

**WHATCOM COUNTY CONTRACT
INFORMATION SHEET**

Whatcom County Contract No.
201902007

Originating Department:	Public Works
Division/Program: (i.e. Dept. Division and Program)	905900/ Construction
Contract or Grant Administrator:	James P. Karcher, PE-Engineering Manager
Contractor's / Agency Name:	Lummi Nation

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: _____
 (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: 339100

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):
 \$ 120,000.00

This Amendment Amount:
 \$ 0

Total Amended Amount:
 \$ 120,000.00

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**:

- Exercising an option contained in a contract previously approved by the council.
- Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance.
- Bid or award is for supplies.
- Equipment is included in Exhibit "B" of the Budget Ordinance
- 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 Interlocal Agreement between Whatcom County and the Lummi Nation will provide funds to the Lummi Nation from Whatcom County. These funds are for the Lummi Nation to use for monitoring and mitigation for anticipated impacts to Lummi Natural Resources experienced as a result of the construction of the Birch Bay Drive and Pedestrian Facility Project.

Term of Contract: Completion of Contract Requirements Expiration Date: N/A

Contract Routing:	1. Prepared by: JPK	Date: 01-28-2019
	2. Attorney signoff: Christopher Quinn	Date: 1/28/2019
	3. AS Finance reviewed: Bbennett	Date: 01/30/19
	4. IT reviewed (if IT related):	Date: _____
	5. Contractor signed: <u>by Lummi Nation</u>	Date: <u>1-15-19</u>
	6. Submitted to Exec.: <input checked="" type="checkbox"/>	Date: <u>2-8-19</u>
	7. Council approved (if necessary): <input checked="" type="checkbox"/>	Date: <u>2-12-19</u>
	8. Executive signed: <input checked="" type="checkbox"/>	Date: <u>2-13-19</u>
	9. Original to Council: <input checked="" type="checkbox"/>	Date: <u>2-15-19</u>

COUNTY ORIGINAL

WHATCOM COUNTY
CONTRACT NO.
201902007

**INTERLOCAL AGREEMENT
BETWEEN
WHATCOM COUNTY
AND
THE LUMMI NATION
FOR THE BIRCH BAY DRIVE & PEDESTRIAN FACILITY PROJECT CRP No 907001**

THIS AGREEMENT is made this 15th day of January, 2019, between Whatcom County, a municipal corporation, hereinafter referred to as the "County," and the Lummi Nation, a federally recognized Indian tribe, hereafter referred to as the "Nation."

WHEREAS, chapter 39.34 RCW authorizes political subdivisions of the State, such as the County, to enter into agreements with other public agencies, including any Native American Indian Tribe recognized as such by the federal government, for joint or cooperative projects for the purpose of administering, financing, and constructing a cooperative undertaking and establishing and maintaining a budget therefore; and,

WHEREAS, this project is located within the fresh and salt waters of the Salish Sea, and the 1855 Treaty of Point Elliot guarantees, to the Nation, the right to fish and harvest in usual and accustomed places of the Salish Sea; and,

WHEREAS, the Nation and the County wish to enhance intergovernmental cooperation toward the safety, welfare, commerce, and community of their respective citizens, to the extent allowed by the respective jurisdictions and authorities, including, but not limited to capital improvements to roads and bridges, the Nooksack River channel, tributaries, riparian zones and floodplains, and marine shorelines.

WHEREAS, the County and the Nation have agreed that marine resources may be affected by the Birch Bay Drive & Pedestrian Facility Project, and that certain monitoring of those resources, both pre-construction and post-construction, would be appropriate as well as mitigation of temporary construction impacts to those marine resources; and,

WHEREAS, the County has agreed to provide the Nation with \$120,000 that would cover pre-construction and post-construction monitoring by the Nation's Natural Resources Department, or a consultant hired by the Nation, and mitigation for temporary construction impacts; and,

WHEREAS, this agreement is in the public interest;

**NOW, THEREFORE, IN CONSIDERATION OF MUTUAL COVENANTS
CONTAINED HEREIN, IT IS MUTUALLY AGREED AND UNDERSTOOD THAT THE**

PARTIES, in accordance with federal, state, and local laws, will utilize their best efforts to accomplish monitoring and mitigation of the affected marine resources related to the construction of the Birch Bay Drive & Pedestrian Facility Project in Whatcom County, Washington; and specifically will undertake the following:

