

**WHATCOM COUNTY CONTRACT
INFORMATION SHEET**

Whatcom County Contract No. _____

Originating Department:	Parks								
Division/Program: <i>(i.e. Dept. Division and Program)</i>	Administration								
Contract or Grant Administrator:	Michael McFarlane								
Contractor's / Agency Name:	Nooksack Valley 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? Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, RFP and Bid number(s): _____ Contract Cost Center: _____									
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: <table style="width:100%; border:none;"> <tr> <td><input type="checkbox"/> Professional services agreement for certified/licensed professional.</td> <td><input type="checkbox"/> Contract for Commercial off the shelf items (COTS).</td> </tr> <tr> <td><input type="checkbox"/> Contract work is for less than \$100,000.</td> <td><input type="checkbox"/> Work related subcontract less than \$25,000.</td> </tr> <tr> <td><input type="checkbox"/> Contract work is for less than 120 days.</td> <td><input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.</td> </tr> <tr> <td><input checked="" type="checkbox"/> Interlocal Agreement (between Governments).</td> <td></td> </tr> </table>		<input type="checkbox"/> Professional services agreement for certified/licensed professional.	<input type="checkbox"/> Contract for Commercial off the shelf items (COTS).	<input type="checkbox"/> Contract work is for less than \$100,000.	<input type="checkbox"/> Work related subcontract less than \$25,000.	<input type="checkbox"/> Contract work is for less than 120 days.	<input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.	<input checked="" type="checkbox"/> Interlocal Agreement (between Governments).	
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<input checked="" type="checkbox"/> Interlocal Agreement (between Governments).									
Contract Amount:(sum of original contract amount and any prior amendments): \$ <u>N/A</u> This Amendment Amount: \$ _____ Total Amended Amount: \$ _____	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: <ol style="list-style-type: none"> 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: _____									
Nooksack Valley School District lease agreement for the Ostrom Conservation Site									
Term of Contract: 25 years	Expiration Date: 12/31/44								

Contract Routing:	1. Prepared by: Michael McFarlane	Date: 11/28/19
	2. Attorney signoff: _____	Date: 12/2/19
	3. AS Finance reviewed: _____	Date: 12/5/19
	4. IT reviewed (if IT related): _____	Date: _____
	5. Contractor signed: _____	Date: _____
	6. Submitted to Exec.: _____	Date: _____
	7. Council approved (if necessary): _____	Date: _____
	8. Executive signed: _____	Date: _____
	9. Original to Council: _____	Date: _____

**Whatcom County and Nooksack Valley School District
Lease for the Ostrom Conservation Site**

This lease (hereinafter "**Lease**") is made and entered into this 6th day of November, 2019, by and between **WHATCOM COUNTY** through its Parks & Recreation Department (hereinafter "**County**") and **NOOKSACK VALLEY SCHOOL DISTRICT No. 506** (hereinafter "**District**").

RECITALS:

- A. For the past twenty-five (25) years the Nooksack Valley School District has leased, maintained and operated the County owned property comprised of approximately 38.62 acres known as the Ostrom Conservation site, located at 4394 South Pass Road, Everson Washington.
- B. The County desires to assist the Nooksack Valley School District in providing a comprehensive outdoor education program and site to be open for use by all schools and citizens of Whatcom County, which benefits the public by fulfilling a public park need stated in the agreement with the donors of property and thereby reduces demands on the County's budget.
- C. RCW 36.34.180 authorizes the County to grant leases in excess of ten (10) years if such lease fulfills a governmental purpose. The use to which the District has agreed to put the property serves a governmental purpose and, therefore, this Lease is not subject to the ten (10) year limitation contained in the above-cited statute.

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

1. Premises: The County hereby demises, lets, and leases unto the District the real property described as follows (hereinafter "**Leased Premises**"):

The Northwest Quarter (NW1/4) of the Northeast Quarter (NE1/4, Section 26, Township 40 North, Range 4 East of W.M., Whatcom County Washington less roads) (as shown in attached Exhibit A).

2. Term: The term of this Lease shall be for a period of twenty-five (25) years, commencing on the first day of January, 2020 and ending at midnight on December 31st, 2044.

3. Rent: There shall be no rent for the Leased Premises. The consideration received by the County shall be the use of the Leased Premises, which fulfills a public purpose, and all other covenants and promises made herein.

4. Acceptance of Premises: The District acknowledges that the Leased Premises have been examined to the District's satisfaction and the District accepts the Leased Premises in their present condition, AS IS. .

5. Administration: The administration of this Lease shall be through the Whatcom County Parks & Recreation Department. The Director of the Parks & Recreation Department (hereinafter "**Director**"), is authorized to administer this Lease and deal with all issues related thereto, including the granting of the necessary approvals contemplated by this Lease; provided, this Lease may only be amended in the manner described in section 16 of this Lease.

