropriate services to assure the senior can remain independent. In addition, the senior has contact with either a volunteer delivery driver or a staff member at least weekly. Some of participants are recovering from an illness or returning home after a stay in a nursing facility or hospital and need meals for a short time while recovering. The Meals on Wheels program allows the majority of our participants to remain in their homes an average of 5 years before needing to move to a skilled nursing facility.

The Nutrition Program is extremely cost effective, 83% of our staff are unpaid volunteers. We have 70 dedicated volunteers helping prepare, serve and deliver meals.

The $80,000 from Whatcom County will help us reach goals to increase food security, keep individuals independent, increase nutritive intake of home bound individuals and improve the quality of lives of seniors in Whatcom County.

**Goal: Increase Food Security:**
The delivery of the meal to a person's home decreases the incidents of missed or skipped meals. Meals on Wheels provides nutrient dense meals for participants who otherwise are unable to purchase nutritionally acceptable foods due to lack of adequate income. 50% of our participants will have increased Food Security.

**Goal: Remain independent:**
Receiving Meals on Wheels eliminates nearly all the steps between shopping and eating. Preparing meals can pose a physical and cognitive challenge for seniors. Receiving a prepared meal removes a huge burden for some individuals. Since our program is closely tied to the aging network, we refer individuals to other community services as needs are identified during assessments by our registered dietitian. 100% of our participants will be able to remain independent and in their own homes while participating in the program.

**Goal: Increase Nutrient Intake:**
Individuals receiving Meals on Wheels eat more fruits, vegetables, whole grains, calcium enriched foods and high protein foods. Participants meet or exceed the Daily Recommended Intakes (DRI's) for most nutrients. Participants' nutritional risk scores decrease the first year on the program. Nutritional risk scores are directly related to eating more fruits, vegetables, calcium enriched foods and high protein foods. 80% of our participants' diets will contain more servings of fruits, vegetables, calcium enriched foods and higher protein foods than when they entered the program.
EXHIBIT "B"
(COMPSENSATION)

The maximum consideration for this contract is $80,000 ($40,000 for year one (2015) and $40,000 for year two (2016). The Contract Number shall be included on all billings or correspondence.

NWRC will submit invoices to the Whatcom County Executive’s office (no more frequently than one time per month). Invoices will detail services provided by NWRC for the Meals on Wheels Program for seniors in Whatcom County, as outlined in Exhibit A.

With each invoice submitted to Whatcom County, NWRC will include receipts or copies of invoices paid by NWRC showing services provided and, where applicable, the number of individuals served.
**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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<tbody>
<tr>
<td>Originator:</td>
<td>twh</td>
<td>11.17.19</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>
<td>D&lt;</td>
<td>12/01/14</td>
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<tr>
<td>Purchasing/Budget:</td>
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<td>12/14</td>
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<td>Executive:</td>
<td></td>
<td>12/2/14</td>
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</table>

**TITLE OF DOCUMENT:** Contract for Services with the Volunteer Center of Whatcom County

**ATTACHMENTS:**

1. Memo, Contract

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

**SEPA review completed?** ( ) Yes ( ) NO

**Should Clerk schedule a hearing?** ( ) Yes ( ) NO

**Requested Date:**

**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:** (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)

The Volunteer Center of Whatcom County will provide support services to Whatcom County volunteer coordinators and volunteers through referrals, training, technical assistance and volunteer mobilization. The contractor will also directly coordinate the volunteer Docent program for Hovander House at Hovander Homestead Park.

**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, County Executive
FROM: Tawni Helms, Administrative Coordinator
RE: Contract for Services with the Volunteer Center of Whatcom County
DATE: November 17, 2014

Enclosed are two (2) originals of contract for Services Agreement between Whatcom County and the Volunteer Center of Whatcom County for your review and signature.

- **Background and Purpose**
The Volunteer Center of Whatcom County will provide support services to Whatcom County volunteer coordinators and volunteers through referrals, training, technical assistance and volunteer mobilization. The contractor will also directly coordinate the volunteer Docent program for Hovander House at Hovander Homestead Park.

- **Funding Amount and Source**
From the General Fund, Whatcom County will pay the Volunteer Center of Whatcom County up to $60,000 ($30,000 in 2015 and $30,000 in 2016) for the services outlined in Exhibit A Scope of Work.

- **Differences from Previous Contract**
The 2015-2016 contract will reimburse the Volunteer Center of Whatcom County for volunteer support services as described in the Scope of Work. This is a more direct way of accounting for services rendered to the County than documenting volunteer hours as previously outlined in the scope of work.

Please contact Tawni Helms at extension 50124, 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>Executive Office</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract or Grant Administrator:</td>
<td>Tawni Helms</td>
</tr>
<tr>
<td>Contractor's / Agency Name:</td>
<td>Volunteer Center of Whatcom County</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Is this a New Contract?</th>
<th>No ☐</th>
<th>Yes ☒</th>
<th>If not, is this an Amendment or Renewal to an Existing Contract?</th>
<th>☐</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes ☒</td>
<td>No ☐</td>
<td></td>
<td>If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #:</td>
<td></td>
</tr>
<tr>
<td>Does contract require Council Approval?</td>
<td>Yes ☒</td>
<td>No ☐</td>
<td>If No, include WCC:</td>
<td>(see Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)</td>
</tr>
<tr>
<td>Is this a grant agreement?</td>
<td>Yes ☐</td>
<td>No ☒</td>
<td>If yes, grantor agency contract number(s):</td>
<td>CFDA#:</td>
</tr>
<tr>
<td>Is this contract grant funded?</td>
<td>Yes ☐</td>
<td>No ☒</td>
<td>If yes, Whatcom County grant contract number(s):</td>
<td></td>
</tr>
<tr>
<td>Is this contract the result of a RFP or Bid process?</td>
<td>Yes ☐</td>
<td>No ☒</td>
<td>If yes, RFP and Bid number(s):</td>
<td>Contract Cost Center: 4440</td>
</tr>
<tr>
<td>Is this agreement excluded from E-Verify?</td>
<td>No ☐</td>
<td>Yes ☒</td>
<td>If no, include Attachment D Contractor Declaration form.</td>
<td></td>
</tr>
</tbody>
</table>

If YES, indicate exclusion(s) below:
- ☐ Professional services agreement for certified/licensed professional.
- ☒ Contract work is for less than $100,000.
- ☐ Contract work is for less than 120 days.
- ☐ Interlocal Agreement (between Governments).
- ☐ Contract for Commercial off the shelf items (COTS).
- ☐ Work related subcontract less than $25,000.
- ☐ Public Works - Local Agency/Federally Funded FHWA.

**Contract Amount:**
- **(sum of original contract amount and any prior amendments):**
  - $ 60,000

**This Amendment Amount:**
- $ __________

**Total Amended Amount:**
- $ __________

**Contracts that require Council Approval (incl. agenda bill & memo)**
- Professional Services Agreement above $20,000.
- Bid is more than $50,000.
- Amendments that have either an increase greater than 10% or provide a $10,000 increase in amount (whichever is greater)

**RENEWALS:** Council approval is not required when exercising an option to renew that is provided in the original contract.

**Summary of Scope:** The Volunteer Center of Whatcom County will provide support services to Whatcom County volunteer coordinators and volunteers through referrals, training, technical assistance and volunteer mobilization. The contract will also directly coordinate the volunteer docent program for Hovander Homestead Park.

**Term of Contract:** 2 years

**Expiration Date:** 12/31/16

**Contract Routing:**
1. Prepared by: twh
2. Attorney signoff: Daniel L. Gibson
3. AS Finance reviewed:
4. IT reviewed (if IT related):
5. Contractor signed:
6. Submitted to Exec.:
7. Council approved (if necessary):
8. Executive signed:
9. Original to Council:

**Date:** 11.17.14
**Date:** 12/01/14
**Last Edited 060414**
Volunteer Center 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 7
Exhibit A (Scope of Work), pp. 8
Exhibit B (Compensation), pp. 9
Exhibit C (Certificate of Insurance)

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

The term of this Agreement shall commence on the 1st day of January, 2014, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 31st day of December, 2016.

The general purpose or objective of this Agreement is to: provide support for volunteer coordinators and volunteers of Whatcom County as well as coordinate the volunteer docent program at Hovander Homestead Park, 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 $60,000. 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 ___ day of ________________, 20___.

CONTRACTOR:

Volunteer Center of Whatcom County

[Signature]
Angela Murray
Executive Director

STATE OF WASHINGTON

COUNTY OF WHATCOM

On this 1st day of Dec, 2014, before me personally appeared Angela Murray to me known to be the Executive Director of Volunteer Center of Whatcom County and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

[Signature]
LINDA M. SALAS
NOTARY PUBLIC in and for the State of Washington, residing at

My commission expires 3/29/17.
WHATCOM COUNTY:

Approved as to form:

[Signature]
Prosecuting Attorney

Approved:
Accepted for Whatcom County:

By: ____________________________
Jack Louws, Whatcom County Executive

STATE OF WASHINGTON  )
COUNTY OF WHATCOM    ) ss

On this ________ day of __________, 20 __, before me personally appeared Jack Louws, to me known to be the Executive of Whatcom County, who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

______________________________
NOTARY PUBLIC in and for the State of Washington, residing at
______________________________
My commission expires ____________

CONTRACTOR INFORMATION:

The Volunteer Center of Whatcom County

Angela Murray, Executive Director

Address:
301 W. Holly Street #06
Bellingham, WA 98225

Mailing Address:
Same

Contact Name: Angela Murray, Executive Director

Contact Phone: 360.734.3055

Contact Email: angelam@whatcomvolunteer.org
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: Not Applicable

11.1 Termination for Default:
If the Contractor defaults by failing to perform any of the obligations of the contract or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the County may, by depositing written notice to the Contractor in the U.S. mail, first class postage prepaid, terminate the contract, and at the County's option, obtain performance of the work elsewhere. Termination shall be effective upon Contractor's receipt of the written notice, or within three (3) days of the mailing of the notice, whichever occurs first. If the contract is terminated for default, the Contractor shall not be entitled to receive any further payments under the contract until all work called for has been fully performed. Any extra cost or damage to the County resulting from such default(s) shall be deducted from any money due or coming due to the Contractor. The Contractor shall bear any extra expenses incurred by the County in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the County by reason of such default.

11.2 Termination for Reduction in Funding: Not Applicable

11.3 Termination for Public Convenience: Not Applicable

Series 20-29: Provisions Related to Consideration and Payments

20.1 Accounting and Payment for Contractor Services:
Payment to the Contractor for services rendered under this Agreement shall be as set forth in Exhibit "B." Where Exhibit "B" requires payments by the County, payment shall be based upon written claims supported, unless otherwise provided in Exhibit "B," by documentation of units of work actually performed and amounts earned, including, where appropriate, the actual number of days worked each month, total number of hours for the month, and the total dollar payment requested, so as to comply with municipal auditing requirements.

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

21.1 Taxes:
The Contractor understands and acknowledges that the County will not withhold Federal or State income taxes. Where required by State or Federal law, the Contractor authorizes the County to withhold for any taxes other than income taxes (i.e., Medicare). All compensation received by the Contractor will be reported to the Internal Revenue Service at the end of the calendar year in accordance with the applicable IRS regulations. It is the responsibility of the Contractor to make the necessary estimated tax payments throughout the year, if any, and the Contractor is solely liable for any tax obligation arising from the Contractor's performance of this Agreement. The Contractor hereby agrees to indemnify the County against any demand to pay taxes arising from the Contractor's failure to pay taxes on compensation earned pursuant to this Agreement.
The County will pay sales and use taxes imposed on goods or services acquired hereunder as required by law. The Contractor must pay all other taxes, including, but not limited to, Business and Occupation Tax, taxes based on the Contractor's gross or net income, or personal property to which the County does not hold title. The County is exempt from Federal Excise Tax.

22.1 **Withholding Payment:** Not Applicable

23.1 **Labor Standards:** Not Applicable

**Series 30-39: Provisions Related to Administration of Agreement**

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

The Contractor acknowledges that the entire compensation for this Agreement is specified in Exhibit "B" and the Contractor is not entitled to any benefits including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, or any other rights or privileges afforded to employees of the County. The Contractor represents that he/she/it maintains a separate place of business, serves clients other than the County, will report all income and expense accrued under this contract to the Internal Revenue Service, 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.

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

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: Not Applicable

34.3 Defense & Indemnity Agreement:
The Contractor agrees to defend, indemnify and save harmless the County, its appointed and elective officers and employees, from and against all loss or expense, including, but not limited to, judgments, settlements, attorneys' fees and costs by reason of any and all claims and demands upon the County, its elected or appointed officials or employees for damages because of personal or bodily injury, including death at any time resulting therefrom, sustained by any person or persons and on account of damage to property, including loss of use thereof, whether such injury to persons or damage to property is due to 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: Not Applicable

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:

Insert here (name, job title, work address)
37.2 Notice: Not Applicable

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.
HOVANDER HOUSE HOMESTEAD PARK DOCENT PROGRAM:
Whatcom Volunteer Center will directly coordinate the volunteer Docent Program at the historic 1903 Hovander House, Hovander Homestead Park as outlined below:

- Recruit, orient, train, track and supervise program volunteers to conduct house tours.
- Schedule and assure a minimum of two (2) adult docents each five hour shift (12:00 – 5:00 p.m.) weekly Friday, Saturday, and Sunday from Memorial Day through Labor Day.
- Prepare an end of season evaluation and volunteer recognition with recommendations for future programming.

VOLUNTEER SUPPORT AND TRAINING:
For all other volunteer programs, Whatcom County will recruit, background check, supervise, track hours and will provide liability and workers' compensation coverage for its volunteers as applicable.

The Volunteer Center of Whatcom County will provide services to support Whatcom County's volunteers and volunteer coordinators:

- Referrals to volunteer opportunities posted on the Whatcom County website. Applicants will submit application directly to Whatcom County and must pass background checks to meet County criteria based on the nature of the position.
- Training, at least one session per quarter, on Volunteer Leader topics to support Whatcom County volunteer coordinators.
  - Supervising and Motivating Volunteers
  - Volunteer Recognition and Retention
  - Evaluating Volunteers
  - Volunteer Coordinators’ Roundtable
  - When Things Don’t Work Out: How to Let a Volunteer Go
- Training for Whatcom County volunteers
  - CPR/First Aid
  - Blood borne Pathogens
  - Stewards of the Light (for volunteers working with children)
  - Disaster Response
  - Basic Emergency Services
  - Table Top Exercises
  - Mental Health Crisis Training
- Volunteer Mobilization in the event of natural disaster or community emergency
  - Establish a volunteer reception center for spontaneous recruitment
  - Draw from a skilled Volunteer Bank of volunteers trained in basic emergency services
  - Offer other support as requested by Whatcom County's Division of Emergency Management (Sheriff’s Office)
- Offer support and technical assistance to Whatcom County government departments interested in identifying new volunteer opportunities
  - Site visit and consultation
  - Writing job descriptions
  - Developing recruitment strategies and postings
  - Opportunities for relevant training (listed above)
- Invite Whatcom County volunteers to participate in community events:
  - Make a Difference Day
  - National Volunteer Week
EXHIBIT "B"
COMPENSATION

HOVANDER HOUSE HOMESTEAD PARK DOCENT PROGRAM:
Whatcom County will pay the Volunteer Center for Whatcom County to directly coordinate the volunteer Docent Program at the historic 1903 Hovander House, Hovander Homestead Park. Whatcom County will pay up $12,000 in 2015 and $12,000 in 2016 for the Hovander House Homestead Park Docent program as listed in Exhibit A.

VOLUNTEER SUPPORT AND TRAINING:
Whatcom County will pay the Volunteer Center of Whatcom County to provide support and training to Whatcom County’s Volunteers and Volunteer Coordinators. Whatcom County will pay up $18,000 each of the contract years for the provision of the services outlined in Exhibit A. The Volunteer Center of Whatcom County will provide monthly reports detailing the services provided as outlined in Exhibit A. Monthly reports will include the number and type of quarterly trainings offered and the number of Whatcom Volunteers who participated in the training, and the Volunteer Coordinators who received and participated in technical assistance activities.

As consideration for the services provided pursuant to Exhibit A, Scope of Work, the county agrees to compensate the contractor according to the hourly rates provided below. Other reasonable expenses incurred in the course of performing the duties herein shall be reimbursed. Mileage shall be reimbursed at the IRS rate and other expenditures such as printing and postage shall be reimbursed at actual cost.

Contractor will invoice monthly. Invoices will include hours work by employee by day together with tasks accomplished. Requests for reimbursement of expenses must be accompanied by copies of paid invoices itemizing costs incurred. Compensation shall not exceed $60,000, $30,000 per year. Any work performed prior to the effective date of this contract or continuing after the completion date of the same unless otherwise agreed upon in writing, will be at the contractor’s expense.

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<th>TVC</th>
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Invoices shall be sent to the Whatcom County Executive’s Office. The Contract Number, set forth above, shall be included on all billings.

*RSVP – Retired and Senior Volunteer Program Director
*ED - Executive Director
*TVC - The Volunteer Connection Director
*Operations – Operations Director
WHATCOM COUNTY COUNCIL AGENDA BILL

CLEARANCES                  Initial     Date       Date Received in Council Office   Agenda Date   Assigned to:
Originator:                -          12/2/2014   
Division Head:             
Dept. Head:                12-2-14      
Prosecutor:                
Purchasing/Budget:         
Executive:                 

TITLE OF DOCUMENT:
Discussion of LIFAC suggested ferry rate changes

ATTACHMENTS:

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

Should Clerk schedule a hearing? (   ) Yes (   ) NO
Requested Date: 

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE: (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)
Discussion of recommendations from the Lummi Island Ferry Advisory Committee regarding proposed modifications to select ferry rates.

