

**WHATCOM COUNTY CONTRACT  
INFORMATION SHEET**

Whatcom County Contract No.

202007012

Originating Department:	Public Works
Division/Program: <i>(i.e. Dept. Division and Program)</i>	9059/Construction
Contract or Grant Administrator:	James E. Lee, Engineering Manager
Contractor's / Agency Name:	Boss Construction, Inc.
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"/>	
Yes <input checked="" type="radio"/> No <input 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: <u>7-7-20</u> (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 checked="" type="radio"/> No <input type="radio"/> If yes, Whatcom County grant contract number(s): <u>201810012</u>	
Is this contract the result of a RFP or Bid process?	
Yes <input checked="" type="radio"/> No <input type="radio"/> If yes, RFP and Bid number(s): <u>20-33</u> Contract Cost Center: <u>PB3841, 128200</u>	
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"/> Contract work is for less than \$100,000.	
<input checked="" type="checkbox"/> Contract work is for less than 120 days.	
<input type="checkbox"/> Interlocal Agreement (between Governments).	
<input type="checkbox"/> Contract for Commercial off the shelf items (COTS).	
<input type="checkbox"/> Work related subcontract less than \$25,000.	
<input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.	
Contract Amount:(sum of original contract amount and any prior amendments): \$ <u>644,554.61</u>	Council approval required for; all property leases, contracts or bid awards <b>exceeding \$40,000</b> , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, <b>except when:</b>
This Amendment Amount: \$ <u>n/a</u>	1. Exercising an option contained in a contract previously approved by the council.
Total Amended Amount: \$ <u>644,554.61</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.
	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.
Summary of Scope:	
This is a standard, competitively bid construction contract for the Swift Creek Channel Excavation and Oat Coles North Repository Development project. Award of this contract to Boss Construction, Inc. was approved by Council on July 7, 2020 and by the County Executive on July 8, 2020.	
Term of Contract: <u>n/a</u>	Expiration Date: Project Completion

Contract Routing:	1. Prepared by: <u>Christina Schoenfelder</u>	Date: <u>6-30-20</u>
	2. Attorney signoff: <u>Christopher Quinn</u>	Date: <u>7/9/2020</u>
	3. AS Finance reviewed: <u>M Caldwell</u>	Date: <u>7/9/2020</u>
	4. IT reviewed (if IT related): _____	Date: _____
	5. Contractor signed: <u>JCL</u>	Date: <u>7-7-2020</u>
	6. Submitted to Exec.: _____ ✓	Date: <u>7-13-2020</u>
	7. Council approved (if necessary): _____	Date: _____
	8. Executive signed: _____ ✓	Date: <u>7-13-2020</u>
	9. Original to Council: _____ ✓	Date: <u>7-14-2020</u>

Jon Hutchings  
Director



James P. Karcher, P. E.  
County Engineer  
322 N. Commercial Street, Ste 301  
Bellingham, WA 98225-4042  
Phone: (360) 778-6210  
Fax: (360) 778-6211

RECEIVED

JUL 13 2020

# Memorandum

WHATCOM COUNTY  
EXECUTIVE'S OFFICE

**To:** The Honorable Satpal Singh Sidhu, Whatcom County Executive

**Through:** Jon Hutchings, Director *JAH SIGN FOR DIRECTOR*

**From:** James P. Karcher, P.E., County Engineer *JPK*  
James E. Lee, P.E., Engineering Manager *JEL*

**Date:** July 9, 2020

**Re:** Swift Creek Channel Excavation and Oat Coles North Repository Development  
**Construction Contract for Signature**

Enclosed for your review and signature are two (2) originals of the above referenced contract between Whatcom County and Boss Construction, Inc. in the amount of \$644,554.61.

## Requested Action

Public Works respectfully requests that the County Executive execute the two (2) attached original contracts. Please sign and/or date where indicated.

## Background and Purpose

This contract was awarded through the competitive bid process and received approval for award by the County Council on July 7, 2020. The County Executive approved award of this contract on July 8, 2020.

