

CLERK OF THE COUNCIL
Dana Brown-Davis, C.M.C.

COUNTY COURTHOUSE
311 Grand Avenue, Suite #105
Bellingham, WA 98225-4038
(360) 778-5010



COUNCILMEMBERS
Barbara Brenner
Rud Browne
Barry Buchanan
Tyler Byrd
Todd Donovan
Carol Frazey
Satpal Sidhu

WHATCOM COUNTY COUNCIL

**COMBINED
AGENDA PACKET FOR
OCTOBER 8, 2019**

**INCLUDES INFORMATION
FOR THE FOLLOWING MEETINGS:**

COMMITTEE OF THE WHOLE (10:15 A.M.)

FINANCE AND ADMINISTRATIVE SERVICE COMMITTEE (11 A.M.)

CRIMINAL JUSTICE AND PUBLIC SAFETY (1:15 P.M.)

PUBLIC WORKS AND HEALTH (1:45 P.M.)

PLANNING AND DEVELOPMENT COMMITTEE (3:30 P.M.)

COUNCIL (7 P.M.)

UPCOMING MEETINGS AND EVENTS:

OCTOBER 15, 2019

10:30 A.M. – SURFACE WATER WORK SESSION
GARDEN LEVEL CONFERENCE ROOM, 322 N. COMMERCIAL STREET

OCTOBER 22, 2019

REGULAR COUNCIL AND COMMITTEE MEETINGS
COUNCIL CHAMBERS, 311 GRAND AVENUE

OCTOBER 29, 2019

SPECIAL COUNCIL MEETING
6 P.M. - EAST WHATCOM REGIONAL RESOURCE CENTER

NOVEMBER 5, 2019

ELECTION DAY

WEDNESDAY

NOVEMBER 6, 2019

REGULAR COUNCIL AND COMMITTEE MEETINGS
COUNCIL CHAMBERS, 311 GRAND AVENUE

COMMITTEE AGENDAS

COMMITTEE OF THE WHOLE

10:15 a.m. Tuesday, October 8, 2019

Conference Room, 311 Grand Avenue

Call To Order

Roll Call

Committee Discussion

1. AB2019-500 Discussion regarding potential property acquisitions for the Flood Control Zone District [Discussion of this item may take place in executive session (closed to the public) pursuant to RCW 42.30.110(1)(b)]

Page 1

Other Business

Adjournment

FINANCE AND ADMINISTRATIVE SERVICES COMMITTEE

Members: Tyler Byrd, Carol Frazey, Satpal Sidhu

11 a.m. Tuesday, October 8, 2019

Council Chambers, 311 Grand Avenue

Call To Order

Roll Call

County Executive's Report

1. AB2019-492 Report from Human Resources Division

Page 2

Committee Discussion

1. AB2019-488 Discussion of an ordinance establishing the Affordable and Supportive Housing Fund

Pages 3 - 15

Committee Discussion and Recommendation to Council

1. AB2019-478 Request authorization for the County Executive to enter into an interagency agreement between Whatcom County Flood Control Zone District and State of Washington Puget Sound Partnership for coordination of the Whatcom County Local Integrating Organization (LIO), in the amount of \$75,000 (Council acting as the Whatcom County Flood Control Zone District Board of Supervisors)

Pages 16 - 51

2. AB2019-487 Request authorization for the County Executive to enter into a grant agreement between Whatcom County and the State of Washington Department of Ecology to fund administrative support and action projects for the Whatcom County Marine Resources Committee, in the amount of \$182,313 (Council Acting as the Whatcom County Flood Control Zone District Board of Supervisors)

Pages 52 - 91

3. AB2019-498 Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Birch Bay Water and Sewer District for implementation of stormwater and water quality programs (Council acting as the Whatcom County Flood Control Zone District Board of Supervisors)

Pages 92 - 99

Council "Consent Agenda" Items

1. AB2019-494 Request authorization for the County Executive to enter into a contract between Whatcom County and Geneva Consulting Services for coordination of the Whatcom Lead Integrating Organization, in the amount of \$68,616.11

Pages 100 - 127

2. AB2019-485 Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Washington State Health Care Authority for substance use prevention services in high-need communities, in the amount of \$577,550

Pages 128 - 233

3. AB2019-486 Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Washington State Health Care Authority for treatment and recovery support services to individuals involved in the criminal justice system, in the amount of \$174,881

Pages 234 - 281

4. AB2019-501 Request authorization for the County Executive to enter into a contract between Whatcom County and FLO Analytics to assist with the developing of the 2020 Lake Whatcom Stormwater Utility Fee in the amount of \$28,715.00

Pages 282 - 297

Other Business

Adjournment

CRIMINAL JUSTICE AND PUBLIC SAFETY COMMITTEE

Members: Barry Buchanan, Tyler Byrd, Carol Frazey

1:15 p.m. Tuesday, October 8, 2019

Council Chambers, 311 Grand Avenue

Call To Order

Roll Call

Special Presentation

1. AB2019-493 Report from the Prosecuting Attorney's Office
Page 298

Other Business

Adjournment

PUBLIC WORKS AND HEALTH COMMITTEE

Members: Barbara Brenner, Barry Buchanan, Carol Frazey

1:45 p.m. Tuesday, October 8, 2019

Council Chambers, 311 Grand Avenue

Call To Order

Roll Call

Special Presentation

1. AB2019-510 Presentation regarding procedural history of WRIA 1 watershed management planning (years 1999-2016)
Pages 299 - 341

Committee Discussion

1. AB2019-496 Discussion of the Whatcom County Strategic Plan to End Homelessness
Pages 342 - 421

Committee Discussion and Recommendation to Council

1. AB2019-499 Resolution in the matter of considering vacating a portion of Horton Road
Pages 422 - 430

Other Business

Adjournment

PLANNING AND DEVELOPMENT COMMITTEE

Members: Barbara Brenner, Tyler Byrd, Todd Donovan

3:30 p.m. (estimated time- may begin earlier or later than 3:30)

Tuesday, October 8, 2019

Council Chambers, 311 Grand Avenue

Call To Order

Roll Call

Committee Discussion

1. AB2019-511 Discussion regarding draft interim zoning regulations for the siting, establishment, and operation of temporary homeless facilities
Pages 431 - 442
2. AB2019-479 Discussion of proposed ordinance amending Whatcom County Code Chapters 11.16 and 11.20 to protect Lake Samish shoreline properties and Lake Samish water recreation
Pages 443 - 450

Committee Discussion and Recommendation to Council

1. AB2019-417 Resolution to replace the Business Rules of the Whatcom County Hearing Examiner
Pages 451 - 482

Other Business

Adjournment

COUNCIL AGENDA

REGULAR COUNCIL MEETING

7 p.m. Tuesday, October 8, 2019

Council Chambers, 311 Grand Avenue

CALL TO ORDER

FLAG SALUTE

ROLL CALL

ANNOUNCEMENTS

If you will be handing out paperwork to councilmembers, please give one copy to the clerk for our office files. Thank you.

PUBLIC HEARINGS

Audience members who wish to address the council during a public hearing are asked to sign up at the back of the room before the meeting begins. The council chair will ask those who have signed up to form a line at the podium. Each speaker should state his or her name for the record and optionally include city of residence. Speakers will be given three minutes to address the council. Council staff will keep track of time limits and inform speakers when they have thirty seconds left to conclude their comments. When a large group of individuals supports the same position on an issue, we encourage the selection of one or two representatives to speak on behalf of the entire group.

1. AB2019-472 Ordinance amending Whatcom County Code 9.32, Unlawful Discharge of Firearms, to establish a no shooting zone in the Drayton Harbor area of Whatcom County
Pages 483 - 491
2. AB2019-452 Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and the City of Bellingham for the 2019 Byrne Justice Assistance Grant to purchase ballistic resistant vests for a total of \$13,391
Pages 492 - 503

OPEN SESSION (20 MINUTES)

During open session, audience members can speak to the council on any issue not scheduled for public hearing. Each speaker should state his or her name for the record and optionally include city of residence. Speakers will be given three minutes to address the council. Council staff will keep track of time limits and inform speakers when they have thirty seconds left to conclude their comments.

CONSENT AGENDA

Items under this section of the agenda may be considered in a single motion. Councilmembers have received and studied background material on all items. Committee review has taken place on these items, as indicated. Any member of the public, administrative staff, or council may ask that an item be considered separately.

(From Council Finance and Administrative Services Committee)

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Pages 100 - 127

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Pages 234 - 281
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Pages 282 - 297

OTHER ITEMS

(From Council Finance and Administrative Services Committee)

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Pages 92 - 99

(From Council Public Works and Health Committee)

4. AB2019-499 Resolution in the matter of considering vacating a portion of Horton Road
Pages 422 - 430

(From Council Planning and Development Committee)

5. AB2019-417 Resolution to replace the Business Rules of the Whatcom County Hearing Examiner
Pages 451 - 482

EXECUTIVE APPOINTMENTS TO BOARDS, COMMISSIONS, AND COMMITTEES

1. AB2019-509 Request confirmation of the County Executive's appointment of Steve Bennett and Galen Herz to the Public Health Advisory Board

Pages 504 - 517

INTRODUCTION ITEMS

Council action will not be taken. The council may accept these items for introduction (no action) in a single motion. Changes, in terms of committee assignment for example, may be made at this time.

1. AB2019-489 Ordinance establishing the Affordable and Supportive Housing Fund
Pages 518 - 530
2. AB2019-508 Ordinance amending the 2019 Whatcom County Budget, request no. 13, in the amount of \$375,570
Pages 531 - 558
3. AB2019-495 Ordinance reauthorizing a Golf Cart Zone on certain roads in the Birch Bay Area
Pages 559 - 575
4. AB2019-503 Receipt of application(s) for the Horticulture Pest and Disease Board, applicant: Andrew Taylor (committee controls and prevents the spread of horticultural pests and diseases) (application deadline for additional applicants is 10:00 a.m. October 15, 2019)
Pages 576 - 578
5. AB2019-502 Resolution amending WCC 100.7 Birch Bay Watershed Aquatic Resources Management District Funding Mechanism by adding an exemption for the Birch Bay Water and Sewer District (Council acting as the Whatcom County Flood Control Zone District Board of Supervisors)
Pages 579 - 583
6. AB2019-504 Resolution adopting the 2020 Annual Road Construction Program (ACP)
Pages 584 - 635

COMMITTEE REPORTS, OTHER ITEMS, AND COUNCIL MEMBER UPDATES

ADJOURN



Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2019-500

File ID:	AB2019-500	Version:	1	Status:	Agenda Ready
File Created:	09/24/2019	Entered by:	AHester@co.whatcom.wa.us		
Department:	Public Works Department	File Type:	Discussion		
Assigned to:	Council Committee of the Whole-Executive Session	Final Action:			
Agenda Date:	10/08/2019	Enactment #:			

Primary Contact Email: Sdraper@co.whatcom.wa.us <<mailto:Sdraper@co.whatcom.wa.us>>

TITLE FOR AGENDA ITEM:

Discussion regarding potential property acquisitions for the Flood Control Zone District [Discussion of this item may take place in executive session (closed to the public) pursuant to RCW 42.30.110(1)(b)]

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Discussion regarding potential property acquisitions for the Flood Control Zone District with Public Works staff [Discussion of this item may take place in executive session (closed to the public) pursuant to RCW 42.30.110(1)(b)]

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2019-492

File ID:	AB2019-492	Version:	1	Status:	Agenda Ready
File Created:	09/23/2019	Entered by:	skorthui@co.whatcom.wa.us		
Department:	County Executive's Office	File Type:	Report		
Assigned to:	Council Finance and Administrative Services Committee	Final Action:			
Agenda Date:	10/08/2019	Enactment #:			

Primary Contact Email: KGoens@WhatcomCounty.us

TITLE FOR AGENDA ITEM:

Report from Human Resources Division

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Human Resources Manager Karen Goens will present her report to Council

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2019-488

File ID:	AB2019-488	Version:	1	Status:	Agenda Ready
File Created:	09/20/2019	Entered by:	SMurdoch@co.whatcom.wa.us		
Department:	Health Department	File Type:	Discussion		
Assigned to:	Council Finance and Administrative Services Committee	Final Action:			
Agenda Date:	10/08/2019	Enactment #:			

Primary Contact Email: adeacon@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Discussion of an ordinance establishing the Affordable and Supportive Housing Fund

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See Attachment

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Memorandum

TO: JACK LOUWS

FROM: Anne Deacon

DATE: September 12, 2019

RE: Ordinance for Affordable and Supportive Housing

An ordinance and corresponding County Code will be introduced at the October 8, 2019 County Council meeting in response to new state legislation for housing. The 2019 state legislative session passed Substitute House Bill 1406 (SHB 1406) allowing local governments to take a tax credit against a portion of the state's share of local sales and use tax. The purpose of these additional monies available to local government is to fund affordable and supportive housing. SHB 1406 has been codified in RCW 82.14.540 and that statute are attached to this packet as reference.