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.
PROPOSAL to COUNTY COUNCIL
December 1, 2014

Amendment of Fare Structure Ordinance on Lummi Island Ferry
for Multi-Ride Tickets (core ridership)

LIFAC, after nearly a year of careful, detailed study by multiple sources, including Public Works, and including multiple public sessions, and with further revisions after public input at its November meeting, recommends the following modifications:

1. Passengers/Pedestrians, 25-ride RT ticket - $75.
2. Needs-Based Passengers/Pedestrian, 10-ride RT ticket - $28
3. [Eliminate Needs-Based P/P 25-ride $92 RT ticket.]
4. Post High School 25-ride RT ticket - $50
5. Vehicle/Driver 25-ride RT ticket - $170
6. Vehicle/Driver 10-ride RT ticket - $80
7. Needs-Based Vehicle/Driver 10-ride RT ticket - $60

The recommendations come from work starting last March, using an interactive Excel model originally developed for the 2011 Ferry Task Force and brought forward with 2014 data.

Benefits of the modifications:

• Significant, fiscally responsible relief for the most users.
• Sustains the $1.5 million Ferry Fund, and meets the 55% target applied from fares to overall ferry operations costs.
• LIFAC utilized information from a meeting with Public Works administration and finance personnel, who thoroughly explained the Ferry Fund and other budget practices. PW also submitted data upon request, vital to this process.
• LIFAC considered modifications to cash fares and found those changes would not support the budget requirements. Instead, a modified discount to multi-ride users – a best practice in transportation – does.
• Also, fiscal responsibility does not support an across-the-board fare adjustment. The Ferry Fund has been replenished, and it’s time to provide relief for core ridership.

Sincerely,
Mike McKenzie, Chair, LIFAC
Stu Clark, Vice Chair; Greg Brown, Secretary; Charles Antholt, Robert Busch, Crispin Colburn, Byron Moye
December 1, 2014

TO: County Executive Jack Louws and County Council
cc: Public Works

RE: Thanks for providing a ferry pass for the safety of school children

I learned today that in passing the annual fee schedule for 2015, you made an allowance for a designated supervisory adult to travel without cost on the ferry to accompany elementary- and middle-school students throughout the school year. (I could not find it in the fee schedule document on line, but received confirmation from the Council office.)

After hearing from the Beach Elementary School on the island and from Ferndale School District earlier this year, LIFAC made this proposal. We found it in the best interest of County safety and liability concerns, because the children, some as young as 1st grade, were crossing unaccompanied (albeit, with legal waivers appropriately signed by parents/guardians, and in effect).

My understanding is that, in exercising due diligence, Public Works ferry ops manager Rob Ney discovered that this could be effected by executive order, and that Executive Louws and County Council then worked collaboratively to have this included in the 2015 fee schedule.

Thank you for making this happen. I know that the staff and administration of Beach Elementary School and the families involved have a great sense of relief. And, thank you for the continued open and positive cooperative exchanges with our advisory committee.

Sincerely,
Mike McKenzie, Chair, LIFAC
Charles Antholt
Greg Brown
Robert Busch
Stu Clark
Cris Colburn,
Byron Moye
and if it is too late, this is not critical...just thought it might be a handy frame of reference for everybody if you can squeeze it into the packet with the fare modifications proposal:

**CURRENT FARE STRUCTURE (Base Fare and Current Surcharge Fare and Proposed New Fare)**

- **Passenger/Pedestrian 25 Trip = Base $40 Current $115 Proposed $75**
- **Needs-Based Passenger/Pedestrian 10 Trip = NEW ($2.80 per) (eliminate 25 Trip @ $3.70 per)**
- **Post HS 25 Trip = Base $23 Current $98 Proposed $50**
- **Vehicle/Driver 10 Trip = Base $72 Current $102 Proposed $80**
- **Vehicle/Driver 25 Trip = Base $160 Current $235 Proposed $170**
- **Needs-Based Veh/Dr 10 Trip = Base $36 Current $66 Proposed $60**

Whether it makes it in or not, Dana, thank you for going the extra mile for us.

Enjoy the day,

Mike

979.571.8555

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Be of good cheer,

Mike
# WHATCOM COUNTY COUNCIL AGENDA BILL

**NO.** 2014-331

<table>
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<tr>
<th>CLEARANCES</th>
<th>Initial</th>
<th>Date</th>
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**TITLE OF DOCUMENT:**
Application to rezone 5 acres from Neighborhood Commercial (NC) to Rural General Commercial (RGC) zoning district.

**ATTACHMENTS:**
1. Staff Memo
2. Proposed Ordinance and Exhibit
3. Staff Report
4. Planning Commission minutes

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

1. The Council must hold a hearing if they want to change the Planning Commission’s recommendation (WCC 2.160.100(B)).

**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.)

A proposal to rezone approximately five acres from Neighborhood Commercial (NC) to Rural General Commercial (RGC), located at the northwest corner of Slater and Elder Roads, about five miles west of Interstate 5.

**COMMITTEE ACTION:**
10/14/2014: Held in Planning Committee until October 28, withdrawn from Introduction
11/12/2014: Discussed in Planning and Development Committee

**COUNCIL ACTION:**
10/14/2014: Withdrawn from introduction and held in Committee until October 28 or a later date
10/28/2014: Held until 11/12/14 as per Gary Davis PDS
11/12/2014: Introduced 7-0

**Related County Contract #:**

**Related File Numbers:**
PLN2014-00008

**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

THROUGH: Mark Personius, AICP, Long Range Planning Manager

FROM: Gary Davis, AICP, Senior Planner

DATE: October 28, 2014

SUBJECT: PLN2014-00008 Slater Road Rezone

At its October 14, 2014 meeting the Planning and Development Committee voted to hold the Slater Road rezone application in committee until a future meeting when additional information can be presented. This information includes:

- Details about the proposed configuration of the automobile sales use, as described in neighbor Larry Daugert’s July 11, 2014 comment. Mr. Daugert’s questions concerned:
  - Location of new lot lines as a result of a possible boundary line adjustment
  - Location of the used car sales lot on the site
  - Number of cars to be accommodated
  - Location of any wash or repair facilities
  - Location of a potential single family home
- Information on the applicant’s automobile sales license
- Information on what the applicant was told by PDS staff when the auto sales use was first proposed

The applicant, not PDS, is the source for this information and the applicant has submitted materials in response to the committee’s request (see attached). PDS can provide brief preliminary comments on these materials at the November 12 meeting, but cannot conduct a full site plan review on a use that is not currently legal. Staff has made some minor changes to the draft agreement, clarifying permitted uses, and allowing the County to rescind the rezone if the time limits in the agreement are not met (attached).

As the staff report stated, this application is a quasi-judicial matter per the state’s Appearance of Fairness Doctrine. Quasi-judicial actions are defined to be: "...those actions of the legislative body, planning commission, hearing examiner, zoning adjuster, board of adjustment, or boards which determine the legal rights, duties, or privileges of specific parties in a hearing or other contested case
to engage in ex parte communication when quasi-judicial matters are pending. An ex parte communication is a one-sided discussion between a decision-maker and the proponent or opponent of a particular proposal which takes place outside of the formal hearing process on a quasi-judicial matter. Any communication between any party and a Council member that may have the appearance of or potential to lead to bias or partiality should be disclosed as soon as possible at the quasi-judicial hearing on the matter.¹

For further information on this application, please contact Gary Davis, Senior Planner, at extension 50246.

Attachments:

Applicant's materials
- Conceptual site plan
- Letter from Massad Boulos
- Business licenses

Revised Draft Concomitant Agreement

¹More information on quasi-judicial actions and the Appearance of Fairness Doctrine is available at http://www.mrsc.org/askmrsc/pastingsubject.aspx?sid=2
Dear County Council Members:

I have been a business owner in this neighborhood for twelve plus years and am very invested in my businesses and the community in which we reside. I am the owner of Starvin Sams X1X, a convenience store/gas station located on what has become known as “Jordyn’s Corner”.

Because of our store location we are the “last stop” for many of the people residing on Sandy Point, the local reservation and the surrounding communities. We have developed long standing and friendly relationships with our customers. Many we know on a first name basis. We strive to pass on excellent customer service and great value to all of our clients.

Incidental to our convenience store and gas station, I began selling used cars at this site about six years ago. I have never received a complaint from any of our neighbors. Our MB Motors sign has hung here with never an issue or problem until of late.

This zoning issue came as a complete surprise to me. When we moved forward with the startup of the car lot I enlisted the help of a family member to comply with all of the steps necessary. We applied for and obtained a business/dealer license. See attached. My cousin went to the Whatcom County Planning offices and spoke with a county employee at the counter regarding the property on which we planned to open the lot. He was told that the area was zoned commercial and that a car lot didn’t appear to be a problem. Unfortunately, my cousin cannot recall the name of the employee that he spoke with as it was years ago. We then moved forward and opened the car lot believing we had researched and followed all laws governing this type of business.

Upon hearing the devastating news regarding zoning, I immediately started to research what could be done to keep my car business up and running. I even went so far as to look at other locations where we might be able to move the car lot to if need be. The lease payments and sale prices at these locations were extremely high and not a feasible solution as we are a small enterprise. Most of the revenue from our car sales goes to paying the mortgage on the building and property here and helping to cover my $35,000 overhead. The Lummi Nation’s opening of the gas station on Slater Road near the casino has materially affected our convenience store and gas station operations as the Lummi Nation is able to sell gas and other items at a significantly lower price. After reviewing our options, the most feasible solution for keeping my car business open is to have the property “rezoned” to allow for the car lot.

We recently hired an engineering firm to come up newest forth a design for the car lot which will include buffer zones and landscaping improvements that would buffer our neighbor’s view of our property, but Slater road as well. I have spent a lot of money trying to get this rezoning implemented and at the same time keep my neighbors happy. Closing down my car business would be devastating. I have personally, professionally, and financially invested a lot of time and money over the last six years. The closing down of MB Motors LLC would also force me to lay off at least 5 of my 15 employees. These are jobs available to people that live in this rural area, one of the purposes of the rural business zone that we seek for the property. My employees rely on me for a steady paycheck so that they can provide for their families. So, as you can see, there is a huge “trickledown” effect if we were forced to close.

As a business owner and committed citizen of this neighborhood I value what all of my neighbors think and I am very willing to sit down and discuss what I can do to continue my business operations here and at the same time keep my neighbors happy. I welcome any ideas or thoughts from the local community.
The "rezoning" of the property appears to be the best solution. I hope that we can come to a beneficial resolution.

Sincerely,

Massad Boulos  
Owner/Operator  
Starvin Sams XIX  
MB Motors LLC
M.B. MOTORS LLC
3310 SLATER RD
FERNDALE WA 98248-9011

UNIFIED BUSINESS ID #: 602 957 080
BUSINESS ID #: 1
LOCATION: 1
EXPIRES: 09-30-2015

DOMESTIC LIMITED LIABILITY COMPANY

TAX REGISTRATION
MOTOR VEHICLE DEALER #1331

REGISTERED TRADE NAMES:
M.B. MOTORS LLC

This document lists the registrations, endorsements, and licenses authorized for the business named above. By accepting this document, the licensee certifies the information on the application was complete, true, and accurate to the best of his or her knowledge, and that business will be conducted in compliance with all applicable Washington state, county, and city regulations.

Director, Department of Revenue
M.B. MOTORS LLC
3310 SLATER RD
FERNDAL WA 98248-9011

BUSINESS LICENSE

Domestic Limited Liability Company

M.B. MOTORS LLC
3310 SLATER RD
FERNDAL WA 98248 9011

TAX REGISTRATION
MOTOR VEHICLE DEALER #1331

REGISTERED TRADE NAMES:
M.B. MOTORS LLC

Unified Business ID #: 602 957 080
Business ID #: 1
Location: 1
Expires: 09-30-2014

This document lists the registrations, endorsements, and licenses authorized for the business named above. By accepting this document, the licensee certifies the information on the application was complete, true, and accurate to the best of his or her knowledge, and that business will be conducted in compliance with all applicable Washington state, county, and city regulations.

Director, Department of Revenue
M.B. MOTORS LLC
3310 SLATER RD
FERNDALE WA 98248-9011

BUSINESS LICENSE

Domestic Limited Liability Company

M.B. MOTORS LLC
3310 SLATER RD
FERNDALE WA 98248 9011

TAX REGISTRATION
MOTOR VEHICLE DEALER #1331

REGISTERED TRADE NAMES:
M.B. MOTORS LLC

Unified Business ID #: 602 957 080
Business ID #: 1
Location: 1
Expires: 09-30-2013

This document lists the registrations, endorsements, and licenses authorized for the business named above. By accepting this document, the licensee certifies the information on the application was complete, true, and accurate to the best of his or her knowledge, and that business will be conducted in compliance with all applicable Washington state, county, and city regulations.

Director, Department of Revenue

Brad Flaherty
BUSINESS LICENSE

STATE OF WASHINGTON

Domestic Limited Liability Company

M.B. MOTORS LLC
3310 SLATER RD
FERNDALE WA 98248-9011

TAX REGISTRATION
MOTOR VEHICLE DEALER #1331

REGISTERED TRADE NAMES:
M.B. MOTORS LLC

Unified Business ID #: 602 957 080
Business ID #: 1
Location: 1
Expires: 09-30-2014

This document lists the registrations, endorsements, and licenses authorized for the business named above. By accepting this document, the licensee certifies the information on the application was complete, true, and accurate to the best of his or her knowledge, and that business will be conducted in compliance with all applicable Washington state, county, and city regulations.

Director, Department of Revenue
M.B. MOTORS LLC
3310 SLATER RD
FERNDALE WA 98248-9011

State of Washington

BUSINESS LICENSE

Domestic Limited Liability Company

M.B. MOTORS LLC
3310 SLATER RD
FERNDALE WA 98248-9011

TAX REGISTRATION
MOTOR VEHICLE DEALER #1331

REGISTERED TRADE NAMES:
M.B. MOTORS LLC

Unified Business ID #: 602 957 080
Business ID #: 1
Location: 1
Expires: 09-30-2012

This document lists the registrations, endorsements, and licenses authorized for the business named above. By accepting this document, the licensee certifies the information on the application was complete, true, and accurate to the best of his or her knowledge, and that business will be conducted in compliance with all applicable Washington state, county, and city regulations.

[Signature]
Director, Department of Revenue
M.B. MOTORS LLC
3310 SLATER RD
FERNDALE WA 98248-9011

MASTERCARD SERVICE
P.O. Box 9034 • Olympia, WA 98507-9034 • (800) 634-1400

REGISTRATIONS AND LICENSES

Domestic Limited Liability Company

Unified Business ID #: 602 957 080
Business ID #: 1
Location: 1
Expires: 09-30-2011

TAX REGISTRATION
MOTOR VEHICLE DEALER #1331

REGISTERED TRADE NAMES:
M.B. MOTORS LLC

The licensee named above has been issued the business registrations or licenses listed. By accepting this document, the licensee certifies the information provided on the application for these licenses was complete, true, and accurate to the best of their knowledge. Any violations will be conducted in compliance with all applicable Washington state, county, and city regulations.

Elizabeth A. Luce
Director, Department of Licensing
M.B. MOTORS LLC
3510 SLATER RD
FERNDALE WA 98248 9011

TAX REGISTRATION
MOTOR VEHICLE DEALER #1331

REGISTERED TRADE NAMES:
M.B. MOTORS LLC

The licensee named above has been issued the business registrations or licenses listed. By accepting this document the licensee certifies the information provided on the application for these licenses was complete, true, and accurate to the best of his or her knowledge and that the business will be conducted in compliance with all applicable Washington state, county, and city regulations.

Elizabeth A. Luce
Director, Department of Licensing
M.B. MOTORS LLC
3310 SLATER RD
FERNDALE WA 98248-9011

MASTER LICENSE SERVICE
PO Box 9034 • Olympia, WA 98507-9034 • (360) 664-1400

REGISTRATIONS AND LICENSES

Domestic Limited Liability Company

M.B. MOTORS LLC
3310 SLATER RD
FERNDALE WA 98248-9011

TAX REGISTRATION

REGISTERED TRADE NAMES:
M.B. MOTORS LLC

Unified Business ID #: 602 957 000
Business ID #: 1
Location: 1

The licensee named above has been issued the business registrations and licenses listed. By accepting this document the licensee certifies the information provided on the application for these licenses was complete, true, and accurate to the best of his or her knowledge, and that business will be conducted in compliance with all applicable Washington state, county, and city regulations.

[Signature]
Department of Licensing
AGREEMENT

This agreement (herein “Agreement”) is made and entered into this _______ day of ________________, 2014, by and between Larry M. Jordan and SYB Holdings Co., Inc. (herein “Owners”) and Whatcom County, a subdivision of the State of Washington (herein “County”).

RECITALS

The Owners are the owners of certain real property (herein the “Property”) which is more particularly described on Exhibit A, attached hereto and incorporated herein, and which is the subject of an application for rezone from Neighborhood Commercial (NC) to Rural General Commercial (RGC) zoning district. The Comprehensive Plan designation for the Property is Rural Business.

A determination of nonsignificance for the rezone proposal was issued by the SEPA Official on May 29, 2014. Notice of the July 10, 2014 public hearing of the Whatcom County Planning Commission was mailed to the Owners and property owners within 1,000 feet of the Property and posted on the Property on June 26, 2014.

On July 10, 2014 the Planning Commission held a public hearing, considered input from the staff, applicant, and neighbors, and made no recommendation. The Whatcom County Council held a second public hearing on October 28 ________________, 2014 and approved the rezone subject to a concomitant agreement.