This Construction Contract provides for excavating accumulated Swift Creek sediment downstream of the Goodwin Rd. Bridge for stream flow conveyance. Sediments contain naturally occurring asbestos and will be stockpiled at the Oat Coles North repository. Per the grant agreement with the Department of Ecology (WCC#201810012), dredging the creek is considered annual maintenance and will be funded with local funds, and development of the repository is capital work and will be funded with grant funds. The separate pay schedules in the contract reflect this division of funding sources.

## Funding Amount and Source

The total contract amount is \$644,554.61. Pay schedules A and C of the contract total \$234,673.17 and will be funded through the Swift Creek Fund 128200. Pay schedule B of the contract totals \$409,881.44 and will be funded by the Department of Ecology grant through the approved Project Based Budget No. 384100. There is sufficient budget authority for this multi-year project expenditure in both of the referenced funds.

Please contact James Lee at extension 6264 if you have any questions or concerns regarding this contract.



## CONTRACT

SWIFT CREEK CHANNEL EXCAVATION AND OAT COLES NORTH REPOSITORY  
DEVELOPMENT

## WORK ORDER NUMBERS 21063 &amp; 21055

This Contract, made and entered into this 13<sup>th</sup> day of July, 2020 by and between Whatcom County, Washington, a municipal Corporation and a Charter County in the State of Washington, hereinafter called the "County" and Boss Construction, Inc. hereinafter called the "Contractor."

WITNESSETH:

That in consideration of the terms and conditions contained herein and attached and made a part of this Contract, the parties hereto covenant and agree as follows:

1. The Contractor shall do all of the work and furnish all of the labor, materials, tools and equipment for the construction of the improvements and shall perform any changes in the work, all in full compliance with the contract documents entitled "**Swift Creek Channel Excavation and Oat Coles North Repository Development, Work Order Numbers 21063 & 21055**". The Washington State Department of Transportation Standard Specifications and all sections contained in said contract documents, including bid procedures and conditions, bid proposal, specifications and conditions, contract forms, construction plans, and appendices, are hereby referred to and by reference made a part hereof.
2. The County hereby promises and agrees with the Contractor to employ, and does employ the Contractor to furnish the labor, materials, tools and equipment, and to do and cause to be done the above-described work, and to complete and finish the same in accordance with the said contract documents and the terms and conditions herein contained, and hereby contracts to pay for the same, according to the said documents, including the schedule of estimated quantities, and unit and lump sum prices in the Bid Proposal, the approximate sum of \$644,554.61 the total amount of bid, subject to the actual quantity of work performed, at the time and in the manner and upon the conditions provided for in this contract.
3. The Contractor for himself, and for his agents, successors, assigns, subcontractors and/or employees, does hereby agree to the full performance of all the covenants herein contained upon the part of the Contractor.
4. The County hereby appoints and the Contractor hereby accepts the Whatcom County Engineer, as the County's representative for the purpose of administering the provisions of this Contract, including the County's right to receive and act on all reports and documents related to this Contract, to request and receive additional information from the Contractor, to assess the general performance of the Contractor under this Contract, to determine if the contracted services are being performed in accordance with Federal, State or local laws, and to administer any other right granted to the County under this Contract. The County expressly reserves the right to terminate this Contract as provided in the contract

documents, and also expressly reserves the right to commence civil action for the enforcement of this contract.