The tax credit expires twenty years after the date on which it is first imposed. Monies must be directed to the following:

1. Assisting people who are at or below 60% of the Area Median Income (AMI)
2. Acquiring, rehabilitating, or constructing affordable housing. This may include new units of affordable housing within an existing structure, or for facilities providing supportive housing services
3. Operations and maintenance costs of new units of affordable or supportive housing
4. Rental Assistance

Whatcom County has been in discussion with all seven city partners to determine who will take this tax credit on behalf of the community, as well as expectations for the use of the additional funds. Maximum taxing capacity is available if the County takes it, and the cities have agreed to this option. The Whatcom County Housing Advisory Committee (WCHAC), formed through an Interlocal agreement among the county and all seven cities, will act as the advisory body for use of these additional funds. This Interlocal will be amended to capture this added responsibility. The Interlocal amendment will also outline membership for the WCHAC to include two representatives from the city of Bellingham. Small cities currently hold a position on the WCHAC under the Interlocal agreement and will continue to have representation.

The City Council of Bellingham passed a resolution on September 9, 2019 declaring their intent to have the County take the tax credit, providing that the county takes formal action before November 30, 2019. A copy of the city's resolution is also attached as reference.





As recipient of the tax, the County has agreed to facilitate a community-wide housing action plan, collaborating with cities, and collating and coordinating existing plans from all seven cities to identify common goals. The WCHAC will submit an annual report to the community on the activities related to this new funding source. Additionally, the county will submit an annual report on activities to Commerce as required by state statute.

State statute reads that by December 31, 2019, or within thirty days of the county authorizing the tax, *whichever is later*, the state's Department of Revenue must calculate the maximum amount of tax distributions. This calculation will be equal to the taxable retail sales within the county in state fiscal year 2019 multiplied by the tax rate of .0146 percent. It is estimated that the annual tax distribution will be between \$650,000 to \$700,000.

Exhibit A is attached and will serve as the County Code for this new funding source. The Affordable and Supportive Housing Fund will be established to account for these monies.



09/17/2019

PROPOSED BY: Health
INTRODUCTION DATE: _____

ORDINANCE NO. _____

ESTABLISHING AN AFFORDABLE AND SUPPORTIVE HOUSING FUND

WHEREAS, in the 2019 Regular Session, the Washington State Legislature approved, and the Governor signed, Substitute House Bill 1406 (Chapter 338, Laws of 2019) ("SHB 1406"); and

WHEREAS, RCW 82.14.540 was established as statute pursuant to SHB 1406; and

WHEREAS, RCW 82.14.540 authorizes the governing body of a county to impose a local sales and use tax for affordable and for supportive housing to persons whose income is at or below sixty percent of the Whatcom County area median income, with said tax expiring twenty years after the date on which the tax is first imposed; and

WHEREAS, RCW 82.14.540 authorizes use for the following: the acquisition, construction or rehabilitation of affordable housing, which may include new units of affordable housing within an existing structure or facilities providing supportive housing, and for funding the operations and maintenance costs of new units of affordable or supportive housing, and for counties with populations of 400,000 or less, for providing rental assistance to tenants; and

WHEREAS, Whatcom County is a participating county that currently imposes a qualifying local sales and use tax in accordance with requirements of RCW 82.14.540; and

WHEREAS, the City of Bellingham also has a qualifying local tax; and

WHEREAS, the City of Bellingham has stated in a resolution on September 9, 2019 that Whatcom County is authorized to retain the tax at the maximum rate and will not be a participating city by retaining the tax; and

WHEREAS, Whatcom County and the cities within the county have agreed that Whatcom County is authorized to retain the tax at the maximum rate; and

WHEREAS, Whatcom County has declared on September 10, 2019 through resolution an intent to adopt legislation to authorize the maximum capacity of the sales and use tax authorized by RCW 82.14.540; and

WHEREAS, the tax will be credited against state sales taxes collected within Whatcom County and, therefore, will not result in higher sales and use taxes within the County and will represent an additional source of funding to address housing needs in the County; and

WHEREAS, Whatcom County will facilitate a county-wide housing plan by collating the various city and county housing plans and then identifying common goals; and

WHEREAS, the Whatcom County Housing Advisory Committee was formed through an interlocal agreement among the county and the seven cities and serves in an advisory capacity to Whatcom County issues related to housing; and

1 **WHEREAS**, the current interlocal agreement establishing the Whatcom County
2 Housing Advisory Committee states membership status for cities as well as scope of the
3 committee's activities; and

4 **WHEREAS**, the city of Bellingham desires two representatives on the Whatcom
5 County Housing Advisory Committee; and

6 **WHEREAS**, an amendment to the interlocal agreement that established the
7 Whatcom County Housing Advisory Committee will reflect the change in membership to add
8 an additional representative from the city of Bellingham, as well as expanded scope as an
9 advisory body for said tax distribution; and

10 **WHEREAS**, the County has a need for supportive and affordable housing units and
11 has determined that retaining the maximum rate of the sales and use tax to address this
12 need will benefit its citizens; and

13 **WHEREAS**, the state Department of Revenue will set the maximum amount of tax
14 distributions for a participating county no later than December 31, 2019; and

15 **WHEREAS**, a new fund must be established to collect the tax distributions;

16 **NOW, THEREFORE, BE IT ORDAINED** that:

17
18 1. Whatcom County adopts Exhibit A into law.

19 2. The Affordable & Supportive Housing fund is hereby established to collect this new
20 revenue.

21 3. An annual report reflecting housing priorities, strategies, and accomplishments of
22 the entire county will be submitted by the Whatcom County Housing Advisory
23 Committee.

24 This ordinance shall take effect immediately upon its passage and adoption.

25
26 **ADOPTED** this ____ day of _____, 20____.

27
28
29
30 ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

31
32
33 _____
34 Dana Brown-Davis, Clerk of the Council

(Current Chair's Name), Council Chair

35
36 WHATCOM COUNTY EXECUTIVE
37 APPROVED AS TO FORM:

WHATCOM COUNTY, WASHINGTON

38
39 _____
40
41 Civil Deputy Prosecutor
42 Executive

(Current Executive's Name), County

43
44 () Approved () Denied

45
46 Date Signed: _____

Exhibit A

Chapter 3.45

AFFORDABLE AND SUPPORTIVE HOUSING SALES AND USE TAX FUND

Sections

3.45.010	Sales and use tax revenue
3.45.020	Administration and collection
3.45.030	Affordable and Supportive Housing Fund
3.45.040	Use of funds
3.45.050	Administration of fund
3.45.060	Whatcom County Housing Advisory Committee
3.45.070	Effective date
3.45.080	Severability

3.45.010 Sales and use tax revenue.

Pursuant to RCW 82.14.540, Whatcom County is a participating county that imposes a qualifying sales and use tax, and may retain a portion of the existing “qualifying tax” as defined in Chapter 82.14.540 RCW. The rate at which the tax will be retained is .0146 percent of the taxable retail sales within the county in state fiscal year 2019, the maximum allowable per RCW 82.14.540 for a participating county. This revenue is not a new tax to the citizens of Whatcom County. This amount is calculated by the Department of Revenue and the tax imposed by a county under this legislation expires twenty years after the date on which the tax is first imposed. (Ord. Exh.; Ord. Exh.).

3.45.020 Administration and collection.

The revenue retained by this chapter shall be administered and collected in accordance with RCW [82.14.540](#). The county executive or designee is hereby authorized and directed to execute any contracts with the Washington State Department of Revenue that may be necessary to provide for the administration or collection of the tax. (Ord. Exh.; Ord. Exh.).

3.45.030 Affordable and Supportive Housing Fund.

The Whatcom County treasurer shall deposit moneys collected pursuant to this chapter in the Affordable and Supportive Housing Fund. The treasurer may invest the fund balance and any interest earned shall be deposited into this fund. (Ord. Exh.; Ord. Exh.).

3.45.040 Use of funds.

Moneys deposited into the Affordable and Supportive Housing Fund shall be used solely for the purpose of acquiring, rehabilitating or constructing affordable housing, which may include new units of affordable housing within an existing structure or facilities providing supportive housing services under RCW 71.24.385, or for funding the operations and maintenance costs of new units of affordable or supportive

housing. Funds may also be used for rental assistance throughout Whatcom County as long as the county population remains 400,000 or less. The housing and services provided may only be provided to persons whose income is at or below 60% area median income for Whatcom County. Funds may also be used as otherwise authorized by the laws of the state of Washington as referenced in RCW 82.14.540. (Ord. Exh.; Ord. Exh).

3.45.050 Administration of fund.

The county executive shall administer the Affordable and Supportive Housing Fund with assistance of the Whatcom County Health Department, in accordance with budgetary processes and Whatcom County administrative policies and state statutes. Whatcom County must report annually to the Department of Commerce on the collection and use of the revenue. (Ord. Exh.; Ord. Exh).

3.45.060 Whatcom County Housing Advisory Committee

The Whatcom County Housing Advisory Committee serves in an advisory capacity to the county executive via Whatcom County Health Department on uses of the Affordable and Supportive Housing Fund. The county will facilitate a community-wide housing action plan with support from the committee. Collaborative efforts include convening city partners, collating existing housing plans and identifying common themes and goals. The committee will submit an annual report reflecting priorities, strategies and accomplishments related to this funding source, as well as identification of action steps for the coming year. This report will be submitted to the County Executive and community partners by the committee.

3.45.070 Effective date.

In accordance with the Whatcom County budget cycle, this chapter shall take effect upon passage. Start date for the collection of the tax credit will be determined by the state Department of Revenue. (Ord. Exh.; Ord. Exh).

3.45.080 Severability.

If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of this chapter or the application of the provisions to other persons or circumstances is not affected. (Ord. Exh.; Ord. Exh).

RCW 82.14.540**Affordable and supportive housing—Sales and use tax.**

(1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Nonparticipating city" is a city that does not impose a sales and use tax in accordance with the terms of this section.

(b) "Nonparticipating county" is a county that does not impose a sales and use tax in accordance with the terms of this section.

(c) "Participating city" is a city that imposes a sales and use tax in accordance with the terms of this section.

(d) "Participating county" is a county that imposes a sales and use tax in accordance with the terms of this section.

(e) "Qualifying local tax" means the following tax sources, if the tax source is instated no later than twelve months after July 28, 2019:

(i) The affordable housing levy authorized under RCW **84.52.105**;

(ii) The sales and use tax for housing and related services authorized under RCW **82.14.530**, provided the city has imposed the tax at a minimum or [of] at least half of the authorized rate;

(iii) The sales tax for chemical dependency and mental health treatment services or therapeutic courts authorized under RCW **82.14.460** imposed by a city; and

(iv) The levy authorized under RCW **84.55.050**, if used solely for affordable housing.

(2)(a) A county or city legislative authority may authorize, fix, and impose a sales and use tax in accordance with the terms of this section.

(b) The tax under this section is assessed on the selling price in the case of a sales tax, or value of the article used, in the case of a use tax.

(c) The rate of the tax under this section for an individual participating city and an individual participating county may not exceed:

(i) Beginning on July 28, 2019, until twelve months after July 28, 2019:

(A) 0.0073 percent for a:

(I) Participating city, unless the participating city levies a qualifying local tax; and

(II) Participating county, within the limits of nonparticipating cities within the county and within participating cities that do not currently levy a qualifying tax;

(B) 0.0146 percent for a:

(I) Participating city that currently levies a qualifying local tax;

(II) Participating city if the county in which it is located declares they will not levy the sales and use tax authorized under this section or does not adopt a resolution in accordance with this section; and

(III) Participating county within the unincorporated areas of the county and any city that declares they will not levy the sales and use tax authorized under this section or does not adopt a resolution in accordance with this section;

(ii) Beginning twelve months after July 28, 2019:

(A) 0.0073 percent for a:

(I) Participating city that is located within a participating county if the participating city is not levying a qualifying local tax; and

(II) Participating county, within the limits of a participating city if the participating city is not levying a qualifying local tax;

(B) 0.0146 percent within the limits of a:

(I) Participating city that is levying a qualifying local tax; and

(II) Participating county within the unincorporated area of the county and within the limits of any nonparticipating city that is located within the county.