The County has entered into this agreement with the Owners concurrently with the rezone of the Property to RGC. The purpose of this agreement to limit the permitted uses and to ensure compliance with all applicable development regulations. It is not intended that this Agreement would modify or eliminate other relevant requirements imposed by other applicable ordinance and regulations.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, and in consideration of the rezone of the Property as discussed above, the parties covenant and agree as follows:

I. Rezone. Concurrently with the approval of this Agreement, the Whatcom County Council shall rezone the Property to RGC, subject to the terms and conditions of this Agreement. Upon approval of the rezone, this agreement shall be recorded as a covenant running with the land.

II. Permitted Uses. Permitted uses on the property shall include all permitted uses in the NC district (WCC 20.60.050), and the following uses: Automobile service stations, Rental storage establishments, Single family residences, and Automobile sales, excluding new buildings. Accessory and
conditional uses listed in WCC 20.60.100 and 20.60.150 are also permitted on an accessory and conditional basis, respectively.

III. Prohibited Uses. Subject to section II above, prohibited uses shall include all permitted uses in the RGC district (WCC 20.59.050) except that the following uses shall be permitted uses:

a. Automobile service stations,

b. Rental storage establishments,

c. Automobile sales, excluding new buildings, and

d. a single family residence (WCC 20.59.055).

IV. Compliance: The use of the property for automobile sales or any use not legally established shall be prohibited until a Pre-Application Meeting with Whatcom County Planning and Development Services (PDS) has been held, the required permits issued and final approval for all permits including a Certificate of Occupancy has been issued. The applicant shall comply with all Whatcom County Code requirements including but not limited to the Whatcom County Development Standards. Improvements that may be required include but are not limited to adherence to setbacks, fire flow, access, landscaping, and stormwater.

V. Pre-Application Meeting and Required Permits: For the purpose of this agreement, “days” shall be calculated as calendar days. The Owners and/or authorized agent shall comply with the following:

1. The Owners shall submit to Whatcom County Planning and Development Services, a complete packet of application materials accompanied by the appropriate filing fee for a zoning pre-application meeting within 14-days of the effective date of the rezone ordinance.

2. The County shall hold the pre-application meeting within 20-days of receipt of the complete pre-application documents. At the pre-application meeting the County will provide the Owners with information regarding all the permits that will be required. The County anticipates that, at a minimum, it will require a building permit that includes review of land disturbance, stormwater, traffic, landscaping, parking, fire access, and fire flow. A revocable encroachment permit may also be required.

3. Following the pre-application meeting, the Owners or authorized agent shall submit all required permit applications with the appropriate deposits and/or fees to the County within 30-days of the pre-application meeting. All applications must be complete.
4. The Owners shall, at the time of each permit application, inform the County project Planner that he/she has submitted the application to the County and shall supply the County with the permit numbers. This will allow the County to expedite issuance and tracking of the permits.

5. The County shall issue a determination of completeness for each application within 14 days of submittal, pursuant to WCC 2.33.020(D) and 2.33.050.

6. The County shall review all submitted permit applications, and if necessary, issue a Notice of Additional Requirements (NOAR) within 14-days of the applications being received. Although not anticipated, a NOAR may be necessary if County review of a complete application finds that additional information is needed, (e.g. if the site plan needs revision due to need for fire apparatus turnaround or because of the location of existing wells, septic systems, etc.)

7. If a NOAR is issued, the applicant shall submit the requested information to Whatcom County within 45 days from the date of the NOAR.

8. Immediately following the County’s final review, the County shall notify the Owners or authorized agent by telephone that a permit is ready for issuance. The Owners shall pay the remaining permit fees and pick-up the permits(s) within 14-days of notification that the permits are ready for issuance.

9. For procedures not specified in this section, the requirements of the Whatcom County Code shall apply.

VI. Time Limit: The County Council may take action to rescind ordinance rezoning the Property to RGC shall include a time limit that rescinds the rezone if the Owners have not received a County-issued Certificate of Occupancy within 120-days of permit issuance, provided notice of a hearing regarding such potential action is first provided to the Owners. The County may, at its discretion, extend this time limit if delays occur through no fault of the applicant.

VII. Effective Date: This agreement shall become effective on the effective date of the ordinance rezoning the property to RGC. This agreement in no way authorizes or condones any use or action on the property by the applicant until formal adoption of this agreement and the rezone to RGC by the County Council.

VIII. Miscellaneous.
1. **Applicable Law.** This Agreement shall in all respects be governed by the laws of the State of Washington and Whatcom County Codes.

2. **Modification or Amendment.** No amendment, change, or modification of this Agreement shall be valid unless in writing and signed by all of the parties hereto.

3. **Successors and Assigns.** All of the terms and provisions contained herein shall inure to the benefit of and shall be binding upon the parties hereto and their respective heirs, legal representatives, successors, and assigns.

4. **Entire Agreement.** This Agreement constitutes the entire understanding and agreement of the parties with respect to its subject matter and any and all prior agreements, understandings, or representation with respect to its subject matter are hereby canceled in their entirety and are of no further force or effect.

5. **Headings.** The captions and paragraph headings used in this Agreement are inserted for convenience of reference only and are not intended to define, limit, or affect the interpretation of construction of any term or provision hereof.

**IN WITNESS WHEREOF** the parties have executed this Agreement on the day above first written.

---

SYB Holdings Co., Inc.

*By:* __________________________

Massad Boulos

*Title:* __________________________

Applicant

---

Larry M. Jordan
Land Owner

---

ATTEST:
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis
Council Clerk

---

WHATCOM COUNTY COUNCIL

Carl Weimer, Chairperson

---

Civil Deputy Prosecutor

Jack Louws, Executive

*Date:* __________________________
ORDINANCE NO. __________

REZONING FIVE ACRES AT THE INTERSECTION OF SLATER ROAD AND ELDER ROAD

WHEREAS, The property owners submitted an application to rezone two parcels totaling about five acres from Neighborhood Commercial (NC) district to Rural General Commercial (RGC) district at the northwest corner of Slater Road and Elder Road; and

WHEREAS, The Whatcom County Planning Commission held a public hearing on July 10, 2014; and

WHEREAS, The Whatcom County Planning Commission made no recommendation at its July 10, 2014 hearing; and

WHEREAS, The County Council hereby adopts the following findings of fact:

FINDINGS OF FACT

1. The subject property was rezoned from Rural to Neighborhood Commercial (NC) in 1988 (Ord. 1988-043)
2. Whatcom County staff has notified the property owners that the ongoing sales of automobiles is a prohibited use in the Neighborhood Commercial (NC) zoning district.
3. The property owners have submitted an application to rezone two parcels from NC to Rural General Commercial (RGC) zoning district, which allows automobile sales, among other uses.
5. Notice of the public hearings was issued in accordance with WCC 20.90.045, including publication in the official county newspaper, mailed notices to property owners within 1,000 feet, and posting of signs on the subject property at least ten days before the hearing.
6. A State Environmental Policy Act (SEPA) determination of non-significance (DNS) was distributed May 29, 2014.
7. Notice of the proposed rezone was submitted to the Washington State Department of Commerce on May 29, 2014.
8. Per Whatcom County Code 20.90.020(3), a rezone may use a concomitant agreement to impose conditions on, or limitations on uses and may also require performance by the applicant(s) which is/are directly related to mitigation of probably on-and off-site impacts to adjacent uses, public services and the environment. The agreement may be
in the form of a covenant running with the land. The provisions of the agreement will be in addition to all other pertinent Whatcom County Code requirements.

CONCLUSIONS

1. The proposed rezone is consistent with the Comprehensive Plan, and is in the public interest.
2. A concomitant agreement, in the form of a covenant running with the land, will ensure that new uses be limited to automobile sales and single family dwelling in addition to those permitted in the NC zoning district, and that automotive sales are permitted only after County approval of a site plan that assures compliance with County development regulations and after the required improvements are installed.
3. The proposed rezone with the concomitant agreement should not result in any significant environmental impacts.

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

Section 1. The Whatcom County official zoning map is hereby amended as shown on Exhibit 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:

( ) Approved ( ) Denied

___________________________
Jack Louws, Executive

Date: _____________________
Regular Meeting

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: Gary Honcoop, David Onkels, Walter Haugen, Natalie McClendon, David Hunter Ben Eienbaas in attendance at 6:55 p.m.
Absent: Jerry Vekved, Mary Beth Teigrob, Ken Bell

Staff Present: Mark Personius, Gary Davis, Becky Boxx

Department Update
Mark updated the commission on the following:
- Items before the County Council.
- Upcoming commission schedule.

Gary Davis updated the commission regarding the Growth Management Hearings Board appeal cases.

Open Session for Public Comment
There was no public comment.

Commissioner Comments
Commissioner McClendon commented on the new chairs.

Public Hearing
File #PLN2014-00008: A proposal to rezone approximately five acres from Neighborhood Commercial (NC) to Rural General Commercial (RGC), located at the northwest corner of Slater and Elder Roads, about five miles west of Interstate 5.

Gary Davis presented the staff report.

Gary stated this is a quasi-judicial matter so the commissioners may want to disclose any potential conflict of interest or any contact they have had with the applicants.

The subject parcels were rezoned from Rural to Neighborhood Commercial in 1988. The uses in Rural General Commercial are a little more extensive than those in Neighborhood Commercial. The uses that are on the site are permitted in Rural General Commercial but not in Neighborhood Commercial, specifically the mini storage and the gas station. The majority of the parcels are already developed although some potentially developable land exists between the business and north of the service station. That is the area being used for automobile sales. The western 300 feet of the area lies within a ravine and contains a fish bearing stream. Staff recommends that if it is approved, that it be subject to a concomitant agreement. The reason this is being proposed is because having car sales on the property is not required to get a permit. Normally a rezone is done with the
understanding a building permit will be taken out in the future, when PDS can make sure
the use complies with codes. That is not the case here so the concomitant agreement will
take care of that.

The hearing was opened to the public.

Jon Sitkin, Whatcom County, representing the applicant: They have no objection to the
concomitant agreement. They asked that a single family residential use be added to the
agreement, as a permitted use, because one of the property owners, Larry Jordan, may
want to build a home in the future. In regards to the zoning, he had conversations with
staff and the zoning designations and purposes are nearly identical. The policies included
in the staff report, 2LL and 2HH from the Comprehensive Plan, supports the designation
and proposal.

Larry Daugert, Whatcom County: He lives on Elder Road close to the proposed rezone
which he opposes. He stated it is obviously a truism that it is better to ask for forgiveness
than permission. The car lot started over a year ago and was not consistent with the
zoning. They regularly parked cars in such a way that it impeded views coming off of Elder
Road onto Slater Road. He complained to the county who stated they don’t have much of
an enforcement mechanism. The county did talk to the owners of the car lot who stated
they would stop pending hearing to rezone. Then what they did is move the cars off,
blacktop everything, then moved the cars back. Selling cars is not consistent with the
rural lifestyle that he and everyone around him likes. The area is mostly five acre parcels
They live there for the rural qualities. Car lots have nothing to do with the rural lifestyle.
Neighborhood grocery stores are important and nobody has a problem with that. There
are no regulations or powers regarding where they get their water, employees or how
many bathrooms they have. He asked the commission to deny the proposal.

Jon Sitkin stated the Comprehensive Plan and zoning code already identifies uses in the
rural zones and these uses are consistent with the rural lifestyle. Stormwater,
landscaping, site plan, etc. would be executed as a condition of the rezone.

The hearing was closed to the public.

Commissioner Honcoop asked if the property remained zoned NC through the recent Rural
Element LAMIRD process.

Mr. Davis stated it did.

Commissioner Honcoop asked if the LAMIRD is limited to the pre-1990 uses.

Mr. Davis stated no, this type of LAMIRD is not subject to 1990 limitation.

Commissioner Honcoop asked if there were conditions placed on the mini-storage when it
was built.

Mr. Sitkin stated none that he was aware of.
Regular Meeting

Commissioner Honcoop stated there had been testimony that the property was recently paved. Was a land disturbance permit obtained for that?

Mr. Sitkin stated the property was not paved, only graveled where it had been previously graveled and no permits were obtained. There were existing areas that had been paved.

Commissioner Haugen asked Mr. Daugert if he felt this was correct.

Mr. Daugert stated that the question was if permits had been taken out and the answer is no. There may have been repaving of the previously paved areas.

Commissioner Haugen asked why the cars were put back after the county directed they be removed.

Mr. Sitkin stated they did remove the cars but the enforcement action was put on hold pending this hearing so there was some understanding the cars could be put back. They have since been removed again.

Commissioner Haugen stated it sounded like the county was legitimizing a businessman’s mistake.

Mr. Sitkin asked that the focus of the hearing be on the change in zoning not on the enforcement issue.

Commissioner Haugen asked what the impact of this rezone would be to the fish bearing streams.

Mr. Davis stated that if there were to be any development near the stream they would have to meet the setbacks involved in Title 16. Right now nothing is being proposed in that area.

Commissioner Haugen stated he knows John and Sarah Gergen, who are neighbors to this property. He stated that will not affect his decision on this matter.

Commissioner Haugen asked if the northeast corner of the property is being used for crops.

Mr. Davis stated there are crops there.

Commissioner Haugen asked if any part of the proposal would affect those crops.

Mr. Sitkin stated no.

Mr. Daugert stated there is an office on the property for the car business.

Commissioner Hunter stated it is not clear if the Planning Department thinks this is a good idea. He has his doubts that the rezone benefits anyone other than the person who sells cars there.
Mr. Davis stated that the county’s approach is that if the zoning stays NC the car sales continue to be an enforcement issue. If they rezone is denied that process would continue. If the rezone is approved; with the recommended concomitant agreement requiring that before that automobile sales use is legal that they submit a site plan that makes sure they adhere to the setbacks, landscaping and buffering requirements; then car sales are the only use allowed above and beyond what is already there.

Commissioner Honcoop asked if the landscaping requirements are the same for both the NC and RGC. As such there doesn’t seem to be a trigger point because a building permit is not required.

Mr. Davis stated there are no screening requirements for the existing non-conforming use that is already there.

Commissioner Honcoop asked if there is a trigger mechanism related to stormwater.

Mr. Davis stated the concomitant agreement would require anything the building permit would require.

Commissioner Honcoop asked why the full range of services allowed in the RGC zone are not being allowed.

Mr. Davis stated because this was an enforcement action on a particular use that is not legal under the current zoning. As such staff is recommending allowing the one stated use rather than the full range. A lot of the uses in RGC are more intensive uses geared towards larger LAMIRDs. This is only a five acre parcel, with the west 300 feet not really usable, and another 2 to 3 acres that is already developed. Since this is an attempt to legitimize a use that is already on there the county’s approach is to limit the uses.

Commissioner McClendon asked what the expectations are regarding how much impervious surface there will be.

Mr. Davis stated that under the concomitant agreement the applicant will have to go through all the existing regulations involving drainage, etc.

Commissioner McClendon asked if impervious surface issues are looked at in the NC zone.

Mr. Davis stated yes if auto sales was a permitted use under that zone. At the time they asked to put in the sales area they would be given the regulations.

Commissioner McClendon stated that even if the area wasn’t used to sell cars the gravel was put there. Is that allowed?

Mr. Davis didn’t know whether that was a violation under the land disturbance permit process.

Commissioner McClendon asked if there were any areas west of the casino zoned RGC or NC.
Regular Meeting

Mr. Davis stated no.

Commissioner McClendon asked if there are any expectations regarding how isolated the LAMIRDs are and how extensive the development can be.

Mr. Davis there is designation criteria and spacing criteria in the Comprehensive Plan regarding LAMIRDs.

Commissioner Elenbaas stated he doesn’t care what happened in the past regarding this property. That is not the question before the commission. Is it legal to this? Is it a spot zone?

Mr. Davis stated it is legal and not a spot zone, particularly because it involves more than one parcel.

Commissioner Hunter stated he knew Larry Daugert’s father but that will not influence his decision regarding this matter.

Commissioner Hunter stated he had concerns regarding car repair because it is a necessary part of used car sales. It is not irrelevant that people feel they can use property in a certain way that is not consistent with local ordinances. Then having used it for a while getting people to say it’s okay based on the history of the use. This fact can play a role in the decision making. Regarding enforcement, over time screening, landscaping, etc. deteriorate because there is no reason to keep it up. He thinks will become another enforcement action in the future.

Commissioner Onkels asked if there is a requirement in the zoning ordinance regarding maintenance of landscaping.

Mr. Davis stated there is.

Commissioner Honcoop stated the RGC zoning is a much better fit because of what has historically been there and the existing legal businesses there. Regarding the statements related to enforcement, the agreement that would be put in place adds to tools the county has for enforcement.

Mr. Personius agreed and stated it will also benefit the neighbors by requiring screening. The agreement would have time limits and expectations that the applicant must meet otherwise the agreement expires and the rezone goes away.

**Commissioner Hunter moved to recommend denial of the proposal.**

**Commissioner Haugen seconded.**

Commissioner Hunter stated this is a compliance issue and there is no benefit to the neighbors or the county with the rezone. The county is going to have to rely on the neighbors to ensure that the conditions placed on the rezone are being met. If he were living in the area he would not want car sales in the neighborhood.
Regular Meeting

Commissioner McClendon asked how the enforcement process perceived. Isn’t it still an enforcement issue that should be pursued and agreements reached?
Mr. Davis stated the concomitant agreement takes the place of the enforcement action if all of the conditions are met.

Mr. Personius stated that enforcement is an issue, particularly in Whatcom County, partly because of the nature of the code. Enforcement issues are generally complaint driven because the county doesn’t have the staff or funding to look for issues. Complaints are investigated and action initiated in the form of notice to the property owner. The code is very limiting in terms of actions the county can take. Most of the rights lie with the property owner.