5. This Contract contains 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 Contract.
6. The Contractor agrees to comply with all applicable Federal, State, County or municipal standards for the licensing, certification, operation of facilities and programs, and accreditation and licensing of individuals.
7. The Contractor shall not assign or subcontract any portion of the work provided for under the terms of this Contract without obtaining prior written approval of the County Engineer. All terms and conditions of this Contract shall apply to any approved subcontract or assignment related to this Contract.
8. The parties intend that an independent Contractor-County relationship will be created by this Contract. The County is interested only in the results to be achieved, and the implementation of the work will lie solely with the Contractor. No agent, employee, servant, or representative of the Contractor shall be deemed to be an employee, agent, servant, 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, servants, subcontractors, or otherwise during the performance of this Contract. In the performance of the work herein contemplated, the Contractor is an independent Contractor with regard to the performance of the details of the work; however, the components of and the results of the work contemplated herein must meet the approval of the County Engineer and shall be subject to the County Engineer's general rights of inspection and review to secure the satisfactory completion thereof.
9. 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 employees thereof, hereinafter referred to as the "County" against and from any loss, damage, costs, charge, expense, liability, claims, demands or judgments, of whatsoever kind or nature, whether to persons or to property, arising wholly or partially out of any act, action, neglect, omission, or default on the part of the Contractor, his agents, successors, assignees, subcontractors and/or employees, except only such injury or damage as shall have been caused by or resulted from the sole 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, successors, assignees, subcontractors and/or employees the Contractor hereby agrees and covenants to 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.
  - a. In the event the County is required to institute legal action and/or participate in the 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.
  - b. If the claim, suit, or action for injuries, death, or damages as provided for in the preceding paragraphs of this specification is caused by or results from the concurrent negligence of (a) the indemnitee or the indemnitee's agents or employees and (b) the indemnitor or the indemnitor's agents for employees the indemnity provisions provided



for in the preceding paragraphs of this specification shall be valid and enforceable only to the extent of the indemnitor's negligence.

10. This Contract has been and shall be construed as having been made and delivered within the State of Washington, and it is mutually understood and agreed by each party hereto that this Contract shall be governed by the laws of the State of Washington, both as to interpretation and performance. Any action in law, suit and equity or judicial proceedings for the enforcement of this contract, or any provisions thereof, shall be instituted and maintained in the courts of competent jurisdiction located in Whatcom County, Washington.
11. The failure of the County to insist upon strict performance of any of the covenants and agreements of this Contract 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 obligation, or any other covenants or agreements, but the same shall be and remain in full force and effect.
12. It is understood and agreed by the parties hereto that if any part of this agreement is determined to be illegal, the validity of the remaining portions shall be construed as if the agreement did not contain the particular illegal part.
13. No change or addition to this Contract shall be valid or binding upon either party unless such change or addition shall be in writing, executed by both parties.

IN WITNESS WHEREOF, the Contractor has executed this instrument, on the day and year first below written and the County Executive has caused this instrument to be executed by and in the name of the said County, the day and year first above written.

Executed by the Contractor this 7th day of July 2020.

By: Jim Hart (SEAL)

Title: Tim Hart, President

Contractor: Boss Construction, Inc.

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF Whatcom )

On this 7th day of July, 2020, before me personally appeared Tim Hart, President, to me personally known to be the person described in and who executed the above instrument and who acknowledged to me the act of signing thereof.



Dennis A. Aemmer  
Notary Public, in and for the  
State of Washington, residing at:  
Fallington WA  
My commission expires: 5-1-2024





**CONTRACT BOND #S014823**

**SWIFT CREEK CHANNEL EXCAVATION AND OAT COLES NORTH REPOSITORY  
DEVELOPMENT**

**WORK ORDER NUMBERS 21063 & 21055**

KNOW ALL MEN BY THESE PRESENTS, that Boss Construction, Inc. :

as PRINCIPAL, and Employers Mutual Casualty Company  
a corporation duly authorized to do a general Surety business in the State of Washington, as  
SURETY, are jointly and severally held and bound unto the COUNTY OF WHATCOM,  
OBLIGEE herein, in the sum of

Six hundred forty four thousand five hundred fifty four and 61/100 dollars;  
(644,554.61), lawful money of the United States, for the payment of which we bind our heirs,  
administrators, executors, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the PRINCIPAL has executed and entered into a certain Contract, with the  
OBLIGEE, dated July 13, 2020 in the Contract described, which Contract is hereto  
annexed.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

If the PRINCIPAL shall well and truly perform and fulfill all and every obligation of the  
covenants, conditions, stipulations, and agreements in the Contract mentioned to be performed  
and fulfilled; and shall promptly make payment to all persons supplying him with labor,  
equipment and materials in the prosecution of the work provided for in the Contract; and shall  
keep the OBLIGEE harmless and indemnified from and against all and every claim, demand,  
judgment, lien, cost and fee of every description incurred in suits or otherwise against the  
OBLIGEE, growing out of or incurred in, the prosecution of the work according to the terms of  
the Contract; and shall repay to the OBLIGEE all sums of money which the OBLIGEE may pay  
to other persons on account of work and labor done or materials furnished on or for the Contract;  
and if the PRINCIPAL shall in all respects, faithfully perform said Contract, then this obligation  
shall be void; otherwise, the same shall remain in full force and virtue.