(d) A county may not levy the tax authorized under this section within the limits of a participating city that levies a qualifying local tax.

(e)(i) In order for a county or city legislative authority to impose the tax under this section, the authority must adopt:

(A) A resolution of intent to adopt legislation to authorize the maximum capacity of the tax in this section within six months of July 28, 2019; and

(B) Legislation to authorize the maximum capacity of the tax in this section within one year of July 28, 2019.

(ii) Adoption of the resolution of intent and legislation requires simple majority approval of the enacting legislative authority.

(iii) If a county or city has not adopted a resolution of intent in accordance with the terms of this section, the county or city may not authorize, fix, and impose the tax.

(3) The tax imposed under this section must be deducted from the amount of tax otherwise required to be collected or paid to the department of revenue under chapter **82.08** or **82.12** RCW. The department must perform the collection of such taxes on behalf of the county or city at no cost to the county or city.

(4) By December 31, 2019, or within thirty days of a county or city authorizing the tax under this section, whichever is later, the department must calculate the maximum amount of tax distributions for each county and city authorizing the tax under this section as follows:

(a) The maximum amount for a participating county equals the taxable retail sales within the county in state fiscal year 2019 multiplied by the tax rate imposed under this section. If a county imposes a tax authorized under this section after a city located in that county has imposed the tax, the taxable retail sales within the city in state fiscal year 2019 must be subtracted from the taxable retail sales within the county for the calculation of the maximum amount; and

(b) The maximum amount for a city equals the taxable retail sales within the city in state fiscal year 2019 multiplied by the tax rate imposed under subsection (1) of this section.

(5) The tax must cease to be distributed to a county or city for the remainder of any fiscal year in which the amount of tax exceeds the maximum amount in subsection (4) of this section. The department must remit any annual tax revenues above the maximum to the state treasurer for deposit in the general fund. Distributions to a county or city meeting the maximum amount must resume at the beginning of the next fiscal year.

(6)(a) If a county has a population greater than four hundred thousand or a city has a population greater than one hundred thousand, the moneys collected or bonds issued under this section may only be used for the following purposes:

(i) Acquiring, rehabilitating, or constructing affordable housing, which may include new units of affordable housing within an existing structure or facilities providing supportive housing services under RCW **71.24.385**; or

(ii) Funding the operations and maintenance costs of new units of affordable or supportive housing.

(b) If a county has a population of four hundred thousand or less or a city has a population of one hundred thousand or less, the moneys collected under this section may only

be used for the purposes provided in (a) of this subsection or for providing rental assistance to tenants.

(7) The housing and services provided pursuant to subsection (6) of this section may only be provided to persons whose income is at or below sixty percent of the median income of the county or city imposing the tax.

(8) In determining the use of funds under subsection (6) of this section, a county or city must consider the income of the individuals and families to be served, the leveraging of the resources made available under this section, and the housing needs within the jurisdiction of the taxing authority.

(9) To carry out the purposes of this section including, but not limited to, financing loans or grants to nonprofit organizations or public housing authorities, the legislative authority of the county or city imposing the tax has the authority to issue general obligation or revenue bonds within the limitations now or hereafter prescribed by the laws of this state, and may use, and is authorized to pledge, the moneys collected under this section for repayment of such bonds.

(10) A county or city may enter into an interlocal agreement with one or more counties, cities, or public housing authorities in accordance with chapter **39.34** RCW. The agreement may include, but is not limited to, pooling the tax receipts received under this section, pledging those taxes to bonds issued by one or more parties to the agreement, and allocating the proceeds of the taxes levied or the bonds issued in accordance with such interlocal agreement and this section.

(11) Counties and cities imposing the tax under this section must report annually to the department of commerce on the collection and use of the revenue. The department of commerce must adopt rules prescribing content of such reports. By December 1, 2019, and annually thereafter, and in compliance with RCW **43.01.036**, the department of commerce must submit a report annually to the appropriate legislative committees with regard to such uses.

(12) The tax imposed by a county or city under this section expires twenty years after the date on which the tax is first imposed.

[2019 c 338 § 1.]



City of Bellingham
210 Lottie Street
Bellingham, WA 98225

MEMORANDUM

TO: MAYOR KELLI LINVILLE
FROM: TARA SUNDIN, COMMUNITY & ECONOMIC DEVELOPMENT MANAGER
CC: BRIAN HEINRICH, DEPUTY ADMINISTRATOR
SUBJECT: RESOLUTION ON SHB 1406
DATE: SEPTEMBER 9, 2019

City and Whatcom County staff have been coordinating on our approach regarding collection and administration of a sales and use tax for affordable and supportive housing under SHB 1406. Per your direction, we have been working toward a collaborative approach whereby the County would collect and administer the monies while providing the City with an opportunity for meaningful input. If the Whatcom County Council passes a resolution stating it intends to collect the sales and use tax in the full amount authorized by the legislation, we propose the following measures be included in the ordinance the County Council is required to pass:

1. Whatcom County facilitates a county-wide housing action plan. Whatcom County is aware that the cities and the county have existing housing plans. The Whatcom County Housing Advisory Committee can take the lead in convening these partners, collate the various plans and identify common themes and goals. The committee will then create an Annual Report that reflects the priorities, strategies, and accomplishments of the entire county, with acknowledgment of action steps for the coming year.
2. The Housing Advisory Committee members. Whatcom County staff are proposing that this Committee be the body that makes recommendations on the SHB 1406 funds (estimated at \$650-\$700k in 2019). Bellingham currently has one representative on this committee. Given the largest portion of sales tax revenue is generated in Bellingham, we request two City representatives be on this committee. County staff has indicated the Housing Advisory Committee is in the process of updating its by-laws and will ensure that two representatives from the City of Bellingham are members. The committee will also take this opportunity to re-evaluate membership generally to optimize input from all relevant sectors.
3. Use of SHB 1406 funds. We propose no limitation on the use of the funds authorized by the State so long as they are used consistently with the legislation.

As a reminder, in order for a city or county to impose the tax, within six months of the effective date of SHB 1406, or January 28, 2020, the governing body must adopt a resolution of intent to authorize the maximum capacity of the tax, and within twelve months of the effective date of SHB 1406, or July 28, 2020, must adopt legislation to authorize the maximum capacity of the tax.

RESOLUTION NO. _____

**A RESOLUTION OF THE BELLINGHAM CITY COUNCIL
REGARDING A SALES AND USE TAX FOR AFFORDABLE AND
SUPPORTIVE HOUSING UNDER SUBSTITUTE HOUSE BILL 1406
(CHAPTER 338, LAWS OF 2019)**

WHEREAS, in the 2019 Regular Session, the Washington State Legislature approved, and the Governor signed, Substitute House Bill 1406 (Chapter 338, Laws of 2019) (“SHB 1406”); and

WHEREAS, SHB 1406 authorizes the governing body of a city or county to impose a local sales and use tax for the acquisition, construction or rehabilitation of affordable housing or facilities providing supportive housing, for the operations and maintenance costs of affordable or supportive housing, and for certain cities and counties, providing rental assistance to tenants; and

WHEREAS, the tax will be credited against sales and use taxes collected by the State of Washington within the city and county imposing the tax, including Bellingham and, therefore, will not result in higher sales and use taxes within the city and county and will represent an additional source of funding to address housing needs in the city and county; and

WHEREAS, the tax must be used to assist persons whose income is at or below sixty percent of the county median income; and

WHEREAS, both Whatcom County (the “County”) and the City of Bellingham (the “City”) have a need for more housing units affordable to those earning at or below sixty percent of median income; and

WHEREAS, in order for a city or county to impose the tax, within six months of the effective date of SHB 1406, or January 28, 2020, the governing body must adopt a resolution of intent to authorize the maximum capacity of the tax, and within twelve months of the effective date of SHB 1406, or July 28, 2020, must adopt legislation to authorize the maximum capacity of the tax; and

WHEREAS, the City and the County are currently working on a proposal under which the County will impose the maximum amount of the tax instead of the City, and the jurisdictions will work collaboratively to ensure the funds are administered in a manner that is consistent with the attached memorandum; and

WHEREAS, the City Council now desires that the County pass a resolution stating its intent to impose a local sales and use tax as authorized by SHB 1406 as set forth herein and pass an ordinance consistent with the memorandum attached hereto.

Resolution Regarding Sales and Use Tax
under SHB 1406

(1)

City of Bellingham
City Attorney
210 Lottie Street
Bellingham, Washington 98225
360-778-8270

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BELLINGHAM:

Section 1. The City Council expresses its support for the proposal attached to this resolution.

Section 2. The City Council anticipates declaring that it will not levy the sales and use tax so that the County may proceed with the attached proposal.

Section 3. It is the intent of the City Council that following passage by the Whatcom County Council of a resolution and legislation that (1) authorizes the maximum capacity of the tax, and (2) is consistent with the attached proposal, the City Council will adopt a resolution declaring that it will not levy the tax.

Section 4. In the event the County Council does not complete the actions set forth in Section 3 of this resolution by November 30, 2019, the City intends to pass a resolution of intent to impose the tax under SHB 1406.

PASSED by the Council this _____ day of _____, 2019.

Council President

APPROVED by me this _____ day of _____, 2019.

Mayor

ATTEST: _____
Finance Director

APPROVED AS TO FORM:

Office of the City Attorney

Resolution Regarding Sales and Use Tax
under SHB 1406 (2)

City of Bellingham
City Attorney
210 Lottie Street
Bellingham, Washington 98225
360-778-8270



Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2019-478

File ID:	AB2019-478	Version:	1	Status:	Agenda Ready
File Created:	09/16/2019	Entered by:	RKlein@co.whatcom.wa.us		
Department:	Public Works Department	File Type:	Contract (WCFCZDBS)		
Assigned to:	Council Finance and Administrative Services Committee	Final Action:			
Agenda Date:	10/08/2019	Enactment #:			

Primary Contact Email: sdraper@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into an interagency agreement between Whatcom County Flood Control Zone District and State of Washington Puget Sound Partnership for coordination of the Whatcom County Local Integrating Organization (LIO), in the amount of \$75,000 (Council acting as the Whatcom County Flood Control Zone District Board of Supervisors)

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

The WRIA 1 Watershed Management Board acts as Local Integrating Organization (LIO) for water resources programs in the Whatcom County region. The WRIA 1 Management met on August 1, 2019 and approved the draft FFY 2019 LIO Coordination Scope of Work for the Whatcom County Flood Control Zone District as the fiscal agent, acting on behalf of the WRIA 1 Watershed Management Board, for negotiating a contract with the Puget Sound Partnership. This agreement provides funds for tasks related to 1) organize, support, administer, facilitate, and coordinate a Local Integrating Organization, 2) steward and implement the Puget Sound Action Agenda 2018-2022, 3) performance management, and 4) support communication, adaptive management, and synthesis of LIO Ecosystem Recovery Plans

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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**WHATCOM COUNTY
PUBLIC WORKS DEPARTMENT**

**Jon Hutchings
Director**



NATURAL RESOURCES

322 N. Commercial, Suite 110
Bellingham, WA 98225
Telephone: (360) 778-6230
FAX: (360) 778-6231
www.whatcomcounty.us

MEMORANDUM

TO: The Honorable Jack Louws, and the Honorable Members of the Whatcom County Flood Control Zone District Board of Supervisors

THROUGH: Jon Hutchings, Public Works Director *JH*

FROM: Gary Stoyka, Natural Resources Manager *VS*
Austin Rose, Planner I

DATE: September 11, 2019

RE: Interagency Agreement #2020-21: Whatcom County LIO – FFY2019 Funding

Please find enclosed for your review and signature two (2) originals of Interagency Agreement # 2020-21: Whatcom County LIO – FFY2019 Funding between the State of Washington Puget Sound Partnership (PSP) and the Whatcom County Flood Control Zone District to coordinate the Whatcom County Local Integrating Organization (LIO).

Requested Action

Public Works respectfully requests that the County Executive approve and sign the attached grant amendment as the fiscal agent for the Whatcom County LIO.

