

**WHATCOM COUNTY CONTRACT
INFORMATION SHEET**

Whatcom County Contract No.
202001022

Originating Department:	Public Works – Maintenance & Operations
Division/Program: (i.e. Dept. Division and Program)	90/9060/906000 (PW/Maintenance and Operations)
Contract or Grant Administrator:	Andy Bowler
Contractor's / Agency Name:	Skagit County

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: _____
 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 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? Contract _____
 Yes No If yes, RFP and Bid number(s): _____ Cost Center: 108100

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):
 \$ N/A
 This Amendment Amount:
 \$ N/A
 Total Amended Amount:
 \$ N/A

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**:

1. Exercising an option contained in a contract previously approved by the council.
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: Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Skagit County to provide mutual assistance on minor road projects with labor, equipment, or materials on a reimbursable basis for road maintenance activities through January 31, 2024.

Term of Contract: 5 years beginning February 1, 2020 Expiration Date: January 31, 2024

Contract Routing:

1. Prepared by: <u>T. Iddings</u>	Date: <u>9/30/19</u>
2. Attorney signoff: <u>C. Quinn</u>	Date: <u>10/03/2019</u>
3. AS Finance reviewed: <u>bbennett</u>	Date: <u>10/18/2019</u>
4. IT reviewed (if IT related): _____	Date: _____
5. Contractor signed: _____ ✓	Date: <u>11-18-19</u>
6. Submitted to Exec.: _____ ✓	Date: <u>1-21-2020</u>
7. Council approved (if necessary): _____ ✓	Date: <u>1-28-2020</u>
8. Executive signed: _____ ✓	Date: <u>1-30-2020</u>
9. Original to Council: _____ ✓	Date: <u>2-07-2020</u>

INTERLOCAL COOPERATIVE AGREEMENT

SKAGIT COUNTY
Contract # C20190505
Page 1 of 6

BETWEEN
WHATCOM COUNTY
AND
SKAGIT COUNTY

THIS AGREEMENT (herein "Agreement") is made and entered into by and between WHATCOM COUNTY, a political subdivision of the State of Washington (herein "Whatcom") and SKAGIT COUNTY, a political subdivision of the State of Washington (herein "Skagit") pursuant to the authority granted by Chapter 39.34 RCW, INTERLOCAL COOPERATION ACT. Whatcom and the Skagit may be individually referred to herein as a "party", and may be collectively referred to herein as the "parties." In consideration of the following, the parties mutually agree as follows:

1. PURPOSE: The purpose of this Agreement is to allow each party to provide mutual assistance on minor projects and work and services for the other party (herein the "Project[s]"), pursuant to and subject to the terms of this Agreement. Such Project work and/or services shall be limited and infrequent in nature and may include, but is not necessarily limited to: the use of equipment owned by the parties; small chip-sealing, striping, and road maintenance and repair matters; culvert clearing; mowing, spraying and vegetation management; and plowing, salting, sanding, etc. The parties recognize and agree that this Agreement is not intended for use (and shall not be used) for larger, more significant projects, and/or complex projects, and/or projects involving unique or noteworthy factual, technical, and/or legal circumstances (which shall otherwise require [an]other separate project-specific agreement[s] between the parties). Neither party is obligated to pay, provide, or expend any funds, and/or provide and/or perform any other services or other duties, unless otherwise specified herein.

2. RESPONSIBILITIES: In accordance with and subject to the Purpose of this Agreement (as provided above per Section 1), either party may, but shall not be required to perform Project work and/or services, provide Project materials, and allow for the use of each party's equipment for Project work as may be requested by the other party, to be reimbursed to the party providing said Project work, materials, equipment, etc., as further provided and described per Section 4. of this Agreement, below. In the event that either party uses any equipment owned by the other party pursuant to this Agreement, the parties agree that any user and/or operator of such equipment shall be an operator properly trained and/or certified in accordance with applicable law and industry standards, as further provided and described per Section 4. of this Agreement, below.