6. Use: The District shall use the Leased Premises only for the operation and maintenance of an outdoor education site for the students of Whatcom County Grades K-12, and for the maintenance of a trailhead to Aron School Park (207 acre site deeded to the schools of Whatcom County in 1918 for the purpose of outdoor and environmental education).

The Parties agree that:

- The District shall have primary use of the Leased Premises for the purposes stated in this Lease;
- Notwithstanding any other provision of this Lease, during such times as the Leased Premises are being used by the District, the District shall have the right to exclusive possession of the Leased Premises and may exclude from the Leased Premises anyone not authorized by the District if such person(s) presence causes interference or disruption to the District's use;
- During such times as the Leased Premises are not being used by the District, the Leased Premises will be available to the citizens of Whatcom County as invitees of the County, for such uses and subject to such limitations as the Director may prescribe;
- The Leased Premises will be referred to as "Ostrom Conservation Site";
- The County shall have the right to erect a plaque in a prominent location within the Leased Premises and containing the following statement: *"This land was donated by Alma, Elinor and Vincent Ostrom to the Whatcom County to be used as a public park for future generations in memory of the associations they have had with family and neighbors in this mountain valley and so that other might share some of the beauty they have known."*

7. Improvements: The District shall make no alterations, improvements, repairs, or do any development on the Leased Premises without the prior written consent of the Director.

The District shall pay for all costs to repair damages to improvements placed on the Leased Premises by the District, and the County shall pay for all costs to repair damages to improvements placed on the Leased Premises by the County. The District shall return the Leased Premises to the County with all improvements placed on the Leased Premises by the District in an adequate condition upon termination or expiration of this Lease.

As applicable, the District agrees to secure the necessary permits required for construction of improvements on the Leased Premises. The County reserves the right to require ownership of any fixtures and improvements to be deeded to the County upon expiration of this Lease.

The District shall keep the Leased Premises free and clear of all mechanics or material liens, or other liens on account of any work done for the District on the Leased Premises.

The District agrees to (1) maintain an outdoor education site; (2) maintain a trailhead that begins on the Ostrom Conservation Site and leads to the Aron School Park site on Sumas Mountain; and (3) provide a continued integration of curricula that would allow for students to learn in a very effective atmosphere/environment.

8. Maintenance: Except as may be stated in section 7 of this Lease, the District shall be solely responsible for maintenance of the Leased Premises to the extent necessary to carry on the District's use. This covenant does not require the District to follow Firewise wildfire standards or similar procedures on the Leased Premises.

9. Operating Costs: The District shall pay all costs of operation of the Leased Premise as to electricity, water, and garbage. If there are any additional operating costs the District must be notified prior to incurring that cost.

10. Insurance: The District carries comprehensive insurance through the Washington Schools Risk Management Pool ("**WSRMP**"), a self-funded, public entity inter-local cooperative among school and educational service districts formed under RCW 48.62. Should the District cease to participate in WSRMP during the term of this Lease, the District shall within 30-days of such cancellation notify the County, so that the parties may negotiate modified insurance provisions.

11. Indemnification: Each party shall defend, indemnify, and hold the other party, its officers, officials, employees, and volunteers harmless from any and all claims, injuries, damages, losses or suits including reasonable attorney fees, arising out of injuries and/or damages caused by each party's own negligence.

12. Assignment and Subletting: The District shall not sublet the Leased Premises or any part thereof, or assign this Lease without the prior signed and written consent of the County, which consent shall not be unreasonably withheld. Any such assignment or subletting or attempt to assign or sublet without such consent shall result in an immediate forfeiture of the District's interest in and to this Lease, as provided herein.

13. Entry on to Premises by County: The County reserves the right to enter onto the Leased Premises at reasonable times to inspect them or make modification, and the District shall permit the County to do so; provided, however, that prior to modifying the Leased Premises, the County shall obtain the consent of the District, which consent shall be freely given so long as the proposed modification does not materially interfere with the District's use as described herein. Consent by the District shall not be withheld if the modification is in the best interest of the County for preservation or improvement of the property for public park purposes.

14. Independent Contractor: It is hereby understood, agreed and declared that, absent an agreement to the contrary, to the extent an agent or employee of the District provides work for the County and that work is related to the Leased Premises, such worker is an independent contractor and not the agent or employee of the County.

15. Conditional use Permits: The District agrees to comply with the terms of Conditional Use Permits that both impact the Leased Premises and are issued by the County.

16. Modifications: No change or addition to this Lease shall be valid or binding upon either party unless such change or addition be in writing, executed by the parties, and approved by the Whatcom County Council and the Nooksack Valley School District Board of Directors.