Background and Purpose

The WRIA 1 Watershed Management Board acts as Local Integrating Organization (LIO) for water resources programs in the Whatcom County region. The WRIA 1 Management Team met on August 1, 2019 and approved the draft FFY 2019 LIO Coordination Scope of Work for the Whatcom County Flood Control Zone District as fiscal agent, acting on behalf of the WRIA 1 Watershed Management Board, for negotiating a contract with the Puget Sound Partnership. This agreement provides funds for tasks related to 1) organize, support, administer, facilitate, and coordinate a Local Integrating Organization, 2) steward and implement the Puget Sound Action Agenda 2018-2022, 3) performance management, and 4) support communication, adaptive management, and synthesis of LIO Ecosystem Recovery Plans.

Funding Amount and Source

This grant agreement with the Puget Sound Partnership provides \$75,000 to complete tasks as outlined in the scope of work. Please contact Gary Stoyka at extension 6218 or Austin Rose at 6286 if you have any questions or concerns regarding the terms of this agreement.

Encl.

**WHATCOM COUNTY CONTRACT
ATTORNEY REVIEW**
[submit via electronic transmittal]

Whatcom County Contract No. _____

Originating Department:	Public Works – Natural Resources
Contact Person:	Austin Rose, Planner I
Contractor's Name:	Puget Sound Partnership
First Review: <input checked="checked" type="checkbox"/> Approved As Is; Prepare Hardcopy for Signoff CDQ <input type="checkbox"/> Needs Revision; Attorney Comments for suggested changes:	
Second Review: <input type="checkbox"/> Implemented Attorney Corrections as Indicated <input type="checkbox"/> Approved; Prepare Hardcopy for Signoff <input type="checkbox"/> Additional Corrections Needed; Attorney Comments for suggested changes	
Please indicate any Special Dates or clauses that require calendaring:	

WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No. _____

Originating Department:	Public Works
Division/Program: <i>(i.e. Dept. Division and Program)</i>	Natural Resources/Whatcom LIO 907010
Contract or Grant Administrator:	Gary Stoyka/Austin Rose
Contractor's / Agency Name:	Puget Sound Partnership

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): 2020-21 CFDA#: 66.456

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?
 Yes ☐ No ☒ If yes, RFP and Bid number(s): _____ Contract Cost Center: 169121

Is this agreement excluded from E-Verify? No ☐ Yes ☒ 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 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).	

Contract Amount:(sum of original contract amount and any prior amendments): \$ <u>75,000</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 : 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.
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Summary of Scope: This grant agreement provides funds for the coordination of the Whatcom LIO.

Term of Contract: October 1, 2019	Expiration Date: September 30, 2020
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Contract Routing:	1. Prepared by: <u>ARose</u>	Date: <u>09/11/19</u>
	2. Attorney signoff: <u>Christopher Quinn</u>	Date: <u>09/12/2019</u>
	3. AS Finance reviewed: <u>M Caldwell</u>	Date: <u>9/12/19</u>
	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: _____



Interagency Agreement

Agreement Number: 2020-21

Title: Whatcom County LIO – FFY2019 Funding

This agreement is made and entered into pursuant to the Interlocal Cooperation Act, RCW 39.34, by and between the state of Washington, Puget Sound Partnership (PSP), and the below named agency, hereinafter referred to as "CONTRACTOR."

CONTRACTOR INFORMATION

Whatcom County Flood Control Zone Dist.
322 N. Commercial ST., Suite110
Bellingham, WA 98225

Project Manager

Gary Stoyka
gstoyka@co.whatcom.wa.us
(360) 676-6876

UBI: 600358208
EIN: 91-6001383
DUNS:
0060044641
Type:

Fiscal: Randy Rydel
rrydel@co.whatcom.wa.us

PSP INFORMATION

PUGET SOUND PARTNERSHIP
326 EAST D STREET
TACOMA, WA 98421-1801

Project Manager

Kristin Hayman
Kristin.hayman@psp.wa.gov
(360) 480-0475

PURPOSE

The purpose of this agreement is to provide support for the coordination of the Whatcom County Local Integrating Organization (LIO).

STATEMENT OF WORK

The CONTRACTOR shall furnish the necessary personnel, equipment, material and/or service(s) and otherwise do all things necessary for or incidental to the performance of the work set forth in Exhibit B attached and incorporated herein.

In the event that the CONTRACTOR is a Sub-Recipient (grantee), Exhibit B shall describe the activities of the Sub-Recipient that are eligible for reimbursement under the award or sub-award.

PERIOD OF PERFORMANCE

The period of performance under this agreement will be from **October 1, 2019**, regardless of the signing date of the contract by both parties, through **September 30, 2020**. **No work shall commence under this agreement prior to October 1, 2019.**

COMPENSATION AND PAYMENT

Compensation for the work provided in accordance with this agreement has been established under the terms of RCW 39.34.130. The parties have estimated that the cost of accomplishing the work herein will not exceed **Seventy-five thousand dollars (\$75,000)**. Payment for satisfactory performance of the work shall not exceed this amount unless the parties mutually agree to a higher amount prior to the commencement of any work which will cause the maximum payment to be exceeded. CONTRACTOR'S compensation for services rendered shall be in accordance with the Budget & Billing Procedures attached as Exhibit C.

In the event that the CONTRACTOR is a Sub-Recipient, the total amount of the award or sub-award for reimbursable activities shall not exceed the above amount, also in accordance with the Budget & Billing Procedures attached as Exhibit C.

FEDERAL FUNDING INFORMATION

This Contract includes federal funding ☒ Yes ☐ No

CONTRACTOR is a Sub-Recipient for purposes of this agreement ☒ Yes ☐ No

CFDA #	CFDA Title	Federal Grant Award Number	Federal Grant Award Name	Federal Agency Name

66.456	National Estuary Program	CE-01J65401	Puget Sound Partnership National Estuary Program	Environmental Protection Agency
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TERMS AND CONDITIONS

All rights and obligations of the parties to this contract shall be subject to and governed by the Terms and Conditions contained in the following exhibits, herein incorporated by reference. The contents of this Agreement include:

1. This contract cover sheet
2. Exhibit A – General Terms and Conditions
3. Exhibit B – Statement of Work
4. Exhibit C – Budget & Billing Procedures
5. Exhibit D - Lobbying Certification
6. Exhibit E – Sub-Recipient Federal Requirements (only if this is a Sub-Recipient contract)
 - Attachment 1- Federal Assurances Form 424B (Rev 4-2012)
 - Attachment 2- Federal Funding Accountability and Transparency Act Data Collection (FFATA form)

ORDER OF PRECEDENCE

In the event of an inconsistency in this agreement, the inconsistency shall be resolved by giving precedence in the following order:

1. Applicable Federal and State of Washington Statutes and regulations
2. This Agreement/Contract, including Exhibit A, General Terms and Conditions
3. Exhibit B, Statement of Work and Exhibit C, Budget & Billing Procedures
4. Any other Exhibit or provision, term or material incorporated herein by reference or otherwise incorporated

ENTIRE AGREEMENT

This agreement, including referenced exhibits and any other provision, term or material expressly incorporated by reference, represents all the terms and conditions agreed upon by the parties. No other statements or representations, written or oral, shall be deemed a part hereof.

APPROVAL

This agreement shall be subject to the written approval of the AGENCY'S authorized representative and shall not be binding until so approved. The agreement may be altered, amended, or waived only by a written amendment executed by both parties.

This agreement is executed by the persons signing below, who warrant they have the authority to execute the agreement.

Whatcom County Flood Control Zone District

Puget Sound Partnership

Date

Brent Barnes
Chief Operating Officer
Date

APPROVED AS TO FORM:

/s Jonathan Thompson
Assistant Attorney General

December 5, 2013

**EXHIBIT A -
GENERAL TERMS AND CONDITIONS**

Title: Whatcom County LIO – FFY2019 Funding

1. DEFINITIONS

As used throughout this contract, the following terms shall have the meaning set forth below:

- A. "AGENCY" means the Puget Sound Partnership (PSP) of the State of Washington, any division, section, office, unit or other entity of the AGENCY, or any of the officers or other officials lawfully representing that AGENCY.
- B. "AGENT" means the Director, and/or the delegate authorized in writing to act on the Director's behalf.
- C. "CONTRACTOR" means that firm, provider, organization, individual or other entity performing service(s) under this contract, and shall include all employees of the CONTRACTOR.
- D. "DEBARMENT" means an action taken by a Federal agency or official to exclude a person or business entity from participating in transactions involving certain federal funds.
- E. "EPA" means U.S. Environmental Protection Agency.
- F. "SUBCONTRACTOR" means one not in the employment of the CONTRACTOR, who is performing all or part of those services under this contract under a separate contract with the CONTRACTOR. The terms "SUBCONTRACTOR" and "SUBCONTRACTORS" means SUBCONTRACTOR(s) in any tier.
- G. "SUB-RECIPIENT" means a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency. Guidance on distinguishing between a subrecipient and a contractor is provided in 2 CFR §200.330. Subrecipient and contractor determinations.

2. AMERICANS WITH DISABILITIES ACT (ADA)

If the contract includes federal funding, the CONTRACTOR must comply with Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities by entities receiving Federal financial assistance. The CONTRACTOR may also be required to comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

3. ADVANCE PAYMENTS PROHIBITED

No payments in advance of or in anticipation of goods or services to be provided under this contract shall be made by the AGENCY.

4. AMENDMENT

This Agreement may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

5. ASSIGNMENT

The work to be provided under this Agreement, and any claim arising under this Agreement, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

6. ASSURANCES

The parties agree that all activity pursuant to this Agreement shall be in accordance with all applicable federal, state and local laws, rules, and regulations as they currently exist or as amended.

7. CONFIDENTIALITY

Confidential information: The CONTRACTOR shall not use or disclose any information that is identified as such, for any purpose not directly connected with the administration of this contract, except with prior written consent of the AGENCY, or as may be required by law. 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. However, the parties acknowledge that state and local agencies are subject to chapter 42.56 RCW, the Public Records Act.

Personal Information (one form of confidential information): Personal information including, but not limited to, "Protected Health Information," collected, used, or acquired in connection with this contract shall be protected against unauthorized use, disclosure, modification or loss. CONTRACTOR shall ensure its directors, officers, employees, subcontractors or agents use personal information solely for the purposes of accomplishing the services set forth herein. CONTRACTOR and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the agency or as otherwise required by law. Any breach of this provision may result in termination of the contract and the demand for return of all personal information. The CONTRACTOR agrees to indemnify and hold harmless the AGENCY for any damages related to the CONTRACTOR'S unauthorized use of personal information.

8. CREDIT AND ACKNOWLEDGEMENT

Reports, documents, signage, videos, or other media, developed as part of projects funded by EPA funded Agreements shall display both the EPA and Puget Sound Partnership logos and the following credit line: "This project has been funded wholly or in part by the United States Environmental Protection Agency under Assistance Agreement [CE-01J65401]. The contents of this document do not necessarily reflect the views and policies of the Environmental Protection Agency, nor does mention of trade names or commercial products constitute endorsement or recommendation for use."

9. DEBARMENT AND SUSPENSION

CONTRACTOR, by signature to this Contract, certifies that CONTRACTOR is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency from participating in transactions (Debarred). CONTRACTOR shall comply with applicable federal agency debarment and suspension rules adopted pursuant to Office of Management and Budget guidance at 2 CFR Part 180, such as 2 CFR Part 1532 for the Environmental Protection Agency, which implement Executive Order 12549. CONTRACTOR acknowledges that failing to disclose the information required at 2 CFR 180.335 may result in the delay or negation of this contract, or pursuance of legal remedies, including suspension and debarment.

CONTRACTOR shall not award subcontracts or subawards to persons (individuals or organizations) listed on the Excluded Parties List located at www.sam.gov/. CONTRACTOR agrees to include the above requirements in all subcontracts into which it enters. The CONTRACTOR shall immediately notify AGENCY if, during the term of this Contract, CONTRACTOR becomes debarred. AGENCY may immediately terminate this Contract by providing CONTRACTOR written notice if CONTRACTOR becomes Debarred during the term hereof.

10. DISALLOWED COSTS

CONTRACTOR is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its Subcontractors.

11. DISPUTES

In the event that CONTRACTOR is a state agency and a dispute arises under this Agreement, either of the parties may request intervention by the Governor, as provided by chapter 43.17.330 RCW, in which event the Governor's process will control.

In the event that a dispute arises under this Agreement, and the CONTRACTOR is not a state agency, it shall be determined by a Dispute Board in the following manner: Each party to this Agreement shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall evaluate the facts, Agreement terms, applicable

statutes and rules, and make a determination of the dispute. The determination of the Dispute Board shall be final and binding on both parties.

The cost of resolution will be borne as allocated by the Dispute Board or the Governor.