SECTION I. PURPOSE OF AGREEMENT

The Birch Bay Drive & Pedestrian Facility Project involves construction of 1.6 miles of soft-shore beach protection, pedestrian safety enhancements, water quality improvements and shore access. However, said improvements may involve temporary construction impacts to existing treaty-protected marine resources. To address the need to know what marine resources may be affected by the project and to address the concern for the potential temporary construction impacts, the County will provide a total amount of \$120,000 to the Nation, in four (4) installments of \$30,000 each, for the following: a) use by the Nation's Natural Resources Department (or consultant) to conduct pre-construction and post-construction monitoring of marine resources within the project footprint; and b) mitigate for the temporary construction impacts.

SECTION II. PROJECT SCOPE AND ADMINISTRATION

After formal notification by the County, to the Nation, that the project is moving forward, the County will provide the Nation with a Notice to Proceed for the following Interlocal Agreement scope: 1) the pre-construction monitoring of marine resources, following standard sampling protocols, along with the compilation of monitoring data into a technical document and providing the information to the County; 2) mitigating temporary construction impacts; 3) the post-construction monitoring of marine resources, following standard sampling protocols, along with the compilation of monitoring data into a technical document and providing the information to the County; and 4) the formal closing of the Interlocal Agreement, via written notification, between the Nation and the County. The four (4) installments of \$30,000 each would be linked to the four (4) scope items listed above. Payment for items 1) through 3) would be before the work is undertaken; however, payment for item 4) would be after all monitoring data is received.

SECTION III. LUMMI NATION RESPONSIBILITIES

The Nation is responsible for the following activities per Section II:

1. Conduct seasonal-appropriate marine resources surveys within the project footprint using the Nation's Natural Resources staff or a consultant hired by the Nation. Monitoring surveys would be conducted both pre-construction and post-construction, to the extent, frequency and detail per the Nation.
2. Compile all monitoring data (pre-construction and post-construction) into a technical document and share with the County.
3. Mitigate for temporary construction impacts of the project.

4. Obtaining necessary permits from County, State and Federal regulatory agencies as appropriate.
5. Provide written notification to the County, via the Nation's contract administrator, of the completion of all Nation responsibilities and request formal closing of the Interlocal Agreement.

SECTION IV. WHATCOM COUNTY RESPONSIBILITIES

The County is responsible for the following activities per Section II:

1. Provide the Nation with a Notice to Proceed with the Interlocal Agreement scope outlined in Section II above.
2. Payment of the agreed \$120,000 total compensation, in four (4) installments of \$30,000 each, linked to the four (4) scope items in Section II.
3. Develop quantifiable performance standards (the baseline for which shall be those associated with the existing berm constructed in 1986) that, if not achieved within three years, will trigger additional environmental monitoring and improvements to address adverse impacts to shellfish productivity along the shoreline.
4. Formal acknowledgement of the closing of the Interlocal Agreement with the Nation by the County's contract administrator.

SECTION V. INTERGOVERNMENTAL COOPERATION BETWEEN WHATCOM COUNTY AND LUMMI NATION

The Nation and the County shall enhance intergovernmental cooperation toward the safety, welfare, commerce, and community of their respective citizens, to the extent allowed by the respective jurisdictions and authorities, including, but not limited to, capital improvements to roads and bridges, the Nooksack River channel, tributaries, riparian zones and floodplains, and marine shorelines.

SECTION VI. TERM OF AGREEMENT

The period of performance for this Agreement shall commence on the date of execution herein, and shall end on December 31, 2025, unless terminated sooner or extended as provided herein. This agreement shall remain in full force and effect until the Project is completed and formal closing of the Interlocal Agreement is made in writing. The provisions of Section IX shall survive the termination of this agreement.

SECTION VII. RELATIONSHIP OF THE PARTIES

The parties agree that each is an independent entity operating pursuant to the terms and conditions of this agreement. No agent, employee, or representative of either party shall be deemed to be an agent, employee, or representative of the other party for any purpose unless requested otherwise in writing per the scope of this agreement. Each party shall be solely and entirely responsible for the acts of its agents, employees and representatives during the term of this agreement.