2.2 In any particular instance or in all instances, either party may choose not to perform requested Project work and/or services for the other party, in the event that such party determines that it would be undesirable, unsafe, impracticable, or otherwise not feasible for any reason.

3. **TERM OF AGREEMENT:** The term of this Agreement shall be from date at which both parties have completed execution through January 31, 2024, unless sooner terminated pursuant to the terms herein.

4. **MANNER OF FINANCING:** The parties agree that reimbursement for Project work as may be performed by either party shall be made as follows:

4.1 Skagit may perform work, provide materials, and/or provide the use of Skagit's equipment (to be operated by a Skagit operator), for work on Whatcom's facilities upon Whatcom's request and acceptance by Skagit, to be reimbursed by Whatcom to Skagit at the actual cost incurred by Skagit for said work, materials, use of Skagit's equipment, and wages for Skagit's operator[s] provided by Skagit to operate the equipment; and, in addition thereto, nine percent (9%) of the total cost shall be added for overhead costs for accounting, billing, and administrative services, provided that Skagit shall submit to Whatcom a certified statement of the costs, and within thirty (30) days thereafter, Whatcom shall pay to Skagit the amount of said statement. Upon the request of Whatcom, Skagit shall provide adequate supporting documentation for any and all amounts billed to Whatcom by Skagit pursuant to the terms of this Agreement.

4.2 Whatcom may perform work, provide materials, and/or provide the use of Whatcom's equipment (to be operated by a Whatcom operator), for work on Skagit's facilities upon Skagit's request and acceptance by Whatcom, to be reimbursed by Skagit to Whatcom at the actual cost incurred by Whatcom for said work, materials, use of Whatcom's equipment, and wages for Whatcom's operator[s] provided by Whatcom to operate the equipment; and, in addition thereto, nine percent (9%) of the total cost shall be added for overhead costs for accounting, billing, and administrative services, provided that Whatcom shall submit to Skagit a certified statement of the costs, and within thirty (30) days thereafter, Skagit shall pay to Whatcom the amount of said statement. Upon the request of Skagit, Whatcom shall provide adequate supporting documentation for any and all amounts billed to Skagit by Whatcom pursuant to the terms of this Agreement.

5. **ADMINISTRATION:** The following individuals are designated as representatives of the respective parties. The representatives shall be responsible for administration of this Agreement and for coordinating and monitoring performance under this Agreement. In the event such representatives are changed, the party making the change shall notify the other party.

5.1 Skagit's representative shall be the Public Works Director, or his/her designee.

5.2 Whatcom's representative shall be the Assistant Director of Public Works, or his/her designee.

6. **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.

7. **NO PARTNERSHIP OR JOINT VENTURE:** No partnership and/or joint venture exists between the parties, and no partnership and/or joint venture is created by and between the parties by virtue of this Agreement. No agent, employee, contractor, subcontractor, consultant, volunteer, and/or other representative of the parties shall be deemed an agent, employee, contractor, subcontractor, consultant, volunteer, or other representative of the other party.

8. **NO THIRD PARTY BENEFICIARIES:** This Agreement is not intended to nor does it create any third party beneficiary or other rights in any third person or party, including, but not limited to, the general public, property owners and residents at or in the vicinity of the Project(s), or any other organization or entity, or any agent, contractor, subcontractor, consultant, employee, volunteer, or other representative of any party.

9. **INDEMNIFICATION:** Each party agrees to be responsible and assume liability for its own wrongful and/or negligent acts or omissions and those of its officials, officers, agents, employees, volunteers, assigns, contractors, subcontractors, and/or consultants to the fullest extent required by law, and further agrees to save, indemnify, defend, and hold the other party harmless from any such liability, loss, and/or expense, including but not limited to, judgments, settlements, attorney's fees and costs by reason of any and all claims and demands upon the other party, 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, except to the extent such injury to persons or damage to property is due to the negligence of the other party, its subcontractors, its elected officers, employees, volunteers, and/or their agents. It is further provided that no liability shall attach to either party by reason of entering into this contract except as expressly provided herein.