It is, however, mutually understood between the parties hereto, that in no event shall the  
SURETY be liable for a greater sum than the penalty of this bond.

IN WITNESS WHEREOF, this instrument is executed in 2 counterparts, each one of which shall be deemed an original. This 7th day of July, 2020.

WITNESS AS TO PRINCIPAL

Boss Construction, Inc.

(SEAL)

Principal

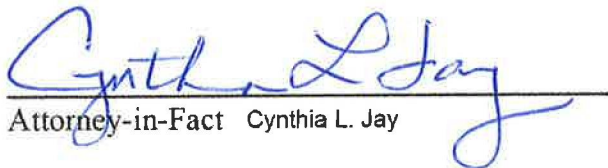
By:



Employers Mutual Casualty Company

Surety

By:

  
Attorney-in-Fact Cynthia L. Jay

The Attorney-In-Fact (Resident Agent) who executes this bond on behalf of the Surety, must attach a copy of his power of attorney as evidence of his authority.



# POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

KNOW ALL MEN BY THESE PRESENTS, that:

- 1. Employers Mutual Casualty Company, an Iowa Corporation
- 2. EMCASCO Insurance Company, an Iowa Corporation
- 3. Union Insurance Company of Providence, an Iowa Corporation
- 4. Illinois EMCASCO Insurance Company, an Iowa Corporation
- 5. Dakota Fire Insurance Company, a North Dakota Corporation
- 6. EMC Property & Casualty Company, an Iowa Corporation

hereinafter referred to severally as "Company" and collectively as "Companies", each does, by these presents, make, constitute and appoint:

**CYNTHIA L. JAY**

its true and lawful attorney-in-fact, with full power and authority conferred to sign, seal, and execute the Surety Bond:

### Any and All Bonds

and to bind each Company thereby as fully and to the same extent as if such instruments were signed by the duly authorized officers of each such Company, and all of the acts of said attorney pursuant to the authority hereby given are hereby ratified and confirmed.

The authority hereby granted shall expire **April 1st, 2021**, unless sooner revoked.

## AUTHORITY FOR POWER OF ATTORNEY

This Power-of-Attorney is made and executed pursuant to and by the authority of the following resolution of the Boards of Directors of each of the Companies at the first regularly scheduled meeting of each company duly called and held in 1999:

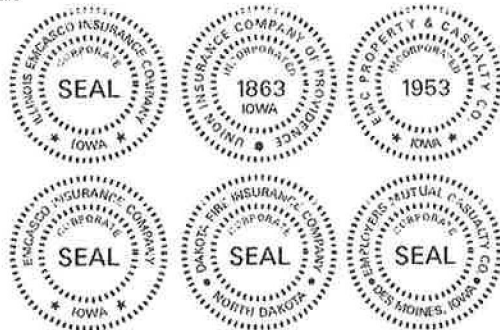
**RESOLVED:** The President and Chief Executive Officer, any Vice President, the Treasurer and the Secretary of Employers Mutual Casualty Company shall have power and authority to (1) appoint attorneys-in-fact and authorize them to execute on behalf of each Company and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof; and (2) to remove any such attorney-in-fact at any time and revoke the power and authority given to him or her. Attorneys-in-fact shall have power and authority, subject to the terms and limitations of the power-of-attorney issued to them, to execute and deliver on behalf of the Company, and to attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof, and any such instrument executed by any such attorney-in-fact shall be fully and in all respects binding upon the Company. Certification as to the validity of any power-of-attorney authorized herein made by an officer of Employers Mutual Casualty Company shall be fully and in all respects binding upon this Company. The facsimile or mechanically reproduced signature of such officer, whether made heretofore or hereafter, wherever appearing upon any certified copy of any power-of-attorney of the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

IN WITNESS THEREOF, the Companies have caused these presents to be signed for each by their officers as shown, and the Corporate seals to be hereto affixed this **1st** day of **July**, **2018**.