12. DUPLICATION OF BILLED COSTS

The CONTRACTOR shall not bill the Agency for services performed under this contract, and the Agency shall not pay the CONTRACTOR if the CONTRACTOR is entitled to payment or has been or will be paid by any other source, including grants, for that service.

13. GOVERNING LAW AND VENUE

This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington and the venue of any action brought under this Agreement shall be in Superior Court for Thurston County.

14. HOTEL MOTEL FIRE SAFETY ACT

The Hotel and Motel Fire Safety Act of 1990 (Public Law 101-391) establishes a number of fire safety standards which must be met for hotels and motels. Pursuant to 40 CFR 30.18, if applicable, and 15 USC 2225a if any portion of this contract will be paid with federal funds, CONTRACTOR agrees to ensure that all space for conferences, meetings, conventions, or training seminars funded in whole or in part with federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (PL 101-391, as amended. CONTRACTOR may search the Hotel-Motel National Master List at: <http://www.usfa.dhs.gov/applications/hotel> to see if a property is in compliance (FEMA ID is currently not required), or to find other information about the Act.

If necessary, the head of the Federal agency may waive this prohibition in the public interest.

15. INDEPENDENT CAPACITY

The employees or agents of each party who are engaged in the performance of this Agreement shall continue to be employees or agents of that party and shall not be considered for any purpose to be employees or agents of the other party.

16. INTELLECTUAL PROPERTY RIGHTS

Unless otherwise provided, all materials produced under this contract shall be considered "works for hire" as defined by the U.S. Copyright Act 17 U.S.C. § 101, et seq., and shall be owned by the AGENCY. Where federal funding is involved, the awarding federal agency may have a proprietary interest in patent rights to any inventions that are developed by the CONTRACTOR as provided in 35 U.S.C. §§ 200-212 and 37 CFR part 401 and retains a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

CONTRACTOR acknowledges that in accordance with 40 CFR 30.36 and 31.34, EPA has the rights to reproduce, publish, use, and authorize others to use copyrighted works or other data developed under this assistance agreement for Federal purposes.

Examples of a Federal purpose include but are not limited to: (1) Use by EPA and other Federal employees for official Government purposes; (2) Use by Federal contractors performing specific tasks for the Government; (3) Publication in EPA documents provided the document does not disclose trade secrets (e.g. software codes) and the work is properly attributed to the recipient through citation or otherwise; (4) Reproduction of documents for inclusion in Federal depositories; (5) Use by State, tribal and local governments that carry out delegated Federal environmental programs as "co-regulators" or act as official partners with EPA to carry out a national environmental program within their jurisdiction and; (6) Limited use by other grantees to carry out Federal grants provided the use is consistent with the terms of EPA's authorization to the other grantee to use the copyrighted works or other data.

Under Item 6, the grantee acknowledges that EPA may authorize another grantee(s) to use the copyrighted works or other data developed under this grant as a result of:

- the selection of another grantee by EPA to perform a project that will involve the use of the copyrighted works or other data or:
- termination or expiration of this agreement.

In addition, EPA may authorize another grantee to use copyrighted works or other data developed with Agency funds provided under this grant to perform another grant when such use promotes efficient and effective use of Federal grant funds.

Materials means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.

In the event the materials are not considered "works for hire" under the U.S. Copyright laws CONTRACTOR shall grant AGENCY, and any federal entity which provided federal funds used in this contract, retain a royalty-free, nonexclusive and irrevocable license to reproduce, publish, recover or otherwise use the material(s) or property and to authorize others to use the same for federal, state or local government purposes.

Material which CONTRACTOR uses to perform the contract but is not created for or paid for by AGENCY is not "work made for hire"; however, CONTRACTOR grant the AGENCY a nonexclusive, royalty-free, irrevocable license to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display, provided that such license shall be limited to the extent which CONTRACTOR has a right to grant such a license to use this material for AGENCY internal purposes at no charge to AGENCY.

17. INTERNATIONAL TRAVEL (including Canada) – FOR FEDERAL FUNDED AGREEMENTS ONLY

All International Travel must be approved by the Office of International and Tribal Affairs (OITA) BEFORE travel occurs. Even a brief trip to a foreign country, for example to attend a conference, requires OITA approval. Please contact your EPA Project Officer as soon as possible if travel is planned out of the country, including Canada and/or Mexico, so that they can obtain appropriate approvals from EPA Headquarters. If you have questions, please contact your EPA Project Officer listed on the front page of the Award Document

18. LOBBYING PROHIBITED

- a. By signing this contract, CONTRACTOR agrees to comply with Title 40 CFR Part 34, New Restrictions on Lobbying, 31 U.S.C. § 1352, and 40 CFR Part 30 if applicable. CONTRACTOR shall include the language of this provision in subcontracts that exceed \$100,000 of federal funds and require all subcontractors to certify and disclose accordingly.
- b. No Federal appropriated funds shall be paid by or on behalf of the CONTRACTOR to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- c. If this contract includes federal funds exceeding \$100,000, CONTRACTOR shall sign and submit to AGENCY Exhibit D, Attachment 2, PSP Certification Regarding Lobbying (based on EPA Form 6600-06 (Rev. 06/2008)). If CONTRACTOR signed and submitted the PSP Certification Regarding Lobbying form during the procurement process for this contract it is not necessary to resubmit the certification.
- d. If CONTRACTOR expends non-federal funds in any amount to lobby as detailed in a., above, CONTRACTOR shall complete and submit to Standard Form LLL (Rev. 4/2012), Disclosure of

Lobbying Activity. The form can be found at:
http://www.epa.gov/ogd/AppKit/form/sfillin_sec.pdf.

19. LOBBYING AND LITIGATION

a. All recipients

- i. The chief executive officer of this recipient agency shall ensure that no grant funds awarded under this assistance agreement are used to engage in lobbying of the Federal Government or in litigation against the U.S. unless authorized under existing law. The recipient shall abide by the Cost Principles available at 2 CFR 200 which generally prohibits the use of federal grant funds for litigation against the U.S. or for lobbying or other political activities.
- ii. The recipient agrees to comply with Title 40 CFR Part 34, New Restrictions on Lobbying. The recipient shall include the language of this provision in award documents for all subawards exceeding \$100,000, and require that subrecipients submit certification and disclosure forms accordingly.
- iii. In accordance with the Byrd Anti-Lobbying Amendment, any recipient who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.
- iv. Contracts awarded by a recipient shall contain, when applicable, the anti-lobbying provision as stipulated in the Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.
- v. Pursuant to Section 18 of the Lobbying Disclosure Act, the recipient affirms that it is not a nonprofit organization described in Section 501(c)(4) of the Internal Revenue Code of 1986; or that it is a nonprofit organization described in Section 501(c)(4) of the Code but does not and will not engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act. Nonprofit organizations exempt from taxation under section 501(c)(4) of the Internal Revenue Code that engage in lobbying activities are ineligible for EPA subawards.

20. NONDISCRIMINATION and DISADVANTAGED BUSINESS ENTERPRISES

In accordance with 40 CFR 33.106 and its Appendix A, the CONTRACTOR shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.

21. PAYMENT TO CONSULTANTS

EPA will limit its participation in salary rate (excluding overhead) paid to individual consultants retained by recipients or by a recipients' contractors or subcontractors shall be limited to the maximum daily rate for Level IV of the Executive Schedule (formerly GS-18), to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. This rate does not include transportation and subsistence costs for travel performed (the recipient will pay these in accordance with their normal travel reimbursement practices).

Subagreements with firms for services which are awarded using the procurement requirements in 40 CFR Parts 30 or 31, are not affected by this limitation unless the terms of the contract provide the recipient with responsibility for the selection, direction and control of the individual who will be providing services under the contract at an hourly or daily rate of compensation. See 40 CFR 30.27(b) or 40 CFR 31.369j), as applicable, for additional information.

As of January 1, 2019, the limit is \$638.24 per day \$79.77 per hour.
(Calculations: 2019 Level IV Executive Schedule annual pay = \$166,500 / 2087 = \$79.77 per hour or \$638.24 per day).

22. PROJECT APPROVAL

The quality, extent and character of any and all work, deliverables and/or services to be performed under this agreement by the CONTRACTOR shall be subject to the review and approval of the AGENCY through the Project Manager or other designated official. In the event that the AGENCY determines, that

any work, deliverable, and/or service performed by the CONTRACTOR is unsatisfactory, the AGENCY may withhold reimbursement for the unsatisfactory work performed by the CONTRACTOR or require that the CONTRACTOR remediate their work product to get it to the satisfaction of the AGENCY. Such approval and satisfaction not be unreasonably withheld. The Parties may agree in the Statement of Work to specific approval, acceptance, and/or remediation terms. If the Statement of Work is silent on this topic, the Disputes provision, above, will govern the resolution process.

23. RECORDS MAINTENANCE

The parties to this Agreement shall each maintain books, records, documents and other evidence that sufficiently and properly reflect all direct and indirect costs expended by either party in the performance of the service(s) described herein. CONTRACTOR shall retain such records for a period of six years following the date of final payment.

At no additional cost, these records, including materials generated under the contract, shall be subject at all reasonable times to inspection, review or audit by the AGENCY, personnel duly authorized by the AGENCY, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement. If this contract exceeds \$100,000 and any portion of the funding source is federal, the federal funding agency, the Comptroller General of the United States, or any duly authorized representatives shall have access to books documents, papers, and records of CONTRACTOR directly pertinent to this contract for purpose of making audits, examination, excerpts and transcriptions (40 CFR 30.48(d)).

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

24. RECYCLED PAPER

In accordance with Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962) any State agency or agency of a political subdivision of a State which is using appropriated Federal funds shall comply with the requirements set forth. Regulations issued under RCRA Section 6002 apply to any acquisition of an item where the purchase price exceeds \$10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was \$10,000 or more. RCRA Section 6002 requires that preference be given in procurement programs to the purchases of specific products containing recycled materials identified in guidelines developed by EPA. These guidelines are listed in 40 CFR 247.

In accordance with the policies set forth in EPA Order 1000.25 and Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management (January 24, 2007), Sub-Recipient agrees to use recycled paper and double sided printing for all reports which are prepared as part of this Agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration.

25. RESPONSIBILITIES OF THE PARTIES

Each party to this Agreement hereby assumes responsibility for claims and/or damages to persons and/or property resulting from any negligent act or omissions on the part of itself, its employees, its officers, and its agents. Neither party assumes any responsibility to the other party for the consequences of any claim, act, or omission of any person, agency, firm, or corporation not a part to this Agreement.

26. SEVERABILITY

If any term or condition of this Agreement is held invalid, such invalidity shall not affect the validity of the other terms or conditions of this Agreement.

27. SUBCONTRACTING

Neither the CONTRACTOR nor any SUBCONTRACTOR shall enter into subcontracts for any of the work contemplated under this contract without obtaining prior written approval of the AGENCY. In no event shall the existence of the subcontract operate to release or reduce the liability of the contractor to the

agency for any breach in the performance of the contractor's duties. This clause does not include contracts of employment between the contractor and personnel assigned to work under this contract.

Additionally, the CONTRACTOR is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this agreement are carried forward to any subcontracts

28. TERMINATION DUE TO FUNDING

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this contract and prior to normal completion, the AGENCY may terminate the contract under the "Termination for Convenience" clause, without the ten-day notice requirement, subject to renegotiation at the AGENCY'S discretion under those new funding limitations and conditions. Agency will reimburse CONTRACTOR for all expenses incurred, including non-cancelable expenses, up until the date of termination.

29. TERMINATION FOR CAUSE

If for any cause either party does not fulfill in a timely and proper manner its obligations under this Agreement, or if either party violates any of these terms and conditions, the aggrieved party will give the other party written notice of such failure or violation. The responsible party will be given the opportunity to correct the violation or failure within 15 working days. If the failure or violation is not corrected, this Agreement may be terminated immediately by written notice of the aggrieved party to the other.

30. TERMINATION FOR CONVENIENCE

Either party may terminate this Agreement upon 30 calendar days' prior written notification to the other party. If this Agreement is so terminated, the parties shall be liable only for the performance rendered or costs incurred, including NON-CANCELABLE expenses, in accordance with the terms of this Agreement prior to the effective date of termination.