Commissioner Haugen stated the cars are still on the lot and the county says it can’t do anything about it. It impacts the neighbors and someone is making money off of the cars illegally. The Planning Department is bending over backwards to legitimize an illegal use. The county is not being fair and impartial and are not helping the people that live there.

Mr. Personius questioned if the sale of cars the issue or is it the visualization of car sales. If the area is screened so people driving by don’t see them is there an issue with the car sales?

Commissioner Haugen stated this is not about zoning at all, it’s about catering to some individual.

Commissioner Elenbaas stated he views it differently. To be fair and impartial the commission should look at the facts as to is it a legal rezone and does it fit the area and not what the applicant has done in the past.

Commissioner McClendon stated the applicant would not be asking for the rezone if they hadn’t done the non-conforming action.

Commissioner Honcoop stated all he is looking at is do the uses fit or not. He doesn’t see the rezone as a problem, but as an opportunity for the county to have some tools to be able to help mitigate the impact on the surrounding area. He sees the rezone as a benefit.

Commissioner Hunter stated all that is happening is substitution of an ordinance with a contract. The applicant has not followed the rules so far which indicates he won’t follow the concomitant agreement either. Don’t pretend there is some benefit to the county or neighbors from this.

Commissioner Elenbaas stated the fact that the applicant is at the meeting and is going through this process shows him that he does want to comply.

Commissioner McClendon stated she still has issue with the fact that it’s next to impossible to conclude an enforcement issue that the commission should roll over and change the rules. If there is no reason for zoning and it can’t be enforced than don’t have it. The argument she has heard is that whatever anyone wants to do the county will change to zoning to match it. What does that tell the rest of the public?
 regularization

Commissioner Honcoop stated there are various reasons why zoning is applied to certain areas and it's not always the best fit. The commission can fix some of those errors. Because someone did something wrong do they need to be penalized? What is the best solution and best fit needs to be looked at.

Commissioner Elenbaas thanked Mr. Daugert for testifying and asked if he tried to get more people to come.

Mr. Daugert stated no.

Commissioner Honcoop stated in the past he had a relationship with Mr. Daugert's firm but that will not influence his decision on this matter.

Commissioners Elenbaas and Onkels have both bought items from the store located on the site but stated it will not influence their decisions.

Roll Call Vote on the motion to recommend denial of the proposal: Ayes – Haugen, Hunter, McClendon; Nays – Elenbaas, Honcoop, Onkels; Abstain – 0; Absent – Bell, Teigrob, Vekved. The motion failed.

Commissioner Honcoop moved to recommend approval of the proposal with changes to read: If the Planning Commission recommends approval, Planning and Development Services recommend the Planning Commission forward the proposed amendment to the County Council with a recommendation of approval subject to a concomitant agreement, a covenant running with the land, that limits new uses to NC uses plus automobile sales and, the existing service station and, rental storage uses as allowed under 20.59.050; 20.59.052(1); and a single family dwelling or duplex for lot. The proposal complies with all applicable county development regulations, and installation of required improvements, including but not limited to landscape materials. Commissioner Elenbaas seconded. Roll Call Vote: Ayes – Elenbaas, Honcoop, Onkels; Nays – Haugen, Hunter, McClendon; Abstain – 0; Absent – Bell, Teigrob, Vekved. The motion failed.

The meeting was adjourned at 8:12 p.m.

Minutes prepared by B. Boxx.

WHATCOM COUNTY PLANNING COMMISSION ATTEST:

David Onkels, Chair

Becky Boxx, Secretary
WHATCOM COUNTY
PLANNING & DEVELOPMENT SERVICES
STAFF REPORT

I. BACKGROUND INFORMATION

File # PLN2014-00008

File Name: Slater Road Rezone

Applicant: Whatcom County

Summary of Request: Rezone about 5 acres from Neighborhood Commercial (NC) to Rural General Commercial (RGC).

Quasi-judicial status: This rezone is a quasi-judicial matter per the state’s Appearance of Fairness Doctrine. Quasi-judicial actions are defined to be: "...those actions of the legislative body, planning commission, hearing examiner, zoning adjuster, board of adjustment, or boards which determine the legal rights, duties, or privileges of specific parties in a hearing or other contested case proceeding."

RCW 42.36.010 No member of a decision-making body is allowed to engage in ex parte communication when quasi-judicial matters are pending. An ex parte communication is a one-sided discussion between a decision-maker and the proponent or opponent of a particular proposal which takes place outside of the formal hearing process on a quasi-judicial matter. Any communication between any party and a Planning Commission member that may have the appearance of or potential to lead to bias or partiality should be disclosed as soon as possible at the quasi-judicial hearing on the matter. More information on quasi-judicial actions and the Appearance of Fairness Doctrine is available at http://www.mrsc.org/askmrsc/pastingsubject.aspx?sid=2

Location: Northwest corner of Slater and Elder Roads, about 5 miles west of Interstate 5.

Staff Recommendation: If the Planning Commission recommends approval, staff recommends that the rezone be subject to a concomitant agreement that limits new uses to NC uses plus automobile sales and the existing service station and rental storage uses, and requires County approval of a site plan that complies with all applicable County development regulations, and installation of required improvements, including but not limited to landscape materials.

History:
Whatcom County Planning & Development Services, Department of Code
Enforcement, received several Code Violation Reports from citizens concerned about property values deteriorating due to an alleged car lot at 3322 Slater Road. A site inspection in August 2013 revealed twenty used vehicles for sale parked on the subject site, in the county right-of-way, and on the neighboring parcel at 3310 Slater Road.

Planning & Development Services contacted the business owner and informed him the sale of automobiles in the Neighborhood Commercial (NC) zone district was a prohibited use and that he would have to remove the vehicles from the site. The property owner agreed to remove the vehicles if the county would grant him an extension until September 15, 2013. Staff agreed and conducted a follow-up site inspection and confirmed the vehicles had been removed as promised. Within a few weeks, staff was notified that the property owner had brought the vehicles back to the site.

In December 2013 the owners of both parcels submitted an application to rezone the parcels to Rural General Commercial (RGC) district, which lists automobile sales as a permitted use.

II. ANALYSIS OF PROPOSED REZONE

The area that includes the two subject parcels was rezoned from Rural to Neighborhood Commercial (NC) in 1988 (Ord. 1988-043) at the request of one of the current owners, Larry Jordan. The owners now propose a rezone from NC to Rural General Commercial (RGC) for both parcels. One parcel is developed as a 3,600 square foot service station/convenience store and the other is a rental storage facility with buildings totaling about 16,500 square feet. Neither the service station or mini-storage use is currently a permitted use in NC. The service station predates the NC zoning, and the rental storage use was developed under a conditional use permit.

A rezone from NC to RGC would expand the list of commercial uses permitted on these parcels. Automobile sales is included in RGC’s permitted uses, as are the existing service station and rental storage establishments. Commercial uses permitted in each zone are listed in the following table for comparison:

<table>
<thead>
<tr>
<th>Neighborhood Commercial (NC)</th>
<th>Rural General Commercial (RGC)</th>
</tr>
</thead>
<tbody>
<tr>
<td>WCC 20.60.050</td>
<td>WCC 20.59.050</td>
</tr>
<tr>
<td>Barber and beauty shops, baker shops, drug stores, food markets, hardware stores, stationery stores, other convenience retail shops not greater than 2,500 square feet per business</td>
<td>Retail establishments including but not limited to grocery, liquor, drug, sundries, variety, building supplies, clothing, florist, nurseries, optical, sporting goods, appliance, music, and pet stores</td>
</tr>
<tr>
<td>Professional offices not greater than</td>
<td>Service establishment including but not</td>
</tr>
</tbody>
</table>
2,500 square feet per business

<table>
<thead>
<tr>
<th>Limited to barber and beauty shops, laundries, dry cleaners, furniture repair, frozen food lockers, funeral parlors, animal hospitals, auction houses, financial institutions, fraternal organizations, and professional offices</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mobile home and RV sales</td>
</tr>
<tr>
<td>Indoor commercial recreation facilities such as bowling alleys, skating rinks, indoor theaters, and physical fitness centers</td>
</tr>
<tr>
<td>Printing and publishing establishments</td>
</tr>
<tr>
<td>Mini-day care centers and day care centers</td>
</tr>
<tr>
<td><strong>Rental storage establishments</strong></td>
</tr>
<tr>
<td>Eating and drinking establishments</td>
</tr>
<tr>
<td><strong>Automobile, motorcycle, marine and farm implement sales</strong>, rental agencies, repair and service, provided that all repair services are conducted within an enclosed building</td>
</tr>
<tr>
<td><strong>Automobile service stations</strong>, car washes, and public garages</td>
</tr>
</tbody>
</table>

In both the NC and RGC zones, maximum building size is limited to 7,000 square feet within a Rural Business designation (WCC 20.59.322 and 20.60.302). This limit was established in 2012 to ensure that new commercial uses are “small-scale” in accordance with Comprehensive Plan Policy 2LL-1 (see Comprehensive Plan evaluation below).

The majority of both parcels is already developed, though some potentially developable land exists between the two existing businesses and to the north of the service station. That is the area that has been used for automobile sales. The western 300 feet of the area lies within a ravine and contains a fish-bearing stream. This area is affected by Critical Area Ordinance restrictions and the applicants plan no development in this area.

**Concomitant Agreement**
Staff recommends that if the rezone is approved, it is subject to a concomitant agreement that agreement that limits new uses to NC uses plus automobile sales and the existing service station and rental storage uses, and requires County approval of a site plan that complies with all applicable County development regulations, and installation of required improvements, including but not limited to landscape materials. WCC 20.90.020(3) authorizes a concomitant agreement in conjunction with a rezone “to impose conditions on, or limitations on uses and may also require performance by the applicant(s) which is/are directly related to mitigation of probable on-and off-site impacts to adjacent uses, public services, and...
the environment. The agreement may be in the form of a covenant running with the land...”

Because automobile sales requires no building to be permitted, no discretionary permit would be necessary to allow the use. The site plan approval requirement would ensure that PDS has reviewed the planned use for compliance with current County development regulations (including but not limited to landscaping, setbacks, access, and stormwater) which would mitigate on- and off-site impacts to adjacent uses, public services, and the environment. Automobile sales on the site would not be compliant with County code until after the site plan is approved and the required improvements are installed, including but not limited to landscaping materials.

III. COMPREHENSIVE PLAN EVALUATION

The Whatcom County Comprehensive Plan designates the two parcels as “Rural Business,” which is a “limited area of more intensive rural development” (LAMIRD), as described in the Washington State Growth Management Act (GMA), RCW 36.70A.070(5)(d)(iii). Comprehensive Plan Policy 2LL-1 mirrors the GMA requirements, describing these LAMIRDs as consisting of “the intensification of development on lots containing isolated nonresidential uses or new development of isolated cottage industries and isolated small-scale businesses.” Both the NC and RGC zones are permissible in a Rural Business designation (per WCC 20.59.010, 20.60.010), so no Comprehensive Plan designation change would be required for this rezone. As a “type iii” LAMIRD, development within the Rural Business designation is not required to be consistent with the sizes and uses that existing in 1990.

Whatcom County Comprehensive Plan goals and policies that are applicable to the proposed rezone are listed below. These goals and policies are in the rural element of Chapter Two Land Use, whose intent is to protect the character of Whatcom County’s rural areas. Staff’s recommendation to approve the rezone only in conjunction with a concomitant agreement is intended to protect the character of this rural area, consistent with these policies.

Goal 2LL: Designate Rural Business areas to limit and contain nonresidential uses.

Policy 2LL-1: All lands designated Rural Business shall meet the Rural Business designation criteria stated in this chapter, and the requirements of RCW 36.70A.070(5)(d)(iii), which describes limited areas of more intensive rural development consisting of

1 This rezone could not be processed as a Site-Specific Rezone because one of the criteria for such a rezone is that the proposed use requires a discretionary development permit or building permit, per WCC 20.90.063(1)(b).
the intensification of development on lots containing isolated nonresidential uses or new development of isolated cottage industries and isolated small-scale businesses.

Policy 2LL-2: On lots in a Rural Business area where businesses did not exist on July 1, 2012, the new businesses shall be “small-scale” as described in the development regulations. On lots where businesses existed on July 1, 2012, development regulations should not hold the business to a “small-scale” standard.

Policy 2LL-3: Uses in the Rural Business designation need not be principally designed to serve the existing and projected rural population and nonresidential uses, but provide job opportunities for rural residents.

Goal 2DD: Retain the character and lifestyle of rural Whatcom County.

Policy 2DD-2: Protect the character of the rural area through the County’s development regulations. In addition to the policies of this plan that provide measures governing rural development, the following County’s key development regulations are incorporated into this plan by reference to assure that the plan contains measures to protect rural character:

A. Measures to contain or otherwise control rural development and reduce the inappropriate conversion of undeveloped land into sprawling, low-density development:

1. Limit the expansion of areas of more intensive development and higher rural densities through Policies 2A-8, 2A-9, 2DD-1, 2DD-8, 2GG-2, 2GG-3, 2JJ-1 through 8, 2KK 1 and 2, 2LL-1 through 4, and 2MM-1 through 4 of this plan.

.....

3. Protect the aesthetic assets of the rural areas and soften the impact of structures through landscape buffers and setback requirements provided in the following Zoning Code provisions, adopted herein by reference:

a. WCC 20.80.200 Setback requirements;
b. WCC 20.80.300 Landscaping.
C. Measures to protect critical areas and surface and groundwater resources:

1. Protect the functions and values of critical areas (geologically hazardous areas, frequently flooded areas, critical aquifer recharge areas, wetlands, and habitat conservation areas) and the ecological processes that sustain them, through WCC 16.16 Critical Areas provisions, adopted herein by reference.

4. Protect surface and groundwater resources through stormwater management standards established in the County’s Development Standards per WCC 20.80.630 through .636, WCC 20.51 and 12.08.035 referenced in the following Zoning Code provision, adopted herein by reference:

f. 20.59.704 Drainage, Rural General Commercial District;

IV. PROPOSED FINDINGS OF FACT AND REASONS FOR ACTION

Staff recommends the Planning Commission adopt the following findings of fact and reasons for action:

1. The subject property was rezoned from Rural to Neighborhood Commercial (NC) in 1988 (Ord. 1988-043)
2. Whatcom County staff has notified the property owners that the ongoing sales of automobiles is a prohibited use in the Neighborhood Commercial (NC) zoning district.
3. The property owners have submitted an application to rezone two parcels from NC to Rural General Commercial (RGC) zoning district, which allows automobile sales, among other uses.
5. Notice of the public hearing was issued in accordance with WCC 20.90.045, including publication in the official county newspaper, mailed
notices to property owners within 1,000 feet, and posting of signs on the subject property at least ten days before the hearing.

6. A State Environmental Policy Act (SEPA) determination of non-significance (DNS) was distributed May 29, 2014.

7. Notice of the proposed rezone was submitted to the Washington State Department of Commerce on May 29, 2014.

8. Per Whatcom County Code 20.90.020(3), a rezone may use a concomitant agreement to impose conditions on, or limitations on uses and may also require performance by the applicant(s) which is/are directly related to mitigation of probably on-and off-site impacts to adjacent uses, public services and the environment. The agreement may be in the form of a covenant running with the land. The provisions of the agreement will be in addition to all other pertinent Whatcom County Code requirements.

V. PROPOSED CONCLUSIONS

1. The proposed rezone is consistent with the Comprehensive Plan, and is in the public interest.

2. A concomitant agreement, in the form of a covenant running with the land, will ensure that new uses be limited to automobile sales in addition to those permitted in the NC zoning district, and that automotive sales are permitted only after County approval of a site plan that assures compliance with County development regulations and after the required improvements are installed.

3. The proposed rezone with the concomitant agreement should not result in any significant environmental impacts.

VI. RECOMMENDATION

If the Planning Commission recommends approval, Planning and Development Services recommends the Planning Commission forward the proposed amendments to the County Council with a recommendation of approval subject to a concomitant agreement, a covenant running with the land, that limits new uses to NC uses plus automobile sales and the existing service station and rental storage uses, and requires County approval of a site plan that complies with all applicable County development regulations, and installation of required improvements, including but not limited to landscape materials.

ATTACHMENTS

Maps
Application
Site Plan – Existing Conditions
WHATCOM COUNTY
Planning & Development Services
5280 Northwest Drive,
Bellingham, WA 98226-9013
360-676-6907, TTY 800-833-6384
360-738-2525 Fax

J.E. "Sam" Ryan
Director

WHATCOM COUNTY
PLANNING AND DEVELOPMENT SERVICES DEPARTMENT
APPLICATION FOR ZONING AMENDMENTS

Please check one of the following:

☑ STANDARD MAP AMENDMENT  ☐ SITE SPECIFIC REZONE  ☐ ZONING TEXT AMENDMENT
   Complete Sections A, B, C, & F  Complete Sections A, B, D, & F  Complete Sections A, E, & F

Do not write in this section of the application-for official use only.

Date Received: ___________________________  File #: ___________________________

Date Complete: ___________________________  Initials of reviewer: __________________

A. GENERAL INFORMATION-All applicants must complete this section.

1. APPLICANT'S NAME:
   Masso Poulos

   SIGNATURE: ________________________________________________________________

   MAILING ADDRESS:
   PO Box 30691
   Bellingham, WA 98228-2691

   E-MAIL ADDRESS
   Masso_back@hotmail.com

   BUSINESS PHONE: 360-961-8845  HOME PHONE: SAME
WHATCOM COUNTY
Planning & Development Services
5280 Northwest Drive,
Bellingham, WA 98226-9013
360-676-6907, TTY 800-833-6384
360-738-2525 Fax

WHATCOM COUNTY
PLANNING AND DEVELOPMENT SERVICES DEPARTMENT
APPLICATION FOR ZONING AMENDMENTS

Please check one of the following:

☑ STANDARD MAP AMENDMENT
Complete Sections A, B, C, & F

☐ SITE SPECIFIC REZONE
Complete Sections A, B, D, & F

☐ ZONING TEXT AMENDMENT
Complete Sections A, E, & F

Do not write in this section of the application-for official use only.

