

**WHATCOM COUNTY CONTRACT
INFORMATION SHEET**

Whatcom County Contract No.

202408018


Originating Department:	Parks & Recreation
Division/Program: <i>(i.e. Dept, Division and Program)</i>	Administration
Contract or Grant Administrator:	Bennett Knox
Contractor's / Agency Name:	Blaine School District
Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes <input type="radio"/> No <input checked="" type="radio"/> If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____	
Does contract require Council Approval? Yes <input checked="" type="radio"/> No <input type="radio"/> If No, include WCC: _____	
Already approved? Council Approved Date: _____ (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)	
Is this a grant agreement? Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, grantor agency contract number(s): _____ CFDA#: _____	
Is this contract grant funded? Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, Whatcom County grant contract number(s): _____	
Is this contract the result of a RFP or Bid process? Contract _____ Cost Center: _____	
Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, RFP and Bid number(s): _____	
Is this agreement excluded from E-Verify? No <input type="radio"/> Yes <input checked="" type="radio"/> If no, include Attachment D Contractor Declaration form.	
If YES, indicate exclusion(s) below:	
<input type="checkbox"/> Professional services agreement for certified/licensed professional. <input type="checkbox"/> Goods and services provided due to an emergency	
<input type="checkbox"/> Contract work is for less than \$100,000. <input type="checkbox"/> Contract for Commercial off the shelf items (COTS).	
<input type="checkbox"/> Contract work is for less than 120 days. <input type="checkbox"/> Work related subcontract less than \$25,000.	
<input type="checkbox"/> Interlocal Agreement (between Governments). <input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.	
Contract Amount:(sum of original contract amount and any prior amendments): \$ <u>0</u>	Council approval required for; all property leases, contracts or bid awards exceeding \$40,000 , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, except when:
This Amendment Amount: \$ <u>0</u>	1. Exercising an option contained in a contract previously approved by the council.
Total Amended Amount: \$ <u>0</u>	2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance.
Summary of Scope:	3. Bid or award is for supplies.
	4. Equipment is included in Exhibit "B" of the Budget Ordinance.
	5. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County.
This is an Access Agreement that whereby the County provides the Blaine School District (BSD) permission to enter portions of Bay Horizon Park for the purposes of conducting evaluations and inspections related BSD's desire to expore acquisition of a portion of Bay Horizon Park for construction of an elementary school. The term is indefinite and extends through the necessary investigation phase and the agreement can be canceled by either party.	
Term of Contract: indefinite	Expiration Date: n/a

Contract Routing:	1. Prepared by: <u>B Knox</u>	Date: <u>7/23/2024</u>
	2. Attorney signoff: <u>Brandon Waldron (via e-mail)</u>	Date: <u>7/23/2024</u>
	3. AS Finance reviewed: <u>Andrew Tan (via e-mail)</u>	Date: <u>7/25/2024</u>
	4. IT reviewed (if IT related): _____	Date: _____
	5. Contractor signed: <input checked="" type="checkbox"/>	Date: <u>7/11/24</u>
	6. Executive contract review: <u>OK</u>	Date: <u>8/22/24</u>
	7. Council approved, if necessary: <u>AB2024-513</u>	Date: <u>8/16/24</u>
	8. Executive signed: <input checked="" type="checkbox"/>	Date: <u>8/23/24</u>
	9. Original to Council: _____	Date: _____



MEMORANDUM

TO: Satpal Sidhu, County Executive

FROM: Bennett Knox, Director 

RE: Access Agreement Between Blaine School District and Whatcom County for Bay Horizon Park

DATE: July 26, 2024

Background and Purpose

Whatcom County acquired what is now Bay Horizon Park, formerly the Blaine Air Force Station, in the mid-1980's as surplus property from the U.S. Government. At that time, a portion of the acquired property was contemplated as suitable for construction of an elementary school on the premises. Over the ensuing years, there have been periodic discussions of this proposal, with the most substantial conversations occurring most recently in the mid-2000s. The Blaine School District has recently initiated renewed outreach to the County regarding this opportunity and seeks to undertake analysis of the originally-contemplated area within Bay Horizon park for suitability.

This access agreement, if approved, would allow the District to perform necessary due diligence to evaluate the site prior to initiating necessary negotiations with the County.

Funding Amount and Source

This agreement does not involve transfer of funds.

Recommendation

The Department recommends approval of this access agreement.

Please contact me at extension 5855 if you have any questions or concerns regarding the terms of this agreement

Encl. 1) Access Agreement including map of subject area

ACCESS AGREEMENT

THIS ACCESS AGREEMENT (“**Agreement**”) is made and entered into as of the date of mutual execution of this Agreement (“**Effective Date**”) by and among WHATCOM COUNTY, a Washington municipal corporation (“**Owner**”), and BLAINE SCHOOL DISTRICT NO. 503, a municipal corporation of the State of Washington (“**District**”), with reference to the following facts:

A. Owner owns certain real property consisting of approximately 68.19 acres of land known as Whatcom County parcel number 4001313352650000, with an address of 7467 Gemini Street, Blaine, Washington (the “**Property**”).