31. TREATMENT OF ASSETS

- a. Title to all property furnished by the AGENCY shall remain in the AGENCY. Title to all property furnished by the CONTRACTOR, for the cost of which the CONTRACTOR is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the AGENCY upon delivery of such property by the CONTRACTOR. Title to other property, the cost of which is reimbursable to the CONTRACTOR under this contract, shall pass to and vest in the AGENCY upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the AGENCY in whole or in part, whichever first occurs.
- b. Any property of the AGENCY furnished to the CONTRACTOR shall, unless otherwise provided herein or approved by the AGENCY, be used only for the performance of this contract.
- c. The CONTRACTOR shall be responsible for any loss or damage to property of the AGENCY that results from the negligence of the CONTRACTOR or which results from the failure on the part of the CONTRACTOR to maintain and administer that property in accordance with sound management practices.
- d. If any AGENCY property is lost, destroyed or damaged, the CONTRACTOR shall immediately notify the AGENCY and shall take all reasonable steps to protect the property from further damage.
- e. The CONTRACTOR shall surrender to the AGENCY all property of the AGENCY prior to settlement upon completion, termination or cancellation of this contract.
- f. All reference to the CONTRACTOR under this clause shall also include CONTRACTOR'S employees, agents or SUBCONTRACTORS.

32. WAIVER

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Agreement unless stated to be such in writing and signed by personnel authorized to bind each of the parties.

**EXHIBIT B -
STATEMENT OF WORK**

Title: Whatcom County LIO – FFY2019 Funding

Task 1: Organize, Support, Administer, Facilitate and Coordinate a Local Integrating Organization

The local integrating organization (LIO) is responsible for organizing and supporting a committee of representatives to discuss and make recommendations related to Action Agenda planning, local ecosystem recovery planning, and LIO Plan implementation interests. The Partnership will support the LIO through Ecosystem Recovery Coordinator (ERC) participation at LIO meetings as the Partnership budget allows. The LIO shall maintain sufficient administration, facilitation, and coordination capacity to support the on-going goals and objectives of a LIO.

Required for FFY 2019 funding:

- Subtask 1.01 Maintain a local point of contact for the LIO.
- Subtask 1.02 Serve as an agent for local engagement and coordination in the LIO.
- Subtask 1.03/1.04 Administer the Whatcom LIO including arranging LIO meetings, preparing agendas, meeting summaries, briefing papers and other supporting materials, and facilitating meetings. Complete other tasks as identified by the WRIA 1 Watershed Management Board or Management Team needed to support the LIO functions. LIO meetings include WRIA 1 Watershed Management Board, WRIA 1 Management Team, Steering Committee, and joint Staff Teams. These meetings are the framework for developing, vetting, and/or approving outcomes of tasks outlined in the LIO scope of work. This is also the framework for coordinating LIO positions/response/feedback to the regional Puget Sound committees.
- Subtask 1.05 Update name, organizational affiliation, contact information (email), and role (which committee(s)) of each LIO member in MiradiShare. Notify ERC and update member roster when there is a change to participation.
- Subtask 1.06 Maintain publicly-available information about the LIO, including notice of meetings, agendas, summary notes and/or opportunities for content review. Maintain LIO information on a public website.
- Subtask 1.07 Participate in regional meetings and trainings, including:
 - Participate in four 5-6 hour in-person LIO Coordination meetings in Edmonds, WA. Possible dates for the LIO Coordinators in-person meetings are:
 - November 5, 2019 (Tuesday)

Partnership may adjust the following dates to better align with Ecosystem Coordination Board (ECB) dates. Meetings will fall on a Tuesday.

 - February 04, 2020 (Tuesday)
 - May 05, 2020 (Tuesday)
 - August 04, 2020 (Tuesday)
 - Direct engagement in EPA convened meetings with LIO Coordinators and

LIO policy bodies. Up to two 3 hour in-person or web meetings that are integrated into in-person and conference call LIO Coordination meetings

- Participate in up to eight hours of conference calls or web meetings facilitated by the Partnership

Subtask 1.08 Coordinate with the salmon recovery lead entity(ies). Participate in PSP-facilitated workshops, discussions, and/or trainings related to ecosystem and salmon recovery integration.

Subtask 1.09 Attend and present at the Mobilizing Funding Symposium. LIO Coordinator will attend an all-day symposium (Spring 2020?).

- Attend Symposium
- Present to Symposium attendees or prepare materials ahead of time. Details and format of the presentation or materials TBD.

Optional subtasks for FFY 2019 funding:

Subtask 1.13 *Participate in other sub-regional or regional meetings (ex. Lead Entity) maximum reimbursed: up to 20 hours*

Task 2: Steward and Implement Puget Sound Action Agenda 2018-2022

Local Integrating Organizations serve an important role in coordinating local implementation of priorities identified in the Puget Sound Action Agenda. Work under this task addresses Near Term Actions (NTA) in the 2018 – 2022 Action Agenda and the approaches identified in LIO Ecosystem Recovery Plans.

Required for FFY 2019 funding:

Subtask 2.01 Support and steward the 2018 – 2022 Action Agenda. Coordinate and catalyze implementation of the Action Agenda, which could include implementation of ISs, NTAs, Ecosystem Recovery Plans, etc. This may include:

- Facilitate process for LIO to address common barriers, gaps, opportunities, and encourage best practices throughout LIO geography
- Identify existing funding sources and leverage existing partnerships that can contribute to NTA implementation
- Share funding opportunities with relevant NTA owners, and assist NTA owners in identification of funding opportunities.
- Organize and facilitate information sharing, conference calls or meetings to connect NTA owners with funding opportunities

Subtask 2.02 Coordinate and execute a process to identify and recommend an NTA for direct funding from the Strategic Initiative Leads (SI Leads). Communicate process and recommended NTA to SI Leads and the Partnership.

Optional subtasks for FFY 2019 funding under Task 2:

Subtask 2.04 *Provide input on the 2022-2026 Action Agenda Comprehensive Plan update.*

Subtask 2.05 *Engage with the Strategic Initiative Lead(s) (SIL) and appropriate*

Implementation Strategy Workgroup(s) through review of draft materials and participate in webinars as appropriate to further refine and develop the Implementation Strategy(ies) (IS). Coordinate LIO input on how best IS can be implemented in local LIO areas and throughout Puget Sound.

Subtask 2.06 Engage with ECB representative to help implement of the 2018-2022 Action Agenda, associated NTAs, and local Ecosystem Recovery Plan.

Task 3: Performance Management

The LIO shall report on progress toward sub-tasks and deliverables through a quarterly progress report provided to the Partnership by the following dates in 2020: January 15, April 15, July 15, and September 30. The LIO shall provide **monthly** invoices with brief explanations of activities two weeks after the end of each month. These reports (progress reports and invoices) will be used by the Partnership for the Financial Ecosystem Assessment Tracking system (FEATs), NEPORT, NEP Atlas, other reporting needs, and to show how LIOs are advancing their plan locally and regionally.

Required for FFY 2019 funding:

Subtask 3.01 Send contract progress reports by Task on a **quarterly** basis (January 15, 2020; April 15, 2020; July 15, 2020; and September 30, 2019) to the Partnership using the Partnership-provided reporting formats (*i.e.* [progress report template](#)). Distribute to LIO committees at least quarterly.

Subtask 3.02 Send billing summary by Task, and proof of expenditure for grant activities on a **monthly** basis to the Partnership using the Partnership-provided reporting formats (*i.e.* the "Paypack" document).

Subtask 3.03 Support local NTA owners to track implementation status on a 6-month basis and financial data (funding needed, secured and expended) and progress measures on an annual basis using PS Info (implementation status and progress measures) and Smartsheet (financial data). Note: NTA owner is responsible for providing this information.

Required:

- If an NTA owner is not responsive, and if needed, assist Partnership in outreach to NTA owner

Subtask 3.04 Develop and distribute local ecosystem recovery plan progress report to the LIO committee(s) and the Partnership.

Optional subtasks for FFY 2019 funding under Task 3:

Subtask 3.06 Lend additional assistance to NTA owners with submitting progress measures and maintaining fact sheets within PS Info.

Task 4: Support Communication, Adaptive Management, and Synthesis of LIO Ecosystem Recovery Plans

The LIO shall manage revisions and communicate LIO Ecosystem Recovery Plan (Plan) content in coordination with local and regional partners. Adaptively managing and strategically communicating the

LIO Plan engenders confidence in local and regional decision makers that there are well defined problems in Puget Sound at the LIO scale, that LIOs know what to do to address them, that the LIO knows which partners to engage and for what purpose, and that the work at the LIO level is well integrated into an overall strategy for Puget Sound Recovery. The Plan serves as a longer term strategic framework from which the Partnership and other partners can produce a variety of products associated with planning and communicating Puget Sound recovery goals, strategies, outcomes, barriers and solutions. Examples of these products include Implementation Strategies and a variety of LIO Plan Synthesis products.

Required for FFY 2019 funding:

Subtask 4.01 Contribute to communications development, products, progress reports, and presentations of LIO Recovery Plan (Fall 2019 - Summer 2020)

- Provide draft outlines or examples of preferred report format and content to Partnership. Partnership will provide additional guidance on this activity.
- Provide feedback on draft reporting templates created by Partnership in response to LIO priorities

Subtask 4.02 Adaptively manage LIO Ecosystem Recovery Plan.

Required:

- Identify priority adaptive management activities for 2020 and beyond
- Provide adaptive management needs and updates to Miradi files and/or MiradiShare and communicate to the ERC and data steward (when provided by the Partnership) for purposes of updating Miradi files (e.g., goals, objectives, results chains, NTAs).
- Keep Miradi files with up to date with most recent NTA status reports from PS Info (at a minimum, December 2019 and June 2020)
- Update Miradi files with 2018 Near Term Actions and performance measures and map to results chains
- Continue to develop quantitative goal statements for priority vital signs and/or pressure sources, stressors and common intermediate progress measures
- Develop priority monitoring activities and connect with Puget Sound Ecosystem Monitoring Program
- Develop and update content for LIO geographic page in Action Agenda Tracker

Subtask 4.03 Support LIO Ecosystem Recovery Plan synthesis development for implementation Strategy integration and/or other regional product integration

- *As new Implementation Strategies are developed, consider how IS information can be used to adaptively manage the LIO Ecosystem Recovery Plan and how the IS can be considered for future NTA development.*

Optional subtasks for FFY 2019 funding under Task 4:

Subtask 4.04 *Address the barriers and opportunities to implementation of LIO Ecosystem Recovery Plan. Identify emerging and outstanding barriers and gaps. Explore*

solutions and share relevant information with the Partnership and regional partners, as appropriate.

Subtask 4.06 Support implementation and coordination of education/outreach related to the LIO Ecosystem Recovery Plan

Subtask 4.12 Engage in the Vital Signs revisioning by coordinating LIO review of key materials and providing feedback and/or input.

Subtask 4.13 Engage in PS Info oversight and development by reviewing materials and providing feedback and/or input.

Schedule and Deliverables

The following table translates the subtasks identified previously into the deliverables and timeline for which the Fiscal Agent will be responsible for from October 1, 2019 – September 30, 2020. Summaries of progress towards subtasks are to be included in quarterly progress reports, and deliverables are to be provided to the Partnership within two weeks of the end of each reporting period in which they were completed, as noted in the table.

Table 1: Summary of LIO Coordination Grant Scope of Work Deliverables and Budget for October 2019 – September 2020.