17. Rent Adjustment: The rent adjustment provision of RCW 36.34.180 shall remain in full force and effect; provided, if there is a dispute on the rental, the arbitrator shall take into consideration the permanent improvements made by the District which will revert to the County at the end of the Lease term. It shall, in addition, take into consideration the public benefit received by the County which combined consideration was deemed at the date of making this Lease to be equal to or greater than the reasonable rental value of the Leased Property during the Lease term. In the event the rent is adjusted upward by an Arbitrator, the District shall have the option to terminate this Lease within sixty (60) days from the date the Arbitrator's decision is given to the parties. Pursuant to Whatcom County Code 1.10.450, this Lease is subject to approval by the county council and is for a term longer than five years, which shall require that the Lessee permit the rental payment and consideration to be adjusted and fixed by Whatcom County every five years.

18. Miscellaneous:

- a. **Time is of the Essence.** Time is of the essence in the performance of this Lease.
- b. **Entire Agreement.** There are no other verbal or written agreements which modify or affect this Lease.
- c. **Benefit.** This Lease shall inure to the benefit of and be binding upon the successors, assigns, and personal representative(s) of the parties hereto.
- d. **Notices.** All notices or demands to be given by each party to the other under this Lease and all sums to be paid by each party shall be to:

DISTRICT:

Superintendent
Nooksack Valley School District
P.O. box 307
Nooksack, WA 98276
(360) 988-4754

COUNTY:

Director
Whatcom County Parks & Recreation Department
3373 Mount Baker Highway
Bellingham, WA 98226
(360) 778-5850

e. **Execution of Documents.** The parties agree to execute any documents which may be necessary, appropriate, or convenient to carry out the intent of the transactions contemplated by this Lease.

f. **Attorney's Fees and Arbitration.** In the event either the County or the District shall institute suit to enforce any rights hereunder, each party shall pay their own court costs and attorney's fees. This Lease shall be governed by Laws of the State of Washington. Unless otherwise agreed by the parties hereto, any controversy or claim arising out of or relating to this Lease that remains unresolved after negotiation shall be settled by binding arbitration before an agreed upon arbitrator in accordance with the applicable American Arbitration Association (AAA) rules in effect on the date hereof. Each Party shall pay all their own costs, fees and expenses of arbitration, except that they shall

share equally in the Arbitrator's fees and costs. Venue for arbitration shall be in Whatcom County unless agreed otherwise in writing by the parties.

g. Severability. If any provision of this Lease is deemed void or unenforceable by the action of a court of law, such provision shall be severable and not affect the balance of this Lease, which shall remain in full force and effect.

h. Applicable Law. This Lease shall be construed, interpreted and enforced pursuant to the laws of the State of Washington and the parties agree that the Superior Court of Whatcom County shall be the appropriate venue of any suit or non-arbitration proceeding brought with respect to this Lease or the Leased Premises.

i. Compliance with Law. The District shall comply with all local, State and Federal Laws.

j. Termination. The County reserves the right to terminate this Lease as follows: 1. The District violates the Lease Agreement and does not remedy the violation after reasonable notice; 2. The District substantially reduces its use as intended under this Lease; 3. The County determines it is in the best interest of the County for public park purposes and the County provides the District with one-hundred and eighty (180) days' notice of termination.

DATED this 6th day of November, 2019

NOOKSACK VALLEY SCHOOL DISTRICT

Randall S. Wright
Board Chair

[Signature]
Superintendent

STATE OF WASHINGTON)

) ss.

COUNTY OF WHATCOM)

On this 6th day of November, 2019, personally appeared before me Mark Johnson, Superintendent to be known to be the individual(s) described in and who executed the within and foregoing instrument on behalf of the Nooksack Valley School District, and acknowledged said instrument to be the free and voluntary act and deed of the District for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.

Dated: November 06, 2019

Notary Signature: [Signature]

Print Name: Yesenia Cisneros

Notary Public in and for the State of Washington residing at 321 Wilson Ln Sumas WA 98245

My appointment expires: 09/04/2023



WHATCOM COUNTY

Satpal Sidhu, Whatcom County Executive



Michael McFarlane, Director

Approved as to form:



Elizabeth Gallery, Senior Deputy Prosecuting Attorney

STATE OF WASHINGTON)

) ss.

COUNTY OF WHATCOM)

On this _____ day of _____, 2020 personally appeared before me Satpal Sidhu, known to be the individual described in and who executed the within and foregoing instrument on behalf of the County, and acknowledged said instrument to be the free and voluntary act and deed of the County for the uses and purposes therein mentioned, and on oath stated to be the County Executive and authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.

Dated: _____

Notary Signature: _____

Print Name: _____

Notary Public in and for the State of Washington residing at _____

My appointment expires: _____

EXHIBIT "A"