Date Received: ___________________________ File #: ________________________________

Date Complete: ___________________________ Initials of reviewer: _______________________

A. GENERAL INFORMATION—All applicants must complete this section.

1. APPLICANT'S NAME:

    Larry Jordan

    SIGNATURE: ____________________________

    MAILING ADDRESS:

    P.O. Box 45

    Ferndale, WA 98248

    E-MAIL ADDRESS

    _______________________________________________________________________

    BUSINESS PHONE: 961-7220 HOME PHONE: 961-7220
2. AGENT'S NAME:  
Larry Stoner

MAILING ADDRESS:  
4751 Birch Bay-Lynden Rd #259  
Blaine, WA  98230

E-MAIL ADDRESS  
stonerl@sol.com

BUSINESS PHONE:  360-201-9777

3. TOPIC OF PROPOSED AMENDMENT:  
Zoning Map Amendment from Neighborhood Commercial to Rural General Commercial

4. Please give a complete but short description of the proposed amendment.
   
   See Attached

5. Explain how the proposed amendment is consistent with the goals, policies, and overall intent of the Comprehensive Plan by listing specific goals or policies and explaining how the proposal complies with each of them.
   
   See Attached
6. Please describe the "changed" condition(s), which support the amendment.

See Attached

B. ZONING MAP AMENDMENTS (STANDARD MAP AMENDMENTS AND SITE SPECIFIC REZONES)

7. PROPERTY INTEREST OF APPLICANT:

☑ PURCHASER/OWNER

☐ LESSEE

☐ OTHER:

EXISTING COMPREHENSIVE PLAN DESIGNATION:

Rural Business

EXISTING ZONING DISTRICT:

Neighborhood Commercial

SUBAREA:

Cherry Point

8. What is the proposed zoning classification?

Rural General Commercial

9. What is the present use of the property or properties within the proposed rezone?

See Attached
10. Describe the land use of the surrounding properties.

See Attached

C. STANDARD MAP AMENDMENTS

11. Supporting information for standard map amendments (attach the following items):

   a) A vicinity map showing property lines, roads, buildings and their use, easements, existing and proposed zoning, wells and other pertinent data.

   b) A list of all property owners and others having a legal interest in the property covered by the proposed change.

   c) A list of the names and mailing addresses of the owners of all property within 300 feet (exclusive of roads and alleys).

A site plan may be requested at a future date if the intended amendment is to accommodate a particular development. The applicant may wish to submit a plan at the time of application. The site plan is a scaled drawing showing approximate location of buildings, roadways, parking, drainage facilities, sanitation and water facilities, and easements. Where appropriate, the location of landscaping, buffers, common areas, and typical individual lease spaces for mobile home and recreational vehicle parks shall be included in the site plan.

D. SITE SPECIFIC REZONES

12. Does the proposed amendment have a substantial relationship to public health, safety, morals, general welfare or community needs?
13. Will the proposed use be serviced adequately by essential public facilities such as highways, streets, public safety and fire protection, drainage structure, refuse disposal, water and sewers, and schools; or will the persons or agencies responsible for the establishment of the proposed use be able to adequately provide any such services? Describe.

14. Is the proposal is located within an Urban Growth Area? □ Yes □ No (go to question #15)
   
   a) Will the site be serviced by full urban services or be capable of receiving urban services in time to serve the development?

   b) Will the proposed site use preclude development at urban levels of density when the area is annexed into the city?

   c) Will the proposed site be five (5) or more acres in size? □ Yes □ No

15. Supporting information for site-specific map amendment.
   Attach the following items:

   a) A vicinity map showing property lines, roads, buildings and their use, easements, existing and proposed zoning, wells and other pertinent data.
b) A conceptual site plan drawn at not less than one (1) inch to one-hundred (100), unless mutually agreed to by the proponent and administrative official, including, but not be limited to:
   1) General location of structures.
   2) Location and number of access points.
   3) Approximate gross floor area of structures.
   4) Name of the proposal.
   5) Identification of areas requiring special treatment due to their sensitive nature.
   6) North directional arrow.
   7) Names and location of all public streets or roads bordering the site.
   8) General legal description(s) for the site.

c) Concurrent submittal of a Discretionary Development Permit or Building Permit, if required for the project.

NOTE: If the project does not require a Discretionary Development Permit or Building Permit or will be constructed in phases, then a narrative statement must be submitted with the conceptual site plan that provides a detailed description of the project proposal and a project completion date. If the project will be constructed in phases provide start and completion dates for each phase and include a final completion date for the entire proposed project.

d) A list of all property owners and others having a legal interest in the property covered by the proposed change.

e) Evidence that all property owners within the proposed rezone boundary concur with the rezone and project proposal.

f) Mailing labels with names and mailing addresses of the owners of all property included within the area proposed for re-designation and:

   - For a map amendment within an existing urban growth area, mailing labels with the typed address of each property owner within 300 feet of the external boundaries of the subject property as shown by the records of the county assessor.

   - For a map amendment outside existing urban growth areas, mailing labels with the typed address of each property owner within 1,000 feet of the external boundaries of the subject property as shown by the records of the county assessor.

For map amendments that involve rezoning property to an Airport Operations District, mailing labels with the typed address of each property owner within 1,500 feet of the
external boundaries of the subject property as shown by the records of the county assessor.

g) A completed Environmental Checklist.

E. ZONING TEXT AMENDMENTS

16. Are there any other circumstances that justify the proposed change?

F. AUTHORIZATION:
Signature of Applicant(s) or Agent:
(I, we) certify that (I, we) are the owner(s) of record of all the above described property and that we will pay for legal notice in the newspaper:

Date: 12/04/13

Date: 12/09/13

Date: ______________________

Date: ______________________
ATTACHMENT TO ZONING AMENDMENT APPLICATION

4. Please give a complete but short description of the proposed amendment.

The proposed zoning map amendment seeks to correct/change the zoning designation of the property located at the NW corner of Slater and Elder Roads within the existing LAMIRD III comprehensive plan Rural Business designation. The zoning designation correction would be a change from Neighborhood Commercial (NC) to Rural General Commercial (RGC). This proposal does not seek to change boundaries of the existing Type III LAMIRD – Rural Business Comprehensive Plan designation.

5. Explain how the proposed amendment is consistent with the goals, policies, and overall intent of the Comprehensive Plan by listing specific goals or policies and explaining how the proposal complies with each of them.

The Comprehensive Plan designation for the subject property is Rural Business. The Comprehensive Plan goals and policies related to said designation are Goal 2LL, and policies 2LL-1 through 2LL-4. A zoning designation of RGC for the existing Type III LAMRID area at Slater and Elder Roads furthers and implements the Comprehensive Plan goals and policies related to Type III LAMIRD-Rural Business, more so than the zoning designation currently in place at this location. NC is more closely associated with Type I LAMIRD’s. This location is already listed as a Type III LAMIRD within “Chapter 2, Land Use - Rural Business” section of the Comprehensive Plan, and that LAMIRD designation fits more closely with an RGC designation, as discussed in more detail below.

The purpose of the RGC zoning designation is as follows (WCC 20.59.010):

“The purpose of the Rural General Commercial District is to provide for limited commercial activities which serve the surrounding community and provide job opportunities for residents of the rural area. This district may be located in either a rural community or rural business area, which are “limited areas of more intensive rural development” per RCW 36.70A.070(5)(d). The district shall comply with the rural land use policies and criteria set forth in the Comprehensive Plan .......... New development in a rural business designation is limited to isolated small-scale businesses.” (Emphasis added).

The two parcels located within the Rural Business Comprehensive Plan designation at Slater and Elder Roads are developed with an indoor/outdoor rental storage facility and a mini-mart service station. They both provide
jobs and services to the residents in the adjoining rural zoned areas. If zoned RGC, both of these parcels could readily be used for expansion of existing or establishment of new businesses within the area of the existing Rural Business designation at this location.

The RGC designation is most applicable and consistent with the current and potential future uses at the site. Given the more limited use options within the Rural Neighborhood Comprehensive Plan designation, and the less restrictive limitations on uses within the Rural General Commercial zoning designation (which is proposed to be the new zoning designation), compatibility with the surrounding rural area is assured.

Comprehensive Plan policies that support this change from NC to RGC include:

*Goal 2LL of the Comprehensive Plan by:*

1) *providing job opportunities for rural residents;*

2) *allowing new development of isolated small scale business.*

Type III LAMIRD'S provide for the establishment of new businesses to better serve the surrounding area and to provide for employment opportunities. In this case, there is additional vacant acreage within the storage facility property (conditional use issued in 1998) to provide for expansion of this use, or establishment of new businesses.

There are fewer options and more restrictions on the establishment of new businesses within the NC zone than within the RGC zone. Under RGC, the gas station/mini-mart could be expanded to include automobile related uses such as auto maintenance, auto repair and auto sales. These logical options are not available within said NC zone. Such uses would require the hiring of additional employees to staff and operate these businesses. Given the zoning limitations of NC, the goals of the Rural Business designation are not met at this location with the NC designation, but would be furthered with the RGC designation. In sum, although the RGC and NC designations have similarities, there are significant differences and the RGC designation would better meet Goal 2LL of the Comprehensive Plan than the current NC designation does.

If rezoned from NC to RGC, there are many more options for further development of the mini-mart site and adjacent Rural Business land. The
parcel where the mini-mart is located can be enlarged via a boundary line adjustment, all within the existing Rural Business designation. There are approximately 1.5 acres of vacant Rural Business-NC zoned land adjoining to the north of the mini-mart. With this extra acreage, change of the current NC designation to RGC will provide for easy expansion of the mini-mart/gas station business or development of other businesses consistent with the Rural Business designation, and an RGC zoning designation that would provide additional services and employment opportunities for the nearby rural areas. Similarly, the owner of the storage facility would have more options to expand or establish new businesses if the NC designation is changed to RGC.

Within the NC zone, commercial uses are limited and do not further goals at the Rural Business location. Under the NC zoning designation there are only eight commercial permitted uses and four conditionally permitted commercial uses. One of said conditional uses is a service station which already exists on the site.

Furthermore, the NC zone places rather unusual restrictions on permitted uses. All permitted uses are subject to evaluation by the zoning administrator. The possibility of imposition of restrictive conditions or denial may tend to discourage business owners from attempting said expansion, or pursuing other uses ostensibly allowed in an NC zone. In RGC, permitted uses are permitted without this subjective judgement, further fostering the goals of allowing new small scale business and providing employment opportunities for rural residents.

Additionally goals and policies of the Comprehensive Plan which are further served by rezoning this property from NC to RGC are as follows:

*Policy 2A-4: Designate land uses that reflect the best use of the land.*

The RGC zoning designation allows the subject properties to be put to their highest and best use by permitting more commercial uses in this isolated Type III LAMIRD.

*Policy 2A-13: Allow for adequate economic development to provide economic sustainability, adequate employment opportunities and services in and for the rural areas.*

Permitting RGC uses on these properties provides for enhanced employment opportunities and adds appropriate rural general services for the rural community. This property is not located within an identifiable neighborhood or community for which the NC zone was intended. It is an isolated site that
is positioned on a major arterial, which provides expanded employment opportunities for more rural residents within a wider rural area. RGC allows a greater variety of uses that will provide expanded employment opportunities

**Policy ZK-1: Support small and cottage businesses in rural areas that minimally impact productive agricultural, forest or mineral resource land.**

The proposed amendment would not adversely impact any agricultural, forest or mineral resource lands as the properties are already developed as commercial businesses. Granting the zoning amendment would support small businesses in a rural zone by allowing an appropriate variety of commercial uses on the commercially developed properties within an existing Type III LAMIRD Rural Business designation.

**Policy 7K-2: Designate adequate zoning to allow business and industrial development where it is needed and most appropriate.**

*(see each of the discussions above)*

6. Please describe the “changed” condition(s), which support the amendment.

(See question #5 above). The change involved in this application is to reflect existing uses on this site, and to correct assignment of a zoning designation that upon closer scrutiny and consideration of the goals of the Rural Business Comprehensive Plan designation, is an incorrect zoning desigation.

9. What is the present use of the property or properties within the proposed rezone?

The existing uses of the two properties within the proposed rezone include an indoor/outdoor storage rental facility and a mini-mart service station.

10. Describe the land use of the surrounding properties.

The zoning designation for all of the surrounding properties is R5A. The properties to the South are undeveloped tribal lands and the properties to the North, West, and East are intermittently developed with single family residences and small farms.
Agent Authorization

If you are authorizing an agent to apply for permits on your behalf you must complete this form, which will provide authorization for a designated agent to apply for permits on your behalf. This form is required for the protection of the property owner. Planning and Development Services will not accept an application that is not either signed by all property owners or accompanied by this form.

I/we, Larry Jordan, the owner(s) of the subject property, understand that by completing this form I hereby authorize Larry Jordan Land Development Consultants to act as my agent. I understand that said agent will be authorized to submit applications on my behalf. I also understand that once an application has been submitted that all future correspondences will be directed to the agent.

Larry Jordan
Property Owner(s) Printed Name

Signature
Property Owner(s) Signature

12/4/13
Date

I certify that I know or have satisfactory evidence that Larry M. Jordan is/are the person(s) who appeared before me, and said person(s) acknowledged it to be his/her free and voluntary act for the uses and purposes mentioned in this instrument.

12/4/13
Dated

Jesse J. Stoner
Notary Signature

Jesse J. Stoner
Printed Name

Notary Public in and for the State of Washington
Residing at Ferndale, WA

My appointment expires: 08/27/15

Application received by ___________________________ Date________________________
Agent Authorization

If you are authorizing an agent to apply for permits on your behalf you must complete this form, which will provide authorization for a designated agent to apply for permits on your behalf. This form is required for the protection of the property owner. Planning and Development Services will not accept an application that is not either signed by all property owners or accompanied by this form.

I/we, _________________________________, the owner(s) of the subject property, understand that by completing this form I hereby authorize Larry Stoner Land Development Consultants to act as my agent. I understand that said agent will be authorized to submit applications on my behalf. I also understand that once an application has been submitted that all future correspondence will be directed to the agent.

Massad Boulos
Property Owner(s) Printed Name

______________________________
Property Owner(s) Signature

Date

I certify that I know or have satisfactory evidence that _________________________________ is/are the person(s) who appeared before me, and said person(s) acknowledged it to be his/her free and voluntary act for the uses and purposes mentioned in this instrument.

Dated ________________________________

Notary Signature: ________________________________
Printed Name: ________________________________
Notary Public in and for the State of Washington
Residing at ________________________________
My appointment expires: ________________________________

Application received by ________________________________ Date ________________________________

Administrative Approval Application
PL4-83-0148

Page 8 of 10
Rev. December 2011

775
Fee Responsibility

Venue and Jurisdiction: The parties hereto recognize and agree that the venue of any action involving their rights or obligations related to this application shall be in Whatcom County, and the parties' rights and obligations hereunder shall be determined, in accordance with the laws of the State of Washington.

Fee Guaranty: Notwithstanding that this application has been submitted in the name of a company, I personally guarantee payment of fees accrued according to the terms listed in the Whatcom County Unified Fee Schedule and that my personal guarantee is part of the consideration for review of the application.

I/we, Messed Boulos, hereby certify that the above statements and the information contained in any papers or plans submitted herewith are true and accurate to the best of my knowledge, and that the list of surrounding property owners is complete and current.

Signature of Applicant ____________________________ Date 10/31/13

Signature of Owner ____________________________ Date 10/31/13

I certify that I know or have satisfactory evidence that Messed Boulos is/are the person(s) who appeared before me, and said person(s) acknowledged it to be his/her free and voluntary act for the uses and purposes mentioned in this instrument.

Dated 10/31/13

Notary Signature: ____________________________

Printed Name: Jesse J. Stoner

Notary Public in and for the State of Washington
Residing at Ferndale, WA
My appointment expires: 08/27/15

Application received by: ____________________________ Date: ____________________________
C. STANDARD MAP AMENDMENTS

11. b) Massad Boulos - 3310 Slater Rd (parcel # 390134 520013)

Larry Jordan - 3322 Slater Rd (parcel # 390134 485016)
From: Larry Daugert <ldaugert@gmail.com>
To: <GDavis@co.whatcom.wa.us>
Date: Fri, 11 Jul 2014 17:55:34 -0700
Subject: Boulos/Jordan Elder & Slater Roads Rezone Application 2014/00008.

Whatcom County Planning Department
Northwest Road
Attn: Gary Davis, Senior Planner
GDavis@co.whatcom.wa.us

Dear Mr. Jones

My comments on the above application after the Planning Commission hearing on 7/10/2014:

1. I re-examined the site today and, in my opinion, someone has not only recently excavated and graveled large sections of the Jordan self-storage parcel for the [presently illegal] used-car sales lot, but also installed new asphalt paving just to the north of the convenience store. I can not tell whether that paving is intended for the store or the used-car sales area, nor can I tell without a survey whether it is upon the Boulos or Jordan parcels.

2. Mr. Sitkin at one point in the hearing indicated that 'obviously there would have to be a lot line adjustment', presumably adding area to the Boulos store parcel to accommodate the used-car lot, and subtracting area from the Jordan self-storage parcel.