Bruce G. Kelley, CEO, Chairman of Companies 2, 3, 4, 5 & 6; President of Companies 1, 2 & 6; Treasurer of Companies 1, 2, 3, 4 & 6

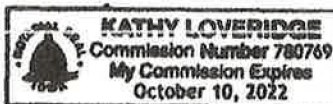
Todd Strother  
Vice President

Seals



On this **1st** day of **July**, **2018** before me a Notary Public in and for the State of Iowa, personally appeared Bruce G. Kelley and Todd Strother, who, being by me duly sworn, did say that they are, and are known to me to be the CEO, Chairman, President and Treasurer, and/or Vice President, respectively, of each of the Companies above; that the seals affixed to this instrument are the seals of said corporations; that said instrument was signed and sealed on behalf of each of the Companies by authority of their respective Boards of Directors; and that the said Bruce G. Kelley and Todd Strother, as such officers, acknowledged the execution of said instrument to be their voluntary act and deed, and the voluntary act and deed of each of the Companies.

My Commission Expires October 10, 2022.

  
Notary Public in and for the State of Iowa

## CERTIFICATE

I, James D. Clough, Vice President of the Companies, do hereby certify that the foregoing resolution of the Boards of Directors by each of the Companies, and this Power of Attorney issued pursuant thereto on **1st** day of **July**, **2018**, are true and correct and are still in full force and effect.

In Testimony Whereof I have subscribed my name and affixed the facsimile seal of each Company this **7<sup>th</sup>** day of **July**, **2020**

  
Vice President



# RETAINAGE INVESTMENT OPTION

## SWIFT CREEK CHANNEL EXCAVATION AND OAT COLES NORTH REPOSITORY DEVELOPMENT

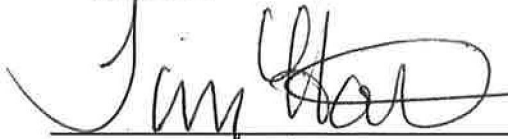
### WORK ORDER NUMBERS 21063 & 21055

CONTRACTOR: Boss Construction, Inc.

Pursuant to R.C.W. 60.28.010, as amended, you may choose how your retainage under this contract will be held and invested. Please complete and sign this form indicating your preference. If you fail to do so, the County will hold your retainage as described in "Current Expense" option 1 below.

1. **Current Expense:** The County will retain your money in its Current Expense Fund Account until sixty (60) days following final acceptance of the improvement or work as completed. You will not receive interest earned on this money.
2. **Interest Bearing Account:** The County will deposit retainage checks in an interest-bearing account in a bank, mutual savings bank, or savings and loan association, not subject to withdrawal until after the final acceptance of the improvement or work as completed or until agreed to by both parties. Interest on the account will be paid to you.
3. **Escrow/Investments:** The County will place the retainage checks in escrow with a bank or trust company until thirty days following the final acceptance of the improvement or work as completed. When the moneys reserved are to be placed in escrow, the County will issue a check representing the sum of the moneys reserved payable to the bank or trust company and you jointly. This check will be converted into bonds and securities chosen by you and approved by the County and these bonds and securities will be held in escrow. Interest on these bonds and securities will be paid to you as interest accrues. If this option is chosen, the bidder shall complete the Escrow Agreement form on the following pages.
4. **Retainage Bond:** The Bidder shall post a retainage bond equal to 5% of the total bid price on this. If this option is chosen, the Bidder shall complete the Retainage Bond form supplied in this document.

Retainage is normally released 45-60 days after final acceptance of work by the County, or following receipt of Washington State Departments of **Labor and Industries / Revenue / Employment Security**, whichever takes longer.

  
\_\_\_\_\_  
(Contractor's signature)

Tim Hart, President  
\_\_\_\_\_  
(Title)