10. **TERMINATION:** Any party hereto may terminate this Agreement upon thirty (30) days notice in writing either personally delivered or mailed postage-prepaid by certified mail, return receipt requested, to the party's last known address for the purposes of giving notice under this paragraph. 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, except that the duty to indemnify pursuant to paragraph 9 shall survive such termination.

11. **CHANGES, MODIFICATIONS, AMENDMENTS AND WAIVERS:** The 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.

12. **SEVERABILITY:** In the event any term or condition of this Agreement or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications of this Agreement which can be given effect without the invalid term, condition, or application. To this end the terms and conditions of this Agreement are declared severable.

13. **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.

14. **STATUS OF AGREEMENT:** This Agreement is in addition to, and is not intended to replace, substitute, modify, or otherwise amend any other agreements by and between the parties. Any other agreements by and between the parties shall continue in full force and effect, unless specified to the contrary herein (see Section 13, above).

15. **USE OF DOCUMENTS AND MATERIALS PRODUCED:** Both parties shall have the right to use and distribute any and all documents, writings, programs, data, public records or other materials prepared by any party (and/or any party's contractors, consultants, and/or subcontractors), in connection with performance of this Agreement. The parties recognize and agree that any documents and/or materials arising from and/or related to this Agreement may be subject to public disclosure pursuant to applicable law.

16. **COMPLIANCE WITH LAWS AND TERMS OF GRANTS:** The parties to this Agreement shall comply with all applicable federal, state, and local laws, rules, and regulations in carrying out the terms and conditions of this Agreement. If applicable, compliance with laws shall specifically include, but not be limited to, compliance

with laws pertaining to the payment of prevailing wage on public works, including, but not necessarily limited to RCW 39.12. If applicable, compliance with laws shall also specifically include, but not be limited to, compliance with laws for the procurement of contracts for architectural and engineering services, including, but not necessarily limited to RCW 39.80. If necessary, the parties shall obtain and comply with all necessary permits and approvals from all applicable jurisdictions prior to commencing any work related to this Agreement. Each party individually recognizes and agrees that it shall be solely and separately responsible and liable for compliance with all terms and conditions of any applicable grant(s) obtained or procured in such party's name.

17. **ASSIGNMENT AND SUBCONTRACTING:** No portion of this Agreement may be assigned, contracted, and/or subcontracted to any other individual, firm, company, and/or other entity by either party.

18. **DEFAULT:** Failure of the parties to comply with the terms of this Agreement shall constitute default. The parties shall have all remedies for the enforcement of this Agreement as provided by law.

19. **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 Superior Court of the State of Washington in and for the County of Snohomish. This Agreement shall be governed by the laws of the State of Washington.

20. **CAPTIONS & COUNTERPARTS:** The captions in this Agreement are for convenience and reference only and do not define, limit, or describe the scope or intent of this Agreement. This Agreement may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement.

21. **NEUTRAL AUTHORSHIP:** Each of the terms and provisions of this Agreement have been reviewed and negotiated, and represents the combined work product of the parties hereto. No presumption or other rules of construction which would interpret the provisions of this Agreement in favor of or against the party preparing the same shall be applicable in connection with the construction or interpretation of any of the provisions of this Agreement. The parties represent that they have had a full and fair opportunity to seek legal advice with respect to the terms of this Agreement and have either done so, or have voluntarily chosen not to do so. The parties represent and warrant that they have fully read this Agreement, that they understand its meaning and effect, and that they enter into this Agreement with full knowledge of its terms. The parties have entered into this Agreement without duress or undue influence.