If that is true, then I believe it encumbent upon the Planning Department to require disclosure of the details of such lot-line change prior to any further re-zone hearing, especially given that the Department may recommend approval conditioned upon some sort of Covenant. What specific areas are to be burdened by what specific requirements of such Covenant?

The devil, it is said, is in the details. Where - exactly - is the used-car lot to be located? How large an area? How many cars will it accommodate [I can just see the sign: "Largest Inventory of Used Cars North of Everett"]? Where is its (inevitable) wash rack? From whence does it obtain its water? Where is its (inevitable) repair facility? Where is the location of Jordan's [proposed] single family home that he asks the Department allow him to build on the remainder of his parcel?

Without knowledge of these details, neither the public nor the Department can properly repond to the re-zone request. If this Application is pursued, I urge the Department to obtain and disseminate answers.

I remain committed to my opposition to such re-zone.

Sincerely,

Larry Daugert
COVER LETTER
FOR NOVEMBER 26, 2014, REVISED SITE PLAN SUBMITTAL
BOULOS – JORDAN REZONE

To: Honorable members of the Whatcom County Council:

At the request of the Council and a neighboring private land owner, we have been asked to submit a site plan depicting what the finished car sales lot will look like.

At the November 12, 2014 council meeting, we submitted a preliminary site plan prepared by Freeland Engineering showing location of the car lot, proposed landscaping and preliminary stormwater control based on a 2000 survey.

During said meeting, you asked for more detailed information regarding stormwater, access and landscaping.

As such, we have engaged J.P. Slagle with Freeland Engineering to prepare more specific engineered plans for stormwater control, vehicular access and internal circulation.

We first had Brian Christie prepare a topographic survey of the entire parcel to provide Freeland with a proper basis to design a stormwater control system.

Next, Katrina Jackson, wetland consultant, was engaged to conduct a wetland delineation of the entire site, including the ravine and stream located at the west end of the property. Her report is attached.

On November 25th, Sanja Barisic of the Whatcom County Engineering department conducted a site visit to determine county requirements for said storm drainage and access. Her report was thence transmitted to Mr. Slagle for incorporation into his site plan and is attached. Note that said report indicates all of the as-built driveway entrances are acceptable.

We now wish to present a more detailed, engineered site plan for your review and consideration. Larry Stoner, President, Larry Stoner Land Division Consultants

(Due to the limited time frame given to submit this information, please note that the subject site plan must still be considered preliminary).
J.P. Slagle, P.E.
Freeland & Associates, Inc.
t: (360) 650-1408
jsp slagle@freelandengineering.com

From: Sanja Barisic [mailto:sbarisic@co.whatcom.wa.us]
Sent: Wednesday, November 26, 2014 12:28 PM
To: JP Slagle
Cc: larry@larrystoner.net
Subject: RE: Site Plan for Boulos

Public Works- Engineering Services has reviewed submitted Schematic Site Plan and Preliminary Stormwater Design prepared by Freeland & Associates (JP Slagle, P.E.) and can confirm that all items have been addressed, and therefore we believe that proposed project can meet min. Whatcom County Development Standards.

Kind Regards,

Sanja Barisic
Whatcom County Public Works-Engineering Services
5280 Northwest Drive
Bellingham, WA 98226
Office: 360.676.6730
sbarisic@co.whatcom.wa.us
Whatcom County Planning and Development
5280 Northwest Drive
Bellingham, WA 98226

November 25, 2014

RE: Tax parcel #s 390134-520013-485016. Boulos Rezone

Dear Critical Areas Administrator,

The project site is mostly developed with the exception being the west end. The northeast portion is pasture and vegetable gardens. The applicant proposes a rezone to provide opportunity to install a single family residence in the west portion. Commercial redevelopment in the west portion is proposed.

Critical areas were reviewed using resources provided by the Army Corps of Engineers, Department of Ecology, Natural Resource Conservation Service, Washington State Department of Fish and Wildlife, Department of Natural Resources, Whatcom County Planning, and various plant taxonomy sources.

Our firm conducted a field observation on 11/18/2014. Several test pits were observed across the site. Four representative data points were recorded. The soil is typically non hydric, brown 3/3 loam at the surface with a 4/3 to 4/4 found starting at about 10 to 14 inches below the surface.

An "F" Type, fish bearing stream is found in the western portion. The Whatcom County standard buffer for this type of stream is 100'. In addition, a 10' building set-back is applied to the CA buffer. The buffer may be modified under provisions for development near critical areas as per Chapter 16.16 of the county code. A standard buffer reduction to retain 75% of the standard buffer with mitigation may be applied for land development when demonstrated with mitigation that no not loss of the function of the critical area will result and that no less impactive alternative feasible options can be found. Any areas on this subject site found to meet wetland characteristics are included within the OHWM of the creek.

<table>
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<tr>
<th>Cutthroat</th>
<th>Oncorhynchus clarki</th>
<th>Occurrence/Migration</th>
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<td>Salvelinus malma</td>
<td>Occurrence</td>
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<tr>
<td>Resident Coastal Cutthroat</td>
<td>Oncorhynchus clarki</td>
<td>Occurrence/Migration</td>
</tr>
<tr>
<td>Coho</td>
<td>Oncorhynchus kisutch</td>
<td>Occurrence/Migration</td>
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</tbody>
</table>

A very small potential wetland area is observed offsite by evidence of hydric herbaceous vegetation from a point from within this subject property without trespass. It is located at the lowest end of a moderately steep ravine located northward of the west side of the creek and northwest of the foot bridge. The narrow offsite ravine slopes to the stream. Because of small size, low quality, and location, the sloped wetland (<200-300 SF) will not be functionally challenged by the project development proposed. The anticipated (60' moderate or 80' high intensity land use) standard buffer of a Category III wetland (2014 WDOE Rating System) falls within the stream buffer overlay.

Throughout the site with exception of the stream area, hydrology does not appear to be of sufficient consistent duration to meet wetland characteristics by observation of all three parameters including primary or secondary hydrologic indicators, soils, and vegetation parameters.

Limitations
This critical areas review is prepared based upon information collected in the field and from resources provided by federal, state, and local agencies. It is the opinion of the author subject to approval by appropriate agencies.

Please do not hesitate to contact us with any questions or concerns about this matter.

Regards,
Katrina Jackson
November 26, 2014

Whatcom County Engineering
5280 Northwest Drive
Bellingham, WA 98225

Attention: Ms. Sanja Barisic

Subject: Boulos Property
3310 Slater Road
Preliminary Stormwater Design

Dear Ms. Barisic:

The proposed project is located at 3310 Slater Road in Ferndale, Washington. This project will include stormwater infrastructure for two gravel parking lots. One parking lot will be used for car sales and the other for overflow parking for the gas station. This letter serves as a preliminary drainage proposal.

Both areas proposed as parking lots have already been converted to gravel. Stormwater runoff from the proposed car sales lot flows overland to a swale created within the gravel surface. The swale is directed to the existing infiltration pond that serves the adjacent ministorage buildings located at 3322 Slater Road. Stormwater runoff from the proposed overflow parking area currently sheet flows onto the existing asphalt of the gas station located at 3310 Slater Road. No flow control or treatment facilities have been identified at the existing gas station. Stormwater from the gas station appears to be collected in catch basins and conveyed to a piped conveyance system in Slater Road.

During a site visit on November 25, 2014, erosion from the proposed car sales lot was observed entering the existing infiltration pond. It appears that the observed erosion is due to the concentrated stormwater conveyed down the side slopes of the existing infiltration pond without proper stabilization. The final proposal will include maintenance and stabilization to the existing stormwater infiltration pond, which is predicted to reverse adverse effects from sedimentation due to erosion. No other sources of erosion were observed onsite.
The proposed development will be subject to Whatcom County Chapter 2 – Stormwater management. It is anticipated that stormwater mitigation will be provided with bioretention systems along the east and south side of the proposed car sales lot and along the south side of the overflow parking lot. These bioretention systems will provide enhanced stormwater treatment and will be designed per Department of Ecology requirements.

Stormwater flow control is anticipated to be achieved through infiltration. Existing onsite soils consist of Kickerville silt loam (hydrologic ‘B’ classification), which typically has capacity for infiltration. In addition, the existing stormwater facility for the adjacent ministorage project is currently utilizing an infiltration pond. Geotechnical analysis will be completed prior to final design to confirm infiltration capacity of the soils and to determine design infiltration rates.

Please feel free to contact me if you have any questions about these observations.

Sincerely,
Freeland and Associates, Inc.

Jean-Paul (J.P.) Slagle, P.E.

CC: Larry Stoner

Encl: Vicinity Map
     Soils Map
     Extraordinary Inspection for 3310 & 3322 Slater Road

Freeland and Associates, Inc.
Map Unit Name: **Kickerville silt loam, 0 to 99 percent slopes**

### Map Unit Composition

80% - **Kickerville**
- Geomorphic Position: terraces

5% - **Clipper**
- Geomorphic Position: terraces
- Horizon data n/a | View Similar Data

3% - **Birchbay**
- Horizon data n/a | View Similar Data

3% - **Laxton**
- Horizon data n/a | View Similar Data

3% - **Everett**
- Horizon data n/a | View Similar Data

2% - **Shalcar**
- Geomorphic Position: flood plains
- Horizon data n/a | View Similar Data

2% - **Fishtrap**
- Geomorphic Position: flood plains
- Horizon data n/a | View Similar Data

2% - **Barnhardt**
- Horizon data n/a | View Similar Data

### Map Unit Data

| **Map Unit Key:** 75144 |
| **Type:** Consociation  |  |
| **Farmland Class:** All areas are prime farmland |
| **Available Water Storage (0-100cm):** 20.79 cm |
| **Max Flood Freq:** None |
| **Drainage Class (Dominant Condition):** Well drained |
| **Drainage Class (Wettest Component):** Well drained |
| **Proportion of Hydric Soils:** 9% |
| **Min. Water Table Depth (Annual):** n/a |
| **Min. Water Table Depth (April-June):** n/a |
| **Min. Bedrock Depth:** n/a |

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Soils Map

Fig. 2
Extraordinary Inspection Memo
MEMORANDUM

TO: Larry Stoner, Agent for Sam Boulos
FROM: SANJA BARISIC, PW Engineering Services
DATE: November 25, 2014
SUBJECT: Extraordinary Inspection, 3310 & 3322 Slater Rd

Engineering Services has visited the subject site and conducted the following inspection on November 25, 2014 as requested by the applicant:

1- Observation of the existing on-site drainage flows and infiltration pond.
2- Observation of the proposed gravel car lot area in relation to parking space, traffic flows, access, drainage flows, and landscaping area.
3- Observation of the existing sight distance and access points and spacing between existing access points.
4- Existing access approach off of Slater Road that serves Jordan’s business storage site has commercial paved apron installed. Access meets minimum sight distance criteria, as per current WC Development Standards.
5- Spacing between access approach to Jordan’s storage business and access approach to the existing gas station is approximately 60 ft. That is min. required spacing between two driveways as per Development Standards.

Based on today’s site visit, Engineering Services requires the following items to review prior to any recommendation or approval:

1- Preliminary Stormwater proposal including short narrative addressing proposed impervious surface, stormwater flows and runoff treatment as per Development Standards and meeting Chapter 2, Stormwater Management. Based on record drawing submitted for Larry Jordan storage business, some of the existing drainage flows will need to be addressed (swale in gravel area). Additional gravel area behind the existing gas station needs to be addressed in this preliminary stormwater proposal as well.

2- Site Plan shall clearly depict parking area and car lot including ingress/egress area that will also serve Jordan’s storage business.
3- Existing infiltration pond shall be maintained and slopes hydro seeded. Additional rip-rap to be installed if proposed additional inflows to the pond.

4- Landscaping shall be installed on the site as required and shall not obstruct sight distance.

5- Installation of vertical curb will prevent parking in the gravel area in front of infiltration pond. Grass can be seeded on site next to the pond. Curb shall be installed on the edge of the existing shoulder or at the road inspector recommendation. Revocable Encroachment Permit shall be obtained for this work. Site Plan shall show vertical curb preliminary location.

If you have any question, please call me at 676-6730, ext. 50245. Thank you.
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<th>CLEARANCES</th>
<th>Initial</th>
<th>Date</th>
<th>Date Received in Council Office</th>
<th>Agenda Date</th>
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<td>AH</td>
<td>4-22-14</td>
<td>5-6-14</td>
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<td>7/8/14</td>
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**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?** ( ) 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.)*

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:**

**COUNCIL 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.  
7/8/2014: Held in Council pending additional information from PUD#1

**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:**

Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: www.co.whatcom.wa.us/council.
To: Honorable Members of the County Council

From: Daniel Gibson, Chief Civil Deputy Prosecuting Attorney

RE: Public Utility District No. 1 of Whatcom County (PUD) Franchise request.

The PUD is requesting a Franchise Agreement with Whatcom County to establish the terms and conditions related to design, construction, and allocation of risk/liability associated with the use of its facilities, and the potential that the County may require relocation of those facilities. By way of background, a Franchise grants the right to use the right of way of County roads within the County for the construction and maintenance of waterworks; gas pipes; cable, telephone, telegraph, and electric light lines; sewer lines; and any other such facilities. See RCW 36.55, Whatcom County Code (WCC) 12.24, and Whatcom County Charter ("Charter") 9.30. This request from the PUD is limited to water works and related facilities. In the past, the County Council has granted a County-wide franchise to the PUD for electrical facilities.

The PUD has provided a lengthy written Question and Answer sheet and accompanying maps addressing the questions raised by Council members. County Public Works staff has reviewed the Q & A and staff’s suggested changes have been incorporated into that document. County staff and legal counsel have met with PUD staff and their legal counsel on a number of occasions. County staff recommends approval of this Franchise as presented.

This Franchise is similar to recently approved Franchise agreements for other utilities that cover the County or the area of the utility’s jurisdiction. Similar franchises approved by Whatcom County include Puget Sound Energy, Trans Mountain Pipeline, the PUD’s recently approved electrical Franchise, and Comcast, among others. For example, Lake Whatcom Water and Sewer District has a Franchise Agreement with Whatcom County that encompasses all of its jurisdictional boundaries within Whatcom County. County staff concurs with the PUD that the approval of this Franchise does not allow or mandate the extension of any water facilities in a manner inconsistent with the County Comprehensive Plan, or the County’s Coordinated Water System Plan. Because the CWSP limits the PUD’s retail domestic/potable service area to the Grandview and Cherry Point Industrial Areas, the PUD cannot provide domestic potable water service outside of these areas at this time. The PUD can provide wholesale water, irrigation water, industrial water or water for other non-domestic/non-potable purposes throughout the County, if desired by a customer. Due to the limitations and requirements of the CWSP, the PUD cannot force a party to connect to its system outside of the Grandview and Cherry Point Industrial Areas.
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.
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

[Signature]

Public Utility District No. 1 of Whatcom County
Company Name

1705 Trigg Road
Mailing Address

Ferndale Washington 98248
City State Zip

Stephan Jilic
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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 to 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

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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: 

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Clerk of the Council

Carl Weimer, Council Chair

APPROVED AS TO FORM:

( ) Approved  ( ) Denied

Daniel L. Gibbon
Chief Civil Deputy Prosecutor

Jack Louws, County Executive
November 26, 2014

HAND-DELIVERED

Whatcom County Council
Whatcom County Courthouse
311 Grand Avenue
Bellingham, WA 98225

RE: Follow-up Regarding Public Utility District No. 1 of Whatcom County’s (PUD) Request for Franchise for PUD’s Water Utility

Dear Council Members:

As you will or may recall, during and after the public hearing before the County Council on the PUD’s request for a franchise, the PUD was asked to respond to a number of questions from the Council and to provide certain maps prior to the matter being placed back on the Council’s agenda. This material is enclosed herewith.

Steve Jilk and I have developed the enclosed Q&A in response to those questions. Gary Stoyka was provided an early draft and his comments/changes were incorporated. We also provided a draft to Dan Gibson last week. We have sent a copy of this information to Mark Personius at County Planning, as well. The Franchise is set to be on the Council agenda for consideration on December 9th.

In summary, the 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 are 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 PUD’s use of the County’s right of way when locating PUD 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 PUD’s recently approved electrical Franchise, and Comcast, among other utilities that have received county wide or jurisdiction wide Franchises.

Further, pursuant to the Coordinated Water System Act, the PUD is not able to extend retail water service anywhere in Whatcom County. Whatcom County’s Coordinated Water System Plan (“CWSP”) limits the PUD’s retail service area to the Grandview and Cherry Point Service Areas. The County’s CWSP does designate the entire County as the PUD’s wholesale service area, which is consistent with the PUD’s water rights’ place of use and jurisdictional boundaries. Accordingly, the PUD may provide water on a wholesale basis throughout Whatcom County.
We look forward to addressing any further questions you may have, and ask for your approval of this request.

Thank you.

Sincerely,

CHMELIK SITKIN & DAVIS P.S.

Jonathan K. Sitkin

JKS/rsv
Encls.
cc:    PUD Commission
       Steve Jilk, PUD General Manager
       Dan Gibson, Chief Civil Deputy Prosecuting Attorney
BACKGROUND ON PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY

1. What is the PUD?

Public Utility District No. 1 of Whatcom County (the “PUD”) was formed in 1937 by a vote of the people of Whatcom County (the “County”). The PUD is governed by an elected board of three (3) nonpartisan commissioners who come from different districts in the county.1 The PUD is the only utility in Whatcom County whose board is elected by and represents all citizens of the county. The commissioners oversee policy decisions related to the operation of utility systems that provide electric and water service. Pursuant to RCW 54.16.030, the PUD has been empowered by the legislature to supply water for all purposes, public and private, including water for domestic use, irrigation and other lawful purposes within Whatcom County; however as addressed herein, the PUD’s ability to provide retail domestic/potable water is limited to the County’s Coordinated Water System Plan (“CWSP”) approved by the Whatcom County Council (the “County Council”).