SECTION VIII. RECORDS MAINTENANCE

Each party to this contract shall maintain books, records, documents and other evidence, which 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, State officials so authorized by law, and in the case of the County, the office of the State Auditor.

The Office of the State Auditor, federal auditors, and any persons duly authorized by the parties shall have full access to, 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 party 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.

SECTION IX. MODIFICATION

No changes or additions to this Agreement shall be valid or binding on either party unless such changes or additions shall be in writing executed by both parties.

SECTION X. TERMINATION

A. If either party fails to comply fully with the terms and conditions of this agreement, the other party may pursue such remedies as is legally available including, but not limited to, the suspension of this Agreement.

B. This Agreement may be terminated by either party without cause, and termination shall be effective upon thirty (30) days written notification to or by either party or its authorized representative.

SECTION XI. NON-WAIVER OF BREACH

The failure of the County or the Nation to insist upon strict performance of any of the covenants and conditions of this Agreement, or to exercise any options 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.

SECTION XII. CONTRACT MANAGEMENT

The Contract Administrator 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 Administrator for the Nation is:
Merle Jefferson, Director or Designee,
Lummi Nation Natural Resources Department
2665 Kwina Road, Bellingham, WA 98226
Phone: (360) 312-2328 Fax: (360)

Birch Bay Drive and Pedestrian Facility CRP #907001

Construction Funding Year(s): 2019 / 2020

Project Narrative:

This project is located parallel to Birch Bay Drive from Cedar Avenue to the mouth of Terrell Creek, in Sections 30 and 31, T40N, R1E, and Sections 24 and 25, T40N, R1W. This is a 1.58 mile separated berm with pathway to encourage pedestrian use along Birch Bay Drive to support safety and to protect the roadway from storm damage. In addition, the project will provide mitigation for both beach erosion and roadway protection. This project is listed #R1 on the 2019-2024 Six-Year Transportation Improvement Program.

Project Status:

Preliminary Engineering began in late 2013, R/W acquisition began in 2016 (95% complete), permitting is 90% complete, and construction is planned for 2019 / 2020. Additional funding sources will be pursued as they become available.

Total Estimated Project Cost: \$11,450,000

Expenditures to Date: \$3,500,000

Funding Sources:

Federal	\$3,170,000 (STP and TAP)
State	\$0
Local	\$8,280,000

Environmental Permitting

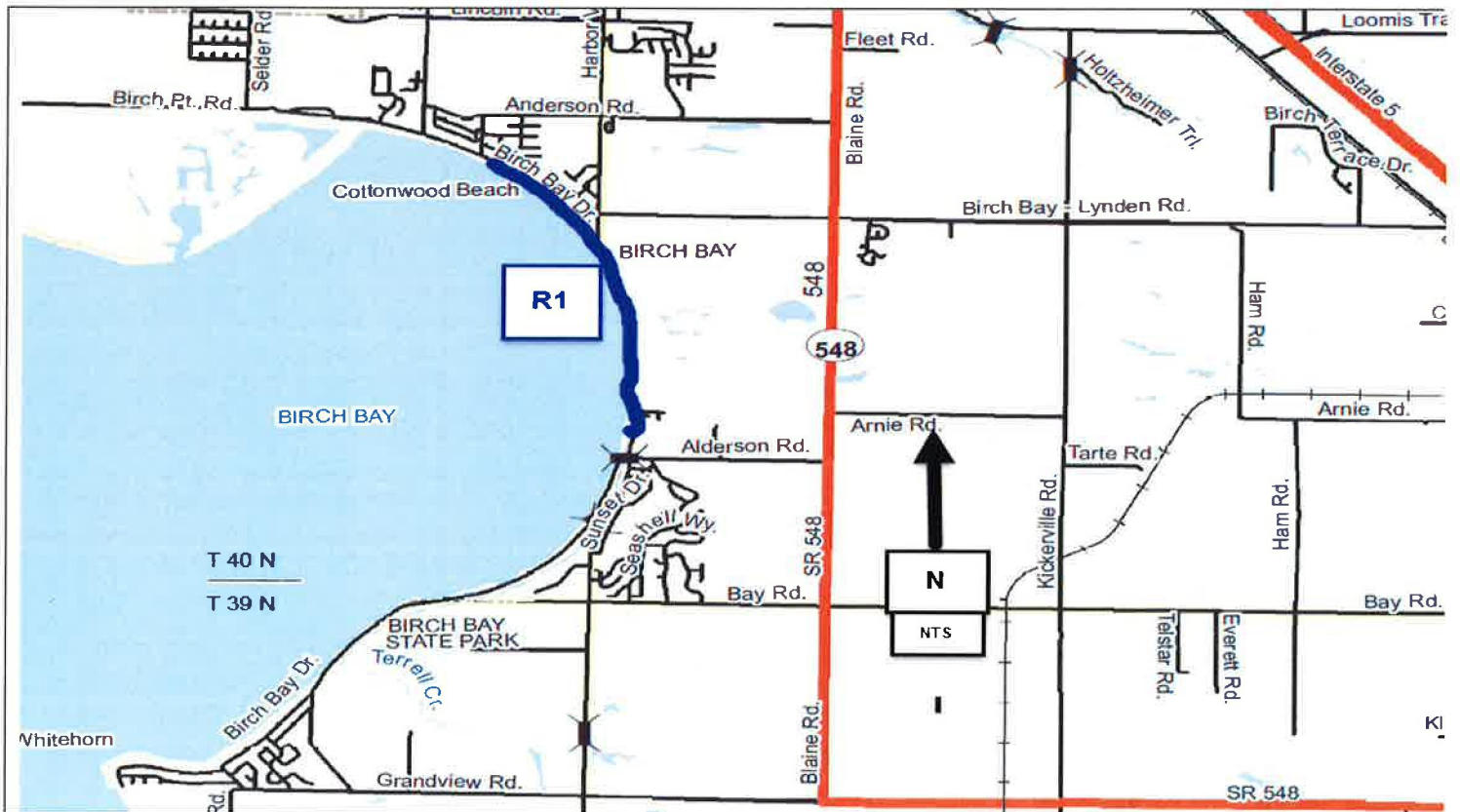
Whatcom County-Shorelines; WDFW-HPA, Army Corps of Engineers, DOE; Sec 404 Clean Water Act

Right-of-Way Acquisition (Estimate)

\$1,500,000

County Forces (Estimate)

N/A



Jon Hutchings
Director



JOSEPH P. RUTAN, P.E.
Assistant Director/County Engineer
322 N. Commercial St., Suite 301
Bellingham, WA 98225-4042
Phone: (360) 778-6210
Fax: (360) 778-6211

RECEIVED

FEB 8 2019

MEMORANDUM JACK LOUWS
COUNTY EXECUTIVE

To: The Honorable Members of the Whatcom County Council, and
The Honorable Jack Louws, Whatcom County Executive

Through: Jon Hutchings, Director *JH*

From: Joseph P. Rutan, P.E., Assistant Director / County Engineer *JPR*
James P. Karcher, P.E., Engineering Manager *JKK*

Date: January 25, 2019

Re: Birch Bay Drive & Pedestrian Facility, CRP No. 907001;
Lummi Nation and Whatcom County;
Interlocal Agreement for Natural Resources

Enclosed for your review and signature are two (2) originals of an Interlocal Agreement between Whatcom County and the Lummi Nation.

Requested Action

Whatcom County Public Works requests the County Council authorize the County Executive to enter into an agreement with the Lummi Nation to provide \$120,000 in funding to the Lummi Nation Natural Resource Group for monitoring and mitigation associated with construction impacts to treaty protected natural resources during construction of the aforementioned project.

Background and Purpose

This agreement is the result of several meetings between Whatcom County Public Works and the Lummi Nation Natural Resource Group to resolve construction related concerns associated with the project.

The Birch Bay Drive & Pedestrian Facility Project, CRP No. 907001 appears as Item No. 1 on the 2019 Annual Construction Program.

Funding Amount and Source

Whatcom County will be using local road funds to cover the Interlocal compensation amount of \$120,000. Sufficient budget authority exists in the Project Based Budget for this expenditure.

Please contact Cody Swan at extension 6265 if you have any questions or concerns regarding the terms of this supplement.