[Handwritten Signature]

Jon Hutchings
Public Works Director

1/7/20
Date

Approved as to form:

[Handwritten Signature]

Christopher Quinn
Senior Civil Deputy Prosecuting Attorney

1/14/2020
Date

Approved:

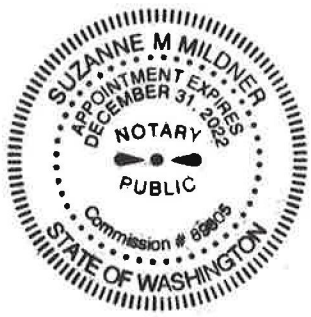
Accepted by Whatcom County:

By: *Satpal Sidhu*
Satpal Sidhu
Whatcom County Executive

1/30/2020
Date

STATE OF WASHINGTON)
) ss.
COUNTY OF Whatcom)

On this 30th day of January, 2020, before me appeared Satpal Sidhu, 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.



Suzanne M. Mildner
NOTARY PUBLIC in and for the State of Washington, residing at
Bellingham. My commission expires *12-31-22*.

DATED this 18 day of November, 2019.

**BOARD OF COUNTY COMMISSIONERS
SKAGIT COUNTY, WASHINGTON**



Lisa Janicki, Chair



Ron Wesen, Commissioner

ABSENT

Kenneth A. Dahlstedt, Commissioner

Attest:


Clerk of the Board

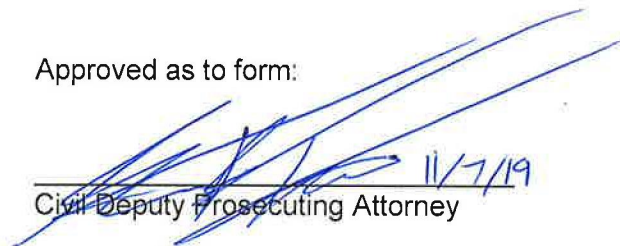
For contracts under \$5,000:
Authorization per Resolution R20030146

Recommended:

 
Department Head

County Administrator

Approved as to form:


Civil Deputy Prosecuting Attorney 11/7/19

Approved as to indemnification:

 (11-14-19)
Risk Manager

Approved as to budget:


Budget & Finance Director

**WHATCOM COUNTY
PUBLIC WORKS DEPARTMENT**



Jon Hutchings
Director

MAINTENANCE AND OPERATIONS DIVISION
901 W. Smith Road
Bellingham, WA 98226-9610
Phone (360) 778-6400
Fax (360) 778-6401
Andy Bowler, Superintendent

MEMORANDUM

RECEIVED

JAN 21 2020

**WHATCOM COUNTY
EXECUTIVE'S OFFICE**

To: The Honorable Satpal Sidhu, County Executive
Honorable Members of the Whatcom County Council

Through: Jon Hutchings, Public Works Director *JH*

From: Andy Bowler, Public Works Maintenance and Operations Superintendent

Date: January 2, 2020

Re: Interlocal Cooperative Agreement – Skagit County

• **Requested Action**

Enclosed are two (2) Interlocal Cooperative Agreement originals between Whatcom County Public Works and Skagit County for your review and approval.

• **Background and Purpose**

On December 18, 2006, Whatcom County and Skagit County first entered into an Interlocal Cooperative Agreement (Contract #200611032) for the purposes of providing each other with labor, equipment, or materials on a reimbursable basis for road maintenance activities. This agreement was replaced with Contract #201111035 in January of 2012 for the purpose of reimbursing Skagit County for work performed on Whatcom County road facilities. This agreement was rescinded in May of 2012 and replaced with Contract #201205030. In February of 2016, Contract #201205030 was replaced by Contract #201601006. Contract #201601006 will expire on January 31, 2020.

The attached agreement will replace the expired agreement (Contract #201601006). The purpose of this new agreement is to provide mutual assistance (reciprocal maintenance) on minor road projects by performing work, providing materials, and/or equipment usage on a reimbursable basis for road maintenance activities. This agreement will run from February 1, 2020 through January 31, 2024.

• **Funding Amount and Source**

Adequate funding exists in the 2019-2020 Road Fund Budget.

• **Recommendation**

Please approve this contract and forward to the Executive and the Whatcom County Council for approval at the January 28, 2020 Whatcom County Council Meeting. Please contact Andy Bowler at extension 6417 if you have any questions or concerns regarding the terms of this agreement.