Based upon this authority, with regard to the water resource supply and planning, the PUD’s intent is to be able to be responsive to the citizens within the PUD’s boundaries (the same citizens who the County Council serves) by providing effective and efficient solutions to water demands and needs.

2. What is retail water service?

Retail water service is the direct sale of water to an end user or customer.

3. What is potable/domestic retail water service?

Retail potable/domestic water service is the direct sale of potable water to an end user. Typically, this is a potable water service provided by a City, Water District or a private water association. For instance, if a municipal water provider, such as a City or Water District, serves you at your home then you are a retail customer of that municipal supplier. A private water association is typically also a retail water supplier.

4. Does the PUD provide retail domestic/potable water? And, if so, how is the potable/domestic retail water service area defined for the PUD?

The PUD does provide domestic retail water service to some customers within the PUD’s retail service area only.

The PUD’s retail service area for domestic and potable water is ultimately defined by Whatcom County and the State Department of Health as that service area is defined in the County’s CWSP. Presently, the PUD’s retail service area for potable and domestic services is limited to the Cherry Point Industrial Area and the Grandview/Northgate Industrial Service Area. The PUD does not have the authority unilaterally to define its retail service area for potable or domestic service.

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1 PUD Commissioner Districts are the same as Whatcom County Council Districts.
5. Can the PUD force a property owner or operator to connect to the PUD’s water system?

No. Only Whatcom County or a City can mandate connection to the PUD or any other water service provider because the PUD does not have regulatory authority; the PUD is only a service provider. A City or County can mandate that a party or property owner connect to a designated retail purveyor of domestic or potable water, but not the PUD.

Pursuant to RCW 43.70.195, Whatcom County is the designated water purveyor of last resort. This means that if a water system fails due to lack of management, bankruptcy, or other factor, Whatcom County is “receiver of last resort”. However, it does not mean the County has to take over or own a failing water system but rather the County is placed in a position of managing and operating that failing water system, not the PUD. Some Counties have entered into an interlocal agreement to have a PUD assume this role on behalf of the County.

6. Does the PUD provide any other types of retail water service besides potable/domestic water service?

The PUD is unique in that it provides a variety of water services on a retail basis. With the two (2) retail services areas established by Whatcom County, the PUD provides potable and domestic water on a retail basis to the Cherry Point Industrial Area and in the Grandview/Northgate Industrial Area.

When requested by customers throughout the County, the PUD can and does provide via contract the following other types of retail water services to the end user or customer:

a. Irrigation water services to irrigators,
b. Industrial water users to industry, and
c. Fire flow.

7. What is wholesale water supply, and does the PUD provide wholesale water to any water purveyors or customers?

Yes. The PUD has provided wholesale water to a variety of entities.

By way of example, the PUD provides water on a wholesale contract basis to the Grandview Business Park, a private water system within the PUD’s Grandview/Northgate Industrial Service Area. Another example is the prior wholesale supply agreement with the City of Ferndale. When the PUD built the water infrastructure to the County’s Northwest Annex the PUD provided wholesale water to the City of Ferndale so that Ferndale could provide the retail service to the County’s Northwest Annex. Recently, the City of Ferndale unilaterally decided to terminate its wholesale water contract with the PUD. The City of Ferndale had developed groundwater wells and decided that the ability to control its own water source as well as obtain water from its own wells was preferred.
8. **Is the PUD required to serve new domestic/potable retail water service within its retail service area?**

Yes, similar to Cities and Water Districts. This is called a “duty to serve.” However, it is necessary to distinguish a “duty to serve” from the “ability to serve”.

Within a water purveyor’s retail water service area, a water purveyor has a “duty to serve” potable/domestic water to any new industrial, commercial, or residential use when (1) that is consistent with local plans and regulations, (2) that the service is available in a timely and reasonable manner, (3) that the water purveyor has sufficient water rights, and (4) that the water purveyor has sufficient capacity to serve the water in a safe and reliable manner. See RCW 43.20.260 and WAC 246-280-106.

Due to the PUD’s senior water right of significant volume, should an existing water purveyor so desire, a water purveyor can acquire wholesale water from the PUD so that the purveyor can meet its duty to serve.

9. **If the PUD is a County-wide Agency, does it have the unilateral authority to define its Retail Potable Water Service Area**

No. As discussed in the Franchise Q&A, Questions 2 and 3, only Whatcom County and the State Department of Health establish a purveyor’s retail domestic/potable service areas. The Whatcom County Council has established the water system service areas for all public water systems and public water associations (Group A or expanding Group B systems). These are depicted in Whatcom County’s Designated Water Service Area map (2003). See attached.
FRANCHISE Q&A

1. **What is a Franchise?**

   A Franchise grants the right to use the right of way of County roads within the County for the construction and maintenance of waterworks, gas pipes, telephone, telegraph, and electric light lines, sewers, and any other such facilities. See RCW 36.55, *Whatcom County Code (WCC)* 12.24, and *Whatcom County Charter* ("Charter") 9.30.

   A Franchise only establishes the terms, rules, and requirements related to the use of the right of way. The Franchise establishes the terms and conditions related to design, construction, and allocation of liability/risk associated with the use of the facilities, and the potential that the County may require relocation of those facilities.

   The Franchise does not allow or mandate the extension of any water facilities in a manner inconsistent with the Water Service Area designation or similar requirements set forth in the County Comprehensive Plan, CWSP, or similar required planning document.

   This Franchise, similar to recently approved Franchise agreements for other utilities, provides the terms and conditions related to the PUD’s use of the County right of way when locating PUD 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 PUD’s recently approved electrical Franchise, Comcast, among other utilities. For example, Lake Whatcom Water and Sewer District (LWWSD) has a Franchise Agreement with Whatcom County that encompasses all of LWWSD’s jurisdictional boundaries within Whatcom County. The jurisdictional boundary of the PUD is Whatcom County.

   Further, the County Charter Section 9.30 prohibits any Franchise from being exclusive, and limits all Franchises to a period of twenty-five (25) years.

2. **Explain the difference between a franchise area and service area.**

   A. Franchise Area.

      a. A Franchise Area is the area where the holder of the Franchise Area may construct and maintain the facilities as approved by the Franchisor (i.e. water, sewer, telecommunication, electrical, etc.).

   B. Service Area.

      a. "Service area means a specific geographical area serviced or for which service is planned by a purveyor." *RCW 70.116.*

      b. Whatcom County has defined a Service Area as:

         "A specific geographic area serviced or for which service is planned for by a purveyor. A geographical area assigned to a water purveyor for the purpose of providing both current and future public water service." See *Whatcom County Coordinated Water System Plan, February 8, 2000, Glossary of terms-page v.*
C. The PUD’s retail domestic/potable service area where it sells water directly to an end user or customer is currently limited to a portion of the Grandview and Cherry Point Industrial Areas. Thus, the PUD cannot provide domestic potable water service outside of these areas at this time.

D. The Whatcom County Council has established the water system service areas for all public water systems and public water associations (Group A or expanding Group B systems) in its CWSP. These are depicted in Whatcom County’s Designated Water Service Area map (2003). See attached.

   a. The process for establishing a service area is set forth in RCW 70.116. RCW 70.116 provides that the water purveyor’s Service Area is ultimately established by Whatcom County and the State Department of Health. The County’s CWSP identified the process by which the County established the service area for each entity.

   b. The Service Areas are set forth in the County’s CWSP. RCW 70.116. These services areas are depicted in Whatcom County’s Designated Water Service Area map (2003). See attached.

   c. Because a purveyor’s public water service area (retail service area) is established by the CWSP, no other purveyor may establish a public water system within the area covered by the Plan, unless the Whatcom County Council determines that the existing purveyors are unable to provide service in a timely and reasonable manner. RCW 70.116.060(3) (b).

   d. The jurisdiction of the County Boundary Review Board can be invoked to review and potential disapprove any service area change.

E. The issuance of the Franchise is unrelated to the service area issues and whether a party can drill an exempt well within a public water system’s service area. As addressed above, if a party seeks connection to a public water system (domestic) the County Council would have to determine that the existing purveyor is unable or unwilling to serve that potential user.

3. Explain what steps and public/County oversight the PUD has to go through to expand its service area once the County has authorized a Franchise that covers all of Whatcom County.

A purveyor cannot unilaterally expand or alter its public water system service area. Alteration of a purveyor’s public water system service area requires the approval of the Whatcom County Council and the State Department of Health.²

Because these limitations apply to domestic public water system, the PUD due to its water rights and county-wide jurisdictional boundaries can provide non-potable water (such as industrial, irrigation, or raw water or water that is not domestic, potable water,) directly to individual water users county-wide. However, the PUD cannot require any individual or entity to connect to the PUD’s infrastructure or mandate that

² RCW 70.116.030(6). Pursuant to the Coordinated Water System Act (RCW 70.116) a public water system applies to water intended for human consumption. Accordingly, the rules related to service area limitations do not expressly limit the extension of industrial water, raw water, irrigation water, or wholesale water. The designated place and purpose of use is provided for in the water right certificate issued by the Department of Ecology.
any party (private or public) connect to the PUD’s wholesale water system.

The Franchise will only allow the PUD to construct facilities within the County Right of Way. It would not authorize any water connection or alter the retail service area of the PUD. Any request from a potential PUD customer for non-potable water would only occur if the PUD were requested to extend such service, as the PUD does not have the authority to mandate a connection. Such requests would likely come from an agriculture operator seeking water for crops or stock, an industrial user, or a public or private water system seeking water to meet the County and State approved service connection of that water system.

4. Maps: (a) showing current authorized franchised / service area vs. the current actual service area, (b) depicting existing Franchise Areas and location of existing water facilities

See attached maps

5. If the PUD has any current non-permitted / non-franchised / unauthorized current use of County right-of-way or service outside its franchise area, please identify it and explain how this occurred.

Over the years, a number of extensions have occurred within the County Right of Way outside of the existing Franchise areas. The PUD believes that in all such cases that these extensions occurred with the knowledge of Whatcom County, and that a County revocable encroachment permit may have been issued by County Public Works for a number of these extensions, although a Franchise could and should have been in place for a number these extensions.

One example was the County’s request for water service to the County’s Northwest Annex facility at the corner of Smith Road and Northwest Drive. Prior to the County’s adoption of the CWSP, at the request of Whatcom County, the PUD extended its water lines to serve the County’s Northwest Annex at Smith Road. The County could, and perhaps should, have required a Franchise for the extension to its facility, but it did not. These facilities are now owned and operated by the City of Ferndale. The Northwest Annex is now within the City of Ferndale’s service area.

6. Identify any current or anticipated contracts / commitments made to third parties to provide service outside your existing franchise area that would be impacted by the new agreement.

No commitments have been made with any third parties for retail water service outside of the PUD’s service area.

As noted above in response to question 5, over the years, a number of water system extensions have occurred within the County Right of Way outside of the areas covered by the two (2) existing Franchise agreements. These were done pursuant to contracts executed with the PUD, including the extension of water service infrastructure to Whatcom County’s facilities.
7. **Matrix listing key terms and changes / impacts between the current franchise agreements and the proposed expanded consolidated agreement.**

Each of the existing Franchises contains different terms and conditions, reflective of the era in which they were drafted. Thus, this table seeks to identify the key terms and to align the issues and identify the different treatment of the issues.

<table>
<thead>
<tr>
<th>Term</th>
<th>Description</th>
<th>Existing Agreement</th>
<th>Proposed Agreement</th>
</tr>
</thead>
<tbody>
<tr>
<td>PUD obligation to not unreasonably interfere with passage of traffic, liability</td>
<td>PUD must place and maintain all facilities so as to not unreasonably interfere with the free passage of traffic. Prior to installing facilities, PUD may request determination from County whether proposed placement will interfere with traffic.</td>
<td>Not Addressed</td>
<td>Section 4.1.</td>
</tr>
<tr>
<td>Timing and priority of preferences regarding location of utilities</td>
<td>Owners of utilities installed prior to PUD’s facilities have preference as to position and location. PUD has preference as to owners of utilities installed subsequent to PUD’s facilities.</td>
<td>Not Addressed</td>
<td>Section 4.3.</td>
</tr>
<tr>
<td>Notice from County for County work in area of PUD lines</td>
<td>Before performing road work contiguous to PUD facilities, County must check with locator service to determine whether PUD lines are located in proposed work area. If PUD lines are located within proposed work area, County must provide seventy-two (72) hours’ notice of proposed work to PUD.</td>
<td>1965 agreement required thirty (30) days’ notice (Section 9). 1970 agreement required forty-eight (48) hours’ notice (Section 9).</td>
<td>Section 4.4.</td>
</tr>
<tr>
<td>PUD liability for above-ground facilities</td>
<td>PUD must provide a clear zone of five (5) feet on all sides of above-ground facilities.</td>
<td>Not Addressed</td>
<td>Section 4.5.</td>
</tr>
<tr>
<td>PUD liability for costs of examination, inspection, and approval of construction by County Engineer</td>
<td>PUD must obtain approval from County Engineer prior to commencement of construction. All such work is subject to inspection of County Engineer, and PUD must pay all costs and expenses of inspection.</td>
<td>Section 3.</td>
<td>Section 5.2.</td>
</tr>
<tr>
<td>Topic</td>
<td>Description</td>
<td>Section 4</td>
<td>Section 5.3</td>
</tr>
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<td>---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
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</tr>
<tr>
<td>PUD liability for restoring County property, performance bond</td>
<td>In any work requiring breaking of soil, PUD liable for restoring property and leaving property in same condition as before work was commenced.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>PUD liability for trenches, tunnels</td>
<td>If PUD commences tunneling work or opening of trenches, PUD must take all necessary precautions to guard the area, including placement of warning lights and barricades if trenches, ditches, or tunnels are left open at night.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>PUD obligation to relocate facilities for improvement of County facilities</td>
<td>If County determines it's necessary to improve County facilities in the Franchise area, PUD must relocate or adjust the elevation of its facilities upon written request from the County Engineer at the PUD's expense.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>County liability for work done over high pressure water lines</td>
<td>In the event the County permits or conducts work over, or near PUD high pressure water lines, County shall indemnify the PUD from any negligence act or omissions that proximately cause damage or disrupt the operation of the high pressure water lines.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>County ability to relocate PUD high pressure lines</td>
<td>County may relocate or adjust PUD high pressure water lines at its sole cost and risk and with the prior written consent of the PUD, so long as service to PUD customers is not interrupted.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Indemnification</td>
<td>PUD shall defend, indemnify and hold the County harmless from all claims made against PUD for injury or damage to the extent such injury or damage is caused by the PUD in exercising the rights granted to the PUD under the franchise agreement.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Moving buildings or other objects by persons other than County</td>
<td>If any person requests permission from the County to use the franchise area for the moving or removal of a building or other object, County must direct such person to arrange with the PUD for the adjustment of PUD facilities. Such person must make arrangements with PUD no less than fourteen (14) days prior to the moving or removal of the building or other object.</td>
<td>Not Addressed</td>
<td>Section 10</td>
</tr>
<tr>
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</tr>
<tr>
<td>Exclusivity</td>
<td>The franchise is not exclusive and does not prohibit the County from granting other similar franchises.</td>
<td>Section 13</td>
<td>Section 12.1</td>
</tr>
<tr>
<td>Franchise Term</td>
<td>Franchise agreement is in effect for twenty-five (25) years.</td>
<td>1965 and 1970 agreements were in effect for fifty (50) years.</td>
<td>Section 13.1</td>
</tr>
<tr>
<td>Assignment of Franchise</td>
<td>Franchise may not be assigned, transferred, or sold without prior written consent of County Council. Any approved assignee must file written notice of assignment with the County within thirty (30) days of the assignment, along with written acceptance of all terms and conditions of the assignment.</td>
<td>Section 15</td>
<td>Section 14.1</td>
</tr>
<tr>
<td>Insurance</td>
<td>During the franchise term, PUD must keep a liability insurance policy in the amount of One Million Dollars ($1,000,000).</td>
<td>1965 agreement required a bond equal to 5% of the installed valuation of the PUD's pipeline and facilities in Whatcom County (Section 18). 1970 agreement required One Hundred Thousand Dollars or Three Hundred Thousand Dollars ($100,000/$300,000) liability insurance policy (Section 21).</td>
<td>Section 18.1</td>
</tr>
</tbody>
</table>
8. Clarification on whether this could allow the PUD (now or in the future) the ability to expand the area within the County it could impose any costs / assessments etc.

Whatcom County has already limited a water purveyor’s ability to extend potable water service outside of the purveyor’s designated service area. The approval of the proposed Franchise would not allow the PUD to expand the area within the County where it could impose costs or assessments.

Denial of the Franchise would not give the County more control in this regard as it has already established those service area limitations. This is because a Franchise only establishes the terms, rules, and requirements related to the use of the right of way. The Franchise also establishes the terms and conditions related to design, construction, and allocation of liability/risk associated with the use of the facilities, and the potential that the County may require relocation of those facilities.

For many of the PUD’s retail customers -- the PUD does not require a written contract. For those retail customers, the connection process is similar to establishing a connection with a City or Water District. For all other water service, including PUD irrigation customers and any fire flow service a contract is required. Every connection or water contract executed by a customer is a voluntary act by the PUD’s customer, and subject to approval of the PUD.

It is worth noting that in seventy-five (75) years of operation the PUD has only taken over one (1) water system (in 1992) and then only at the request of the owner/operator of that water system – the formerly private Northgate/Grandview Water system. During the PUD’s history, the PUD has consistently been a partner seeking to be available to assist and facilitate solutions to private and public water systems. This has not changed.