B. The District has requested permission to enter the portion of the Property identified in purple on the depiction attached as Exhibit A hereto (“**Inspection Property**”) prior to deciding upon whether to make an offer to purchase the Inspection Property from Owner, in order to perform wetlands studies, assess developability, and conduct other due diligence of the Inspection Property.

C. On the terms and conditions set forth below, Owner is willing to allow the District the opportunity to conduct certain due diligence of the Inspection Property prior to entering into negotiations and reaching agreement on and entering into a formal binding purchase and sale agreement with respect to the purchase of the Inspection Property (“**Purchase Agreement**”).

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, Owner and the District agree as follows:

1. GRANT OF ACCESS RIGHT DURING PRELIMINARY INSPECTION PERIOD

Commencing on the Effective Date and continuing until the mutual execution of the Purchase Agreement or the sooner termination of this Agreement pursuant to Section 3 below (“**Preliminary Inspection Period**”), subject to the terms and conditions set forth in Section 2 below, the District and its employees, agents, contractors, consultants and representatives (“**District’s Due Diligence Team**”) shall be granted access to the Inspection Property for the purpose of conducting tours, inspections, examinations, studies, surveys, measurements, or tests (including without limitation wetlands studies) (collectively, “**Inspections**”), all in compliance with any applicable law, regulation, ordinance, code or rule, including without limitation, laws governing environmental matters, of any federal, state, county, local or municipal governmental authority with jurisdiction over the Inspection Property.

2. THE DISTRICT’S RESPONSIBILITIES

2.1 **Prerequisites to Physical Access.** The District and the District’s Due Diligence Team may request reasonable access to the Inspection Property to conduct Inspections during normal business hours. Such requests must be made by email to Owner at least one (1) business day in advance of when access is requested. Owner’s approval of such requests shall not be

unreasonably withheld, conditioned or delayed. The District and the District's Due Diligence Team shall abide by all reasonable directives of Owner in conducting its due diligence.

2.2 Indemnification. The District shall indemnify, defend, and hold Owner harmless from and against any liability, claim (including any claim for damage to property or injury to or death of any persons), lien, loss, damage (excluding special, punitive, or consequential damages), cost or expense, including reasonable attorneys' fees, to the extent directly arising from the Inspections conducted by the District or the District's Due Diligence Team on or about the Inspection Property, except to the extent arising out of (i) the mere discovery of any pre-existing condition at the Inspection Property, or (ii) the negligence or misconduct of Owner, Owner's property manager or their agents, or Owner's employees, licensees, guests, or members of the public. This obligation shall survive termination of this Agreement.

2.3 Insurance. Prior to entering the Inspection Property and while conducting any Inspections, those members of the District's Due Diligence Team entering the Inspection Property shall, at no cost or expense to Owner: (a) procure and maintain commercial general liability (occurrence) insurance in an amount no less than \$1,000,000 and on commercially reasonable terms adequate to insure against all liability arising out of any entry onto or Inspections of the Inspection Property that lists Owner as additional insureds; and (b) deliver to Owner prior to entry upon the Inspection Property certificates of insurance for the applicable members of the District's Due Diligence Team evidencing such required insurance.

2.4 Additional Requirements. The District will not alter the physical condition of the Inspection Property without notifying Owner of its intent to do so and obtaining the prior written consent of Owner (which consent shall not be unreasonably withheld, conditioned, or delayed) to any physical alteration of the Inspection Property, including, without limitation, borings, drillings or other invasive testing. The District shall restore the Inspection Property to substantially the same condition in which the same were found before any such entry upon the Inspection Property and any Inspections were performed. The District shall promptly pay when due all costs of all Inspections done with regard to the Inspection Property and shall not permit any liens to attach to the Inspection Property by reason of the exercise of its rights under this Agreement. These obligations shall survive termination of this Agreement.

3. TERMINATION OF AGREEMENT

Either Owner or the District may terminate this Agreement at any time for any reason or no reason upon written notice to the other. If not earlier terminated by Owner or the District, this Agreement shall automatically terminate upon the mutual execution of the Purchase Agreement between the parties. Upon the termination of this Agreement, neither party shall have any further rights or obligations hereunder other than as set forth herein with respect to rights or obligations which survive termination.