DRAFT Deliverables	Reporting Period FFY 2019 Funding			
	Oct – Dec 2019	Jan – Mar 2020	Apr – Jun 2020	Jul – Sep 2020
Task 1: Maintain, Organize, Facilitate and Administer a Local Integrating Organization - \$ 30,880				
Subtask 1.03/1.04 <ul style="list-style-type: none"> • Submit LIO committee meeting materials including agendas and other meeting materials (via Box contract folder). • Develop and distribute summary meeting notes and materials to committees and the Partnership (via Box contract folder). 	X	X	X	X
Subtask 1.05 Updated Miradi file that has updated name and organizational affiliation of each LIO member. Notify ERC of change or list in quarterly progress reports.	X	X	X	X
Subtask 1.06 Provide link to LIO publicly-available website to the Partnership and describe updates to the website in quarterly progress reports.	X	X	X	X
Subtask 1.07 Attendance at meeting as reflected on the attendance sheets and summaries written by Partnership staff	X	X	X	X
Subtask 1.08 Attendance at workshop and training as reflected on the attendance sheets and summaries written by Partnership staff	X	X	X	X
Subtask 1.09 <ul style="list-style-type: none"> • Attendance at Symposium as reflected in sign-in sheet • Presentation and/or materials to be uploaded to Box contract folder 	X	X		
OPTIONAL SUBTASKS Subtask 1.13 Attached at meetings as reflected on the attendance sheets and summaries written by Partnership staff	X	X	X	X

Task 2: Puget Sound Action Agenda Implementation – \$11,206				
Subtask 2.01 Send all deliverables relevant to the individual LIO contract to the Partnership with quarterly progress reports: <ul style="list-style-type: none"> A list of funding opportunities shared with NTA owners Brief description of how you connected NTA owners to funding opportunities Description of process to address common barriers 	X	X	X	X
Subtask 2.02 Notify the Partnership of the NTA recommended for direct funding from the Strategic Initiative Leads	X	X	X	X
OPTIONAL SUBTASKS Subtask 2.04 Summary of LIO input on the 2022-2026 Action Agenda Comprehensive Plan update	X	X	X	X
OPTIONAL SUBTASKS Subtask 2.05 Summary of LIO input to Implementation Strategies being refined and developed.	X	X	X	X
OPTIONAL SUBTASKS Subtask 2.06 Brief description of connecting with ECB representative on LIO-related topics (e.g., NTAs, LIO Plan, 2018-2022 Action Agenda)	X	X	X	X
Task 3: Performance Management - \$ 5,159				
Subtask 3.01 <ul style="list-style-type: none"> Send progress reports by task and associated deliverables on a quarterly basis (January 15, 2020; April 15, 2020; July 15, 2020; and September 30, 2020) to the Partnership using the Partnership-provided reporting formats (<i>i.e. progress report template</i>). Distribute progress report to LIO committee(s) at least quarterly. 	X	X	X	X
Subtask 3.02 Send billing summary by task, and proof of expenditure for grant activities monthly to the Partnership using the Partnership – provided reporting formats (<i>i.e. the “Paypack” document</i>) (<i>Final billing invoice due October 2020</i>)	X	X	X	X
Subtask 3.04 Distribute local Plan progress report to Partnership.		X		X
OPTIONAL SUBTASKS Subtask 3.06 Brief description of assistance provided to NTA owners submitting progress measures and maintaining fact sheets within PS Info				

Task 4: Support communication and adaptive management of LIO Ecosystem Recovery Plan - \$ 27,755				
Subtask 4.01 <ul style="list-style-type: none"> Send all deliverables relevant to the individual LIO contract to the Partnership with quarterly progress reports Provide copy of draft reporting templates and/or outlines to Partnership via contract Box folder Provide copies of presentations of the LIO Ecosystem Recovery Plan along with purpose and presentation details (date/location and audience) to the Partnership in progress report and Partnership contract Box folder 	X	X	X	X
Subtask 4.02 Send all deliverables relevant to the individual LIO contract to the Partnership with quarterly progress reports <ul style="list-style-type: none"> Provide description of priority adaptive management activities for 2020 and beyond to ERC in progress report Track, update and report changes (including reason for change) to the Partnership on the LIO Ecosystem Recovery Plan and project file in Miradi (i.e. briefly note if changes were made in Miradi in quarterly progress report). 	X	X	X	X
Subtask 4.03 <ul style="list-style-type: none"> Provide written feedback on the draft LIO Synthesis Products and/or Implementation Strategies to the Partnership. 	X	X	X	X
OPTIONAL SUBTASKS (4.04-4.13) Subtask 4.04 Description of barriers and opportunities related to implementation of LIO Plan, and update emerging barriers and gaps. Subtask 4.06 Submit education and outreach materials to Partnership via contract Box folder. Subtask 4.12 Provide feedback on Vital Signs revisioning materials Subtask 4.13 Provide feedback on PS Info oversight and development materials	X	X	X	X
Total Maximum Payable	\$ 75, 000			

PROGRAM SPECIFIC REQUIREMENTS/NARRATIVE

Staffing Requirements: The PSP Executive Director or designee must approve project personnel changes.

EXHIBIT C -
Budget & Billing Procedures

Title: Whatcom County LIO – FFY2019 Funding

CONTRACT: 2020-21													
PROJECT TITLE: Whatcom County LIO - FFY2019 Funding													
				TASK 1 Maintain, Organize, Facilitate and Administer a LIO		TASK 2 Puget Sound Action Agenda Implementation		TASK 3 Performance Management		TASK 4 Support communication and adaptive management of LIO Ecosystem Recovery Plan		TOTAL \$0.00	
	Job Classification	UNIT	RATE	UNITS	COST	UNITS	COST	UNITS	COST	UNITS	COST	UNITS	COST
SALARY COST	Planner I Planner I (wages starting July 2020)	HR	\$33.17	0	\$0	0	\$0	30	\$995	20	\$663	50	\$1,659
		HR	\$33.50	0	\$0	0	\$0	30	\$1,005	30	\$1,005	60	\$2,010
TOTAL SALARY				-	\$0	-	\$0	60	\$2,005	50	\$1,668	110	\$3,669
BENEFITS	Planner I Planner I (wages starting July 2020)	HR	74%		\$0		\$0		\$736		\$491		\$1,227
		HR	74%		\$0		\$0		\$744		\$744		\$1,487
TOTAL BENEFITS					\$0		\$0		\$1,480		\$1,235		\$2,715
SUBCONTRACTS			\$ -		\$0		\$0		\$0		\$0		\$0
Consultant	Geneva Consulting		\$ -		\$0		\$0		\$0		\$0		\$0
Salaries, Benefits	Becky Peterson		\$ -		\$30,149		\$11,206		\$1,679		\$23,798		\$66,832
Travel	Mileage R/T (\$.58 per)		\$ -		\$731		\$0		\$0		\$0		\$731
Supplies/Graphics											\$1,054		\$1,054
TOTAL SUBCONTRACTORS					\$30,880		\$11,206		\$1,679		\$24,852		\$68,617
TOTAL COSTS					\$30,880		\$11,206		\$5,159		\$27,755		\$75,000

BILLING PROCEDURES

The AGENCY shall reimburse the CONTRACTOR upon review and approval of work performed under the scope of this agreement and receipt of properly completed reimbursement requests.

THE AGENCY will pay for work and expenses that occurred within the period of performance. The AGENCY reserves the right to withhold 10% of the payment under each reimbursement request until satisfactory completion of the project. Such satisfaction not be unreasonably withheld.

Payment may be withheld if required work, services, progress reports and/or deliverables are not submitted to the satisfaction of the AGENCY. Such satisfaction not be unreasonably withheld.

The AGENCY may terminate the agreement if the CONTRACTOR fails to comply with any term or condition of this contract.

The AGENCY will pay indirect costs as approved in the budget. The CONTRACTOR may be required to submit a copy of their current federally approved indirect cost rate.

The CONTRACTOR shall receive reimbursement for travel and other expenses as identified below or as authorized in advance by the AGENCY as reimbursable. Such expenses may include airfare (economy or coach class only), other transportation expenses, lodging and subsistence necessary during periods of required travel at the current state reimbursement rates (<http://www.ofm.wa.gov/resources/travel.asp>).

If the CONTRACTOR expends more than the amount of the AGENCY funding in this agreement in anticipation of receiving additional funds from the AGENCY, it does so at its own risk. The AGENCY is not legally obligated to reimburse the CONTRACTOR for costs incurred in excess of the AGENCY's approved budget.

The CONTRACTOR **must** submit a **monthly** invoice voucher or equivalent document to the AGENCY by the 20th of each month for the previous month's billing (e.g. March invoice to be submitted by April 20th) **UNLESS** the agreement has been identified as a "deliverable-based" contract with specific due date or special conditions that has been approved by the PSP Project Manager. Payment for approved goods and/or services will be made by check, warrant or electronic fund transfer (EFT) within 30 days of receipt of the invoice. The CONTRACTOR must submit invoices for all work done within a fiscal year 30 days after the end of the fiscal year. Invoices shall be paid within 30 days after the final invoice has been submitted.

BILLING CONDITIONS:

All Contractors/LIOs must submit any budget changes to PSP for sufficient processing time of any amendment execution between PSP and the Contractor/LIO. If information provided does not allow for sufficient processing time, PSP will not adjust or pay for any invoices or billing over the 10% of the total amount listed for each task or subtask even if the added total amounts for those tasks/subtasks does not exceed the total budget.

BILLING DETAIL

Each invoice voucher or equivalent document submitted to the AGENCY by the CONTRACTOR must include all necessary information for the AGENCY to verify all expenditures. At a minimum, the CONTRACTOR shall specify the following:

1. The PSP contract/agreement number.
2. The time-period during which the services were performed.
3. A description of purchases, work and services performed.
4. Total invoice amount.
5. Expenditure detail based on the approved budget. Supporting documentation must include the same level of detail as the approved budget, such as:

- a. Task Number
 - b. Budget category (personnel, goods/services, subcontractors)
 - c. Number of hours billed, if applicable and
 - d. Hourly rate, if applicable.
6. A receipt must accompany any single expense in the amount of \$50.00 or more.
7. If match is required:
 - a. match requirement met during the billing period, and
 - b. cumulative match requirement met
8. A progress report describing the deliverables completed during the reimbursement request period.

The AGENCY shall not process payments if the CONTRACTOR fails to submit the required documentation.

Submit reimbursement requests to:
*Puget Sound Partnership
Fiscal Unit
326 East D Street
Tacoma, WA 98421-1801*

Requests may be submitted electronically to pspfiscal@psp.wa.gov

Payment shall be considered timely if made by the AGENCY within thirty (30) calendar days after receipt of properly completed reimbursement request.

Exhibit D

PSP Agreement #2020-21

CERTIFICATION REGARDING LOBBYING
CERTIFICATION FOR CONTRACTS, GRANTS,
LOANS AND COOPERATIVE AGREEMENTS

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31 U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Typed Name & Title of Authorized Representative

Signature and Date of Authorized Representative

PSP form (rev 8/2013) based on EPA form 5500-06 (Rev. 06/2008) Previous editions are obsolete.

EXHIBIT E

Puget Sound Partnership SUB-RECIPIENT FEDERAL REQUIREMENTS

Title: Whatcom County LIO – FFY2019 Funding

1. INTRODUCTION

This Exhibit E contains provisions that are not listed on OMB Standard Form 424B (Rev 4-2012). These provisions apply only to Sub-recipients.

2. AUDIT REQUIREMENTS

Sub-recipient CONTRACTOR shall meet the provisions in Office of Management and Budget (OMB) Guidance, Subpart F, §200.501 (Audit Requirements), if the CONTRACTOR expends \$750,000 or more in total Federal funds in a fiscal year. The \$750,000 threshold for each year is a cumulative total of all federal funding from all sources. The CONTRACTOR shall forward a copy of the audit along with the RECIPIENT'S response and the final corrective action plan to AGENCY within ninety (90) days of the date of the audit report. For complete information on how to accomplish the single audit submissions, visit the Federal Audit Clearinghouse Web site: <http://harvester.census.gov/facweb/>

3. COST PRINCIPLES/INDIRECT COSTS FOR STATE AGENCIES

GRANT RECIPIENT agrees to comply with the cost principles of 2 CFR 200 Subpart E as appropriate to the award.

In addition to the US Environmental Protection Agency's General Terms and Conditions "Indirect Cost Rate Agreements", if the recipient does not have a previously established indirect cost rate, it agrees to prepare and submit its indirect cost rate proposal in accordance with 2 CFR 200 Appendix VII.

4. CIVIL RIGHTS OBLIGATIONS

This term and condition incorporates by reference the signed assurance provided by the recipient's authorized representative on Standard Form 424B. These assurances and this term and condition obligate the recipient to comply fully with applicable civil rights statutes and implementing EPA regulations.

5. CYBERSECURITY CONDITION

The subrecipient(s) must comply with the recipient's requirements (section (b) (1) – EPA must ensure that any connections between the recipient's network or information system and EPA networks used by the recipient to transfer data under this agreement, are secure) if the subrecipients network or information system is connected to EPA networks to transfer data to the Agency using systems other than the Environmental Information Exchange Network or EPA's Central Data Exchange.

6. NON DISCRIMINATION AND DISADVANTAGED, MBE, WBE BUSINESS ENTERPRISES ADDITIONAL REQUIREMENTS

CONTRACTOR agrees to comply with the requirements of EPA's Program for Utilization of Small, Minority, and Women's Business Enterprises in procurement, contained in 40 CFR, Part

33. CONTRACTOR shall include the following provision in all subcontracts involving use of federal funds:

In accordance with 40 CFR 33.106 and its Appendix A, the CONTRACTOR shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor administration shall carry out applicable requirements of 40 CFR part 33 in the award of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.