The PUD has the authority to impose a county-wide tax. The elected PUD Commission has this authority to impose a tax independent of the County Council. Since its formation in 1937, the PUD has only assessed a small tax in the mid-1940s for a few years to collect revenue to pay administrative costs. Since that time, the PUD has not levied any property tax. The PUD source of revenue is through its water and electrical service contracts for industrial, irrigation, fire flow, or retail water service, and the sale and delivery of electrical energy.
9. What is the difference in cost to the PUD of acquiring a private vs County right-of-way? It sounds like the Lynden project would be a great example as you appear to have already done most work.

An example is the best way to respond to this question.

Should a customer or potential customer seek an extension of wholesale water to their farm or water association, the PUD would likely need to construct a water transmission main to the potential customer. If a Franchise is not available, the PUD would not be allowed to locate that main in the County Right of Way, but the PUD could proceed to acquire easements over private and in some cases public properties, through negotiated purchase or through the exercise of its eminent domain power. The PUD prefers to work with the County consistent with an existing Franchise.

Because the cost of extending the water main would be borne by the potential customer, generally speaking the added cost of acquiring easements, particularly for a lengthy extension, is or can be cost prohibitive.

As to the Lynden example raised previously, the “Lynden Project” involved the potential delivery of non-potable water to the City of Lynden, farmers, irrigators and potentially for stream flow augmentation. The PUD can sell non-potable water to water associations, Cities, farmers, and irrigators anywhere in the County without altering the PUD’s retail domestic/potable water service area set by the County’s CWSP. The Lynden Project is an example of how the PUD could have used the County Right of Way mostly for road crossings and potentially to lay pipe along side a roadway for short lengths in order to extend the non-potable water mains to the City of Lynden and other areas of North County for the above mentioned purposes. The Lynden Project never fully developed or evolved to a point where the PUD would investigate the costs of acquiring easements, public or private. The initial estimate for the cost of the infrastructure was considered unfeasible to pursue.

10. Explain exactly what the rules are that govern the type of use & place of use of PUD water.

The rules related to the use and place of use water are set forth in combination of rules, policies, and regulations.

First, pursuant to Washington State water law, the PUD’s water rights establish limits on the type of water use, and the place of use, the point and type of the source (surface water or ground waters) as well as the volumes of use (annual and instantaneous). Because the PUD is a county-wide public entity, the place of use for water appropriated by the PUD is county-wide. As addressed above, the PUD and Whatcom County have historically viewed this as a benefit to the citizens of Whatcom County, not merely the existing customers, primarily industrial customers. The public benefit is the opportunity for the PUD, a county-wide public agency, to play a role in addressing water resource issues in the County together with the other key water right/purveyor stakeholders in Whatcom County.

Second, as noted, the County’s CWSP places limits and restrictions of any retail potable water service outside of the PUD’s current service area.

Lastly, the PUD has established its own policies and requirements related to water service. These are found in the PUD’s water system plan, that is part of the County's
CWSP, as well as the PUD's water system management policies and procedures, such as requirements related to operation and management of its water system, connection policies, rates and fee policies, etc. For instance, generally speaking, other than within a water system that is owned and operated by the PUD (the Grandview/I-5/Northgate Retail Service Area), no party is entitled to any service, including fire flow without a contract with the PUD, including those within the PUD's retail service area.

11. Explain how expanding your franchise agreement could alter / expand / improve access to water around the county.

This has been addressed, in part, in response to other questions above. Because the PUD is a municipal entity, and its jurisdiction is county-wide, other than the retail domestic/potable water service, the place of use for water appropriated by the PUD is county-wide. For example, should a potential customer seek an extension of water service to their farm or water association, the PUD could provide that service if requested by the customer and if the PUD's water rights allow for that place and purpose of use. The Franchise would allow the PUD to locate water lines in the County Right of Way, but would not obligate any party to connect to that line, unless required by Whatcom County or a City.

Another example is that the PUD as a public entity can facilitate financing infrastructure improvements for the benefit of water associations that the associations may not independently be able to pursue. An example would be if a water association sought the PUD's assistance to facilitate financing improvements through a Local Utility Improvement District. The PUD could construct facilities needed by the water association, and make those facilities available for use by the water association. Examples of this include the financing of the water extension to the County's Northwest Annex, the extension of water transmission lines and fire suppression systems in the I-5 Grandview area expanding the County's commercial/industrial tax base, and Elder Road Water Association, a private water association that paid for a water system improvement for fire flow and irrigation by connection to the PUD industrial water system.

Another possibility is that the PUD can be the recipient of grants for water system improvements available only to a public entity. The PUD can develop the facilities, such as the replacement of waterlines, financed by a state or federal grant, and then make those facilities available for use by the private water association through a lease back of facilities from the PUD to the water association.

12. Explain what permits, permissions, etc. the PUD will still need to get from the County before it can provide service if this franchise / right-of-way agreement is put in place. Do changes in service areas have to be approved by the County Council (example: service to BP changed from the PUD to BBWSD, or Central City service changed to the City of Ferndale)?

As it relates to retail water service outside of its existing retail service area (Grandview and Cherry Point Industrial Areas), the PUD would need to obtain the approval of the Whatcom County Council before it extended retail water service outside of its existing service areas.

In addition, the County has existing zoning regulations that require a zoning conditional use permit for any water line in excess of eight inches (8"), with few exceptions. All
exceptions would require that the extension be consistent with the County approved Comprehensive Plan, which includes the County’s CWSP. See WCC 20.82.030(3).

In addition, if the water lines were to be located within a Franchise Area, the PUD would be required to obtain Whatcom County Public Works approval of the design, specifications and location of the lines.

Further, the PUD would likely need a fill and grade permit from the County Planning Department for any excavations required to construct the lines. The PUD may also need a building permit for structures developed, such as a pump house.

13. If we increase the franchise area will County citizens be forced to apply or connect to the PUD for water (and potentially be rejected) before they can drill a well in an area that does not otherwise have water service from another purveyor?

No. Similar to any other water purveyor, the PUD does not have the authority to prohibit any person or entity outside of its retail service area from drilling an exempt well.

The issuance of the Franchise is unrelated to the service area issues and whether a party can drill an exempt well within a public water system’s service area. As addressed above, if a party seeks connection to the PUD’s public water system (domestic) the County Council would have to determine that the existing purveyor is unable or unwilling to serve that potential user.
MINUTES FROM THE JULY 8, 2014

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) (7:37:49 PM)

Andrew Hester, Public Works Department, gave a staff report and stated this is a new franchise that will replace three existing franchises. The franchise covers the County’s entire right-of-way area, similar to other utility services.

Weimer asked if there is another process the Public Utility District (PUD) would have to go through to actually put lines in the ground and run water to areas. Hester stated there are County code regulations, planning, and permitting for building in the right-of-way.

Weimer opened the public hearing, and the following people spoke:

Steve Jilk, Public Utility District (PUD) #1 General Manager, stated this is a replacement of three existing franchises in place right now. Those franchises cover specific main transmission lines from the treatment plants in Ferndale and north of Ferndale to serve the Cherry Point area. The franchise is new in the sense that it covers all areas of Whatcom County. The existing franchises now specifically cover the three pipelines that are in place. The PUD has taken on ownership of the Grandview/Interstate 5/Northgate water system and developed extensions from the main transmission lines to serve water associations and about 50 irrigation customers. The PUD has no plans at this time to extend infrastructure to other locations in the county. Under the authority of the PUD, established by vote in 1937, the PUD has the legal right to serve water and electricity throughout Whatcom County. The County approved a franchise in 2011 to allow the PUD to operate its electrical system throughout Whatcom County. The PUD reiterates that this does not provide the PUD the opportunity to extend water service throughout the county. That has to be provided through other means.

Karen Brown stated she opposes the franchise. The PUD should not get special treatment. The PUD commissioners have said they have the right to tax the whole county. The PUD has 13 miles in a small area that includes Cherry Point in which it can distribute water and power. The PUD has taken two years to fix the legal paperwork for their wellhead pipes and building that they operate for the Grandview water and fire system. She asked why the County would grant a countywide franchise when the PUD can't serve its own service area in a timely manner. Birch Bay Lynden Water and Sewer recycles 1.5 million gallons in its water plant. They have been denied access to serve Cherry Point, which would free up potable water from the Nooksack. Be aware of everything going on behind the scenes before granting a countywide franchise.

Hearing no one else, Weimer closed the public hearing.

Weimer asked about the process the PUD would have to go through to provide water service to the entire county. Jilk stated it depends on the water rights, type of use, place of use, point of withdraw, and whether the service is retail or wholesale. The place for which
they can provide retail service is defined in the Coordinated Water System Plan and by the State Department of Health. The PUD water rights allow the PUD to provide wholesale service throughout the county. The type and place of use is also defined in their water rights. The PUD provided water to the British Petroleum (BP) refinery for industrial and potable purposes until a couple of years ago. The quality of the water didn’t meet Health Department standards, and had to be treated. BP determined it was more cost efficient to buy potable water directly from the Birch Bay Water and Sewer District. The Coordinated Water System Plan was amended to allow the district to serve the BP refinery. The PUD would have to go through that type of action to serve retail.

Weimer asked if the County Council approves the amendments. Jilk stated they are amendments to the Coordinated Water System Plan service area. The PUD can provide wholesale water to anyone in the county just through an agreement.

Weimer stated the community is concerned that the PUD can provide water wholesale without coming to the County for approval to run pipe in the County right-of-way. Jilk stated they can do that now by running pipe through private easement agreements with private property owners.

Browne asked if the PUD would not have to get private easements if the franchise is approved and the PUD has access to the County rights-of-way. He asked if the PUD no longer needs the County’s permission to cross County roads with this franchise in place. Jilk stated that’s correct. If the PUD is ever asked to take ownership of a portion of another system or tie different systems together, and the route is best located within or crossing County right-of-way, this franchise would allow the PUD to do that. The actual construction still requires work with the County. There is no increased opportunity for the PUD. There is no restriction on any other utility to keep them from applying for a similar franchise.

Brenner asked if an expansion would be prohibitively expensive without this franchise. Jilk stated it would not.

Browne asked if the County Health Department would require a property owner seeking water service to get that water from the PUD, because the service areas will overlap. Jilk stated the purpose of the Coordinated Water System Plan is to ensure that water is available and those service areas don’t overlap.

Jon Sitkin, PUD #1 Attorney, stated the PUD can only provide wholesale water, not retail water. The franchise grants an easement through County rights-of-way to locate a water line. It does not grant the authority to provide water service.

Kremen asked what the new franchise would do that the current franchises do not. Jilk stated the current franchises cover the existing transmission lines. Also, there are existing facilities that are not covered by the current franchises. If requested to serve other parts of the county, the PUD will have that flexibility to work within the County right-of-way.

Kremen asked if this franchise gives the PUD no additional authority to serve. Jilk stated the franchise gives the PUD the authority to work within County rights-of-way, but not to provide retail service to customers.

Brenner stated this franchise gives the PUD an advantage over other water utility districts and associations. She’s not sure why the current agreements don’t work. If they don’t work, the County should change it for everyone. There should be a blanket ordinance for all water providers.
Browne asked the location of the PUD water intake. Jilk stated one is at Pioneer Park in Ferndale. Another is two miles upriver off of Trigg Road. Together, the PUD has water rights equivalent to about 54 million gallons per day. They have the capacity to pump and treat about 46 million gallons per day.

Browne stated draw the water at the low end of the river instead of the high end of the river to protect fish. He asked for a service map and a chart of the current situation, including anything noncompliant with permitting, and a map and chart after approval. He struggles to understand what is changing.

Weimer asked if approval of this franchise would enable growth in rural areas. Jilk stated that it could, but there are restrictions to the location and type of water, even though it's a wholesale use. The PUD could still request to amend the Coordinated Water Service Plan. The issue of providing water to expand development of rural areas is restricted based upon zoning laws.

Jack Louws, County Executive, stated his experience in working with the PUD was very positive during his years as the mayor of the City of Lynden. The PUD is going to be a huge partner in the future to solve municipal water issues. He supports the franchise. If any district with extra water wants the same opportunity as the PUD, the County would grant them that same opportunity. It's not a competition. A blanket franchise would be a problem, because the owners of the pipes in the ground are responsible to maintain them. The PUD is bound by a contract to maintain the pipes by signing the franchise agreement. The PUD commissioners are elected to serve everyone in the county. They will have to take action on some of these franchises, which are expired or expiring soon.

Brenner stated she is not opposed to consolidating the three existing PUD franchises. She is not comfortable with a countywide franchise. Treat all the providers the same.

Jilk stated the Council can grant an opportunity to serve countywide to any utility district that requests it. It is a nonexclusive franchise. The PUD is the only public utility established under the vote of the entire county in 1937 to serve all of Whatcom County with electric and water service, so there is a difference.

Crawford moved to adopt the ordinance.

Browne moved to hold in Council until the PUD can prepare and provide documents that will explain the impacts of combining the three franchises and the differences between the current franchises and the proposed franchise. Provide a map that shows the current service area and the areas out of compliance that would be brought into compliance by this ordinance.

Kremen asked for clarity on what area the PUD currently serves and what the potential new expanded service will be. Jilk stated neither this nor any franchise impacts the PUD service area. The ability to serve water isn't granted by the franchise.

Crawford stated there is no harm in this ordinance. It's great that the jurisdictions are working together to provide water. He hopes to change the Coordinated Water System Plan someday to a countywide buildable water system plan for drinking water. Enable water providers to move in that direction.
Browne restated his motion to describe the difference between this agreement and existing agreements, specifically answering how this could impact or expand the supply of water around the county.

Weimer suggested a friendly amendment to also ask the Planning and Development Services Department staff to provide information.

Browne accepted the friendly amendment.

The motion to hold in Council carried by the following vote:

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

Nays: Crawford (1)
TITLE OF DOCUMENT: Whatcom County Library System Board appointment

ATTACHMENTS: Application for appointment; 11/20/14 letter from WCLS Executive Director

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 appointment of Lori Jump to the Whatcom County Library System (Rural Library) Board.

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.
APPLICATION FOR APPOINTMENT TO WHATCOM COUNTY BOARDS AND COMMISSIONS

PLEASE PRINT LEGIBLY and COMPLETE ALL ITEMS

Name:  Lori (Jump)  Johnson  Date:  Oct 11, 2014
Street Address:  Locke E Laurel Rd
City:  Bellingham  WA  Zip Code:  98226
Mailing Address (if different from street address):
Day Telephone:  360-815-4312  Evening Telephone:  Same  Cell Phone:  Same
E-mail address:  LEBERLOZO@COMCAST.NET

1. Name of board or committee—please see reverse:
   WCLS Board of Trustees
   WCLS Board of Trustees

2. You must specify which position you are applying for.
   Please refer to vacancy list.

3. Do you meet the residency, employment, and/or affiliation requirements of the position for which you’re applying?
   (If applicable, please refer to vacancy list.)  ☑ yes  ( ) no

4. Which Council district do you live in?  ☑ One  ( ) Two  ( ) Three

5. Are you a US citizen?  ☑ yes  ( ) no

6. Are you registered to vote in Whatcom County?  ☑ yes  ( ) no

7. Have you ever been a member of this Board/Commission?
   If yes, dates:
   □ yes  ☑ no

8. Do you or your spouse have a financial interest in or are you an employee or officer of any
   business or agency that does business with Whatcom County?
   If yes, please explain:
   □ yes  ☑ no

9. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community
   activities, and education.
   B.S. Business Administration @ CWU, International Logistics Manager @ CD Technologies, Georgia Pacific, business owner of Media
   Migration Services, Inc. Responsibilities: skills, outside sales, managing personnel, HR (hiring, firing, insurance, I.T. etc.), budgeting, project
   management, contract negotiation. Former board/participant of United Way, Rape Relief, Sunday School teacher, MMS Site Council, MMS
   Booster Club, President of Laude Book Club, Soccer coach. I believe
   Community volunteering is the backbone of a healthy community. I love to

   References (please include daytime telephone number):
   LeaD, LeaRn, orgaNize, help
   John Risser 360-369-5531, Suzanne Chandler 360-220-2424

Signature of applicant: 

THIS IS A PUBLIC DOCUMENT: As a candidate for a public board or commission, the above information will be
available to the County Council, County Executive, and the public. All board and commission members are
expected to be fair, impartial, and respectful of the public, County staff, and each other. Failure to abide by these
expectations may result in revocation of appointment and removal from the appointive position.
Mr. Jack Louws, Whatcom County Executive
311 Grand Avenue, Suite 108
Bellingham, WA 98225

Dear Executive Louws:

Whatcom County Library System Board of Trustees Personnel Committee met recently with applicants for a partial term for Position #4, which was vacated by the resignation of Deborah Lambert. While each of the candidates has excellent qualifications, the Personnel Committee recommends that Lori Jump complete the term, which runs through January 31, 2019.

Ms. Jump resides in the Laurel area of rural Whatcom County. She is very active as a business woman (she was an International Logistics Manager at Alpha Technologies and Georgia Pacific, and now owns Media Migration Services, Inc.) and as a community volunteer. She serves as a Sunday school teacher at her church, a member of the Meridian Middle School Site Council and Booster Club, President of the Laurel Book Club, and as a soccer coach. Yet she assures us she has the time and passion for serving as a library trustee!

The Personnel Committee was particularly interested in her professional experience with Human Resources and project management, as well as her many ties to the rural community. Laurel is one area of Whatcom County where we do not currently have a library branch and her connections to this community will be a significant asset as we start to work on updating our strategic plan next year.

If you have any questions about this recommendation, please do not hesitate to call. Thank you for your consideration. We look forward to hearing the news of your appointment.

Sincerely,

Christine Perkins, Executive Director