4. NO OBLIGATION REGARDING POSSIBLE TRANSACTION

Notwithstanding the rights granted to the District under this Agreement, and notwithstanding any negotiations or other communications between Owner and the District, neither Owner nor the

District shall have any obligation whatsoever to proceed with or otherwise enter into any agreement concerning Owner's sale or the District's purchase of the Inspection Property or any portion thereof, or to otherwise consummate any transaction of any kind concerning the Inspection Property or any portion thereof. Neither this Agreement nor any other negotiations or communications between Owner and the District shall constitute evidence of a binding agreement to sell the Inspection Property by Owner or an offer to purchase the Inspection Property by the District, and other than as set forth in this Agreement, neither Owner nor the District shall have any obligations whatsoever regarding the Inspection Property, unless and until Owner and the District execute and enter into a binding purchase and sale agreement regarding the Inspection Property, which either party may or may not do in its sole discretion.

5. GOVERNING LAW; VENUE

This Agreement shall be governed by, and construed in accordance with, the laws of the state in which the Inspection Property is located, without regard to any otherwise applicable principles of conflicts of laws. Venue for any action arising out of this Agreement shall be in the state courts in the state and county in which the Inspection Property is located.

6. ATTORNEYS' FEES

If any action is brought by any party to this Agreement to enforce or interpret its terms or provisions, the prevailing party will be entitled to reasonable attorneys' fees and costs incurred in connection with such action prior to and at trial and on any appeal therefrom.

7. ENTIRE AGREEMENT

This Agreement constitutes the sole and only agreement of the parties hereto with respect to the subject matter hereof and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter hereof and cannot be changed except by their written consent.

8. COUNTERPARTS: ELECTRONIC DELIVERY

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute the same agreement, whether or not all parties execute each counterpart. Signatures transmitted by email shall have the same effect as original ink signatures.

[SIGNATURES FOLLOW ON NEXT PAGE(S)]

EXECUTED AS OF THE DATES SET FORTH BELOW.

OWNER:

WHATCOM COUNTY,
a municipal corporation of the State of Washington

By: Satpal Sidhu
Name: Satpal Sidhu
Title: Whatcom Co. Executive
Date: Aug 23, 2024

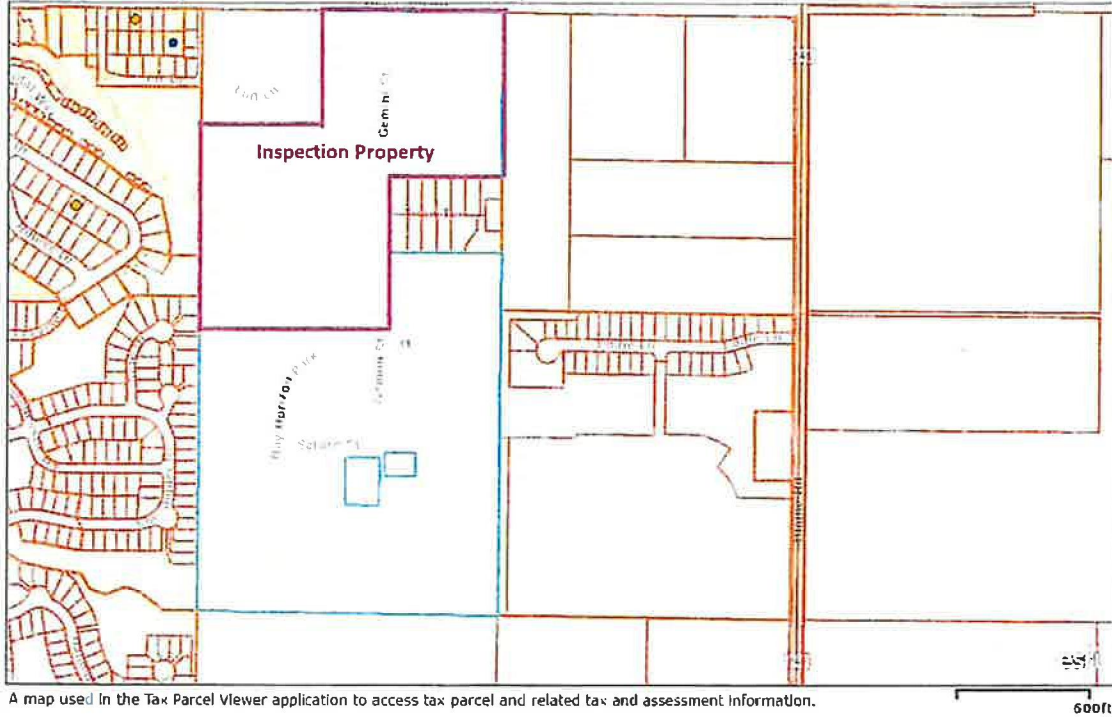
DISTRICT:

BLAINE SCHOOL DISTRICT NO. 503,
a municipal corporation of the State of Washington,

By: Dr. Christopher Granger
Name: Dr. Christopher Granger
Title: Superintendent
Date: July 11, 2024

**EXHIBIT A
DEPICTION OF INSPECTION PROPERTY**

Whatcom County Tax Parcel Viewer - Classic Map Viewer



A map used in the Tax Parcel Viewer application to access tax parcel and related tax and assessment information.