7. DRUG FREE WORKPLACE

CONTRACTOR (Sub-Recipient) shall make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in Title 2 CFR Part 1536 Subpart B. Additionally, in accordance with these regulations, the recipient organization shall identify all known workplaces under its federal award and keep this information on file during the performance of the award.

CONTRACTORS who are individuals must comply with the drug-free provisions set forth in Title 2 CFR Part 1536 Subpart C.

The consequences for violating this condition are detailed under Title 2 CFR Part 1536 Subpart E. Recipient can access the Code of Federal Regulations (CFR) Title 2 Part 1536 at: <http://ecfr.gpoaccess.gov>.

8. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA) REPORTING REQUIREMENTS

- a. In order to comply with the FFATA, the Sub-Recipient shall complete the FFATA Data Collection Form (FFATA Data Collection Form, Exhibit E, Attachment 2) and return it to the AGENCY. The AGENCY will report basic agreement information, including the required DUNS number, for all federally-funded agreements at www.fsr.gov. This information will be made available to the public at www.usaspending.gov. Sub-Recipients who do not have a DUNS number can find guidance at www.grants.gov. Please note that AGENCY will not pay any invoices until it has received the completed FFATA Data Collection Form.
- b. To comply with the act and be eligible to enter into this contract, your organization must have a Data Universal Numbering System (DUNS®) number. A DUNS® number provides a method to verify data about your organization. If you do not already have one, you may receive a DUNS® number free of charge by contacting Dun and Bradstreet at www.dnb.com.
- c. Any sub-recipient that meets each of the below criteria must also report compensation for its five top executives, using AGENCY's Federal Funding Accountability and Transparency Act (FFATA) Data Collection Form if the sub-recipient meets the following criteria:
 - Receives more than \$25,000 in federal funds under this award.
 - Receives more than 80 percent of its annual gross revenues from federal funds.
 - Receives more than \$25,000,000 in annual federal funds.
 - The public does not have access to this information about the compensation of the senior executives of your organization through periodic reports filed under section 13(A) or 15(d) of the Securities and Exchange Act of 1934 (15 U.S.C. 78m(a), 78(d) or section 6104 of the Internal Revenue Code of 1986.

See www.fsr.gov for details of this requirement. If your organization falls into this above category, you must report the required information to AGENCY.

9. INTERNATIONAL TRAVEL (Including Canada)

All International Travel must be approved by the US Environmental Protection Agency's, Office of International and Tribal Affairs (OITA) BEFORE travel occurs. Even a brief trip to a foreign country, for example to attend a conference, requires OITA approval. Please contact your Partnership Project manager as soon as possible if travel is planned out of the country, including Canada and/or Mexico, so that they can submit a request to the EPA Project Officer if they approve of such travel.

10. LEP (Limited English Proficiency) Title VI

As a recipient of EPA financial assistance, you are required by Title VI of the Civil Rights Act to provide meaningful access to LEP individuals. In implementing that requirement, the Sub-recipient agrees to use as a guide the Office of Civil Rights (OCR) document entitled "*Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons.*" The guidance can be found at

http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2004_register&docid=fr25jn04-79.pdf.

In accepting this contract, the recipient acknowledges it has an affirmative obligation to implement effective Title VI compliance programs and ensure that its actions do not involve discriminatory treatment and do not have discriminatory effects even when facially neutral. The recipient must be prepared to demonstrate to EPA/PSP that such compliance programs exist and are being implemented or to otherwise demonstrate how it is meeting its Title VI obligations. For example, if CONTRACTOR's responsibilities under this contract include gathering public input on an environmental issue, CONTRACTOR's communication with the public should attempt to minimize barriers that interfere with the ability of LEP persons to meaningfully participate.

11. MANAGEMENT FEES

Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term "management fees or similar charges" refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs which are not allowable under this CONTRACT. Management fees or similar charges may not be used to improve or expand the project funded under this Agreement, except to the extent authorized as a direct cost of carrying out the scope of work.

12. PEER REVIEW

The results of this project may affect management decisions relating to Puget Sound. Prior to finalizing any significant technical products the Principal Investigator (PI) of this project must solicit advice, review, and feedback from a technical review or advisory group consisting of relevant subject matter specialists. A record of comments and a brief description of how respective comments are addressed by the PI will be provided to the Project Monitor prior to releasing any final reports or products resulting from the funded study.

13. REIMBURSEMENT LIMITATION

If CONTRACTOR expends more than the amount of the Environmental Protection Agency (EPA) funding in this agreement in anticipation of receiving additional funds from EPA, it does

so at its own risk. EPA is not legally obligated to reimburse PSP, nor its sub-recipients, for costs incurred in excess of the EPA approved budget.

14. SEMI-ANNUAL AND ANNUAL PERFORMANCE REPORTS

The Sub-recipient shall submit performance reports during the life of the project, as specified in the statement of work or work plan developed under this contract.

In addition to the periodic performance reports, the recipient shall submit a final performance report, which is due 90 calendar days after the expiration or termination of the award, or as specified in the work plan or statement of work. The report shall be submitted to the PSP Project Officer and may be provided electronically. The report shall generally contain the same information as in the periodic reports, but should cover the entire project period. After completion of the project, the PSP Project Officer may waive the requirement for a final performance report if the PSP Project Officer deems such a report is inappropriate or unnecessary.

15. SIX GOOD FAITH EFFORTS, 40 CFR, PART 33, SUBPART C

Pursuant to 40 CFR, Section 33.301, the recipient agrees to make the following good faith efforts whenever procuring construction, equipment, service and supplies under an EPA financial assistance agreement, and to require that subrecipients, loan recipients, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained:

- a) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local Government recipients, this will include placing DBEs on solicitation lists and soliciting whenever they are potential sources.
- b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
- c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
- d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
- e) Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.
- f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraph (a) through (e) of this section.

16. SUB-AWARDS

If CONTRACTOR (Sub-Recipient) makes sub-awards under this contract, CONTRACTOR is responsible for selecting its sub-awardees and, if applicable, for conducting sub-award competitions. CONTRACTOR agrees to:

- a. Establish all sub-award agreements in writing;
- b. Maintain primary responsibility for ensuring successful completion of the approved project (Sub-Recipient cannot delegate or transfer this responsibility to a sub-awardee);

- c. Ensure that any sub-awards comply with the standards in Section 210(a)-(d) of OMB Circular A-133, and are not used to acquire commercial goods or services for the sub-awardee;
- d. Ensure that any sub-awards to 501(c)(4) organizations do not involve lobbying activities;
- e. Monitor the performance of sub-awardees, and ensure sub-awardees comply with all applicable regulations, statutes, and terms and conditions which flow down in the sub-award;
- f. Obtain AGENCY's consent before making a sub-award to a foreign or international organization, or a sub-award to be performed in a foreign country; and
- g. Obtain approval from AGENCY for any new sub-award work that is not outlined in the approved work plan in accordance with 40 CFR Parts 30.25 and 31.30, as applicable.

17. TRAFFICKING IN PERSONS AND TRAFFICKING VICTIM PROTECTION ACT OF 2000 (TVPA) AS AMENDED IN 22 U.S.C. 7104(g)

This provision applies only to a Sub-Recipient, and all sub-awardees of Sub-Recipient, if any. See page one (1) of this contract for determination of whether CONTRACTOR is a sub-recipient. Sub-Recipient shall include the following statement in all sub-awards made to any private entity under this Agreement.

"You as the Sub-Recipient, your employees, sub-awardees under this award, and sub-awardees' employees may not engage in severe forms of trafficking in persons during the period of time that the award is in effect; procure a commercial sex act during the period of time that the award is in effect; or use forced labor in the performance of the award or sub-awards under this Award."

Sub-Recipient, and all sub-awardees of Sub-Recipient must inform AGENCY immediately of any information you receive from any source alleging a violation of this prohibition during the award term.

Federal agency funding this agreement may unilaterally terminate, without penalty, the funding award if this prohibition is violated, Section 106 of the Trafficking Victims Protection Act of 2000, as amended.

18. UNLIQUIDATED OBLIGATIONS (ULO)

Sub-recipients, and all sub-awardees of Sub-Recipients, if any, should manage their agreement and subaward funding in ways that reduce the length of time that federal funds obligated and committed to subaward projects are unspent (not yet drawn down through disbursements to sub-recipients and sub-awardees).

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681- 1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee- 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.
10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.
19. Will comply with the requirements of Section 106(g) of the Trafficking Victims Protection Act (TVPA) of 2000, as amended (22 U.S.C. 7104) which prohibits grant award recipients or a sub-recipient from (1) Engaging in severe forms of trafficking in persons during the period of time that the award is in effect (2) Procuring a commercial sex act during the period of time that the award is in effect or (3) Using forced labor in the performance of the award or subawards under the award.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (Rev. 7-97) Back



424B (Rev 4-2012) Federal Funding Accountability and Transparency Act Data Collection Form


This award is supported by Federal Funds that require compliance with the Federal Funding Accountability and Transparency Act. The purpose of the Transparency Act is to make information available online so the public can see how Federal Funds are spent. To comply with the act and be eligible to receive this award, your organization must have a Data Universal Numbering System (DUNS®) number. If you do not already have one, you may receive a DUNS ® number free of charge by contacting Dun and Bradstreet at www.dnb.com. The Puget Sound Partnership (PSP) also encourages registration with the System for Award Management (SAM) to reduce data entry by both PSP and your organization. You may register with SAM Free of Charge at www.sam.gov. Information about your organization and this grant will be reported by PSP to the Federal government as required by P.L 109-282. This information will then be made available to the public by the Federal Government on www.USASpending.gov.

Subrecipient

1. Legal Name	2. Duns Number
3. Principle Place of Performance	
3a. City	3b. State
3c. Zip +4	3d. Country
4. Are you registered in SAM? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, skip to signature block. Sign, Date & Return	
5. In the preceding fiscal year, did your organization:	
a. Receive 80% or more of annual gross revenue from Federal contracts, subcontracts, grants, loans, subgrants, loans and/or cooperative agreements, AND	
b. \$25,000 or more in annual gross revenues from Federal contracts, subcontracts, grants, loans, subgrants, loans and/or cooperative agreements, AND	
c. Receives more than \$25,000,000 in annual federal funds.	
d. The public does not have access to this information about the compensation of the senior executives of your organization through periodic reports filed under section 13(A) or 15(d) of the Securities and Exchange Act of 1934 (15 U.S.C. 78m(a), 78(d) or section 6104 of the Internal Revenue Code of 1986.	
<input type="checkbox"/> No – skip to signature block. Sign, Date, & Return	
<input type="checkbox"/> Yes – you must report the names and total compensation of the top 5 highly compensated officials of your organization	
Name of Official	Total Compensation
1.	\$ Annually
2.	\$ Annually
3.	\$ Annually
4.	\$ Annually
5.	\$ Annually
NOTE: Total compensation for the purposes of this requirement generally means the cash and non-cash value earned by the executive during the past fiscal year and includes salary and bonus; awards of stock; stock options and stock appreciation rights; and other compensation such as severance and termination payments, and value of life insurance paid on behalf of the employee, and as otherwise provided by FFATA and applicable OMB guidance.	
By signing this document, the Authorized Representative attests to this information	
Signature of Authorized Representative	Date Printed Name of Authorized Representative

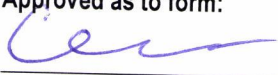
WHATCOM COUNTY:

Recommended for Approval:

 9/17/19

Jon Hutchings, Public Works Director Date

Approved as to form:

 9/26/19

Christopher Quinn Date
Civil Deputy Prosecuting Attorney

Approved:

Accepted for Whatcom County:

By: _____
Jack Louws, Whatcom County Executive

STATE OF WASHINGTON)
) ss
COUNTY OF WHATCOM)

On this _____ day of _____, 20 __, before me personally appeared Jack Louws, to me known to be the Executive of Whatcom County, who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

NOTARY PUBLIC in and for the State of Washington, residing at
_____. My commission expires _____.



Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2019-487

File ID:	AB2019-487	Version:	1	Status:	Agenda Ready
File Created:	09/19/2019	Entered by:	RKlein@co.whatcom.wa.us		
Department:	Public Works Department	File Type:	Contract (WCFCZDBS)		
Assigned to:	Council Finance and Administrative Services Committee	Final Action:			
Agenda Date:	10/08/2019	Enactment #:			

Primary Contact Email: sdraper@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into a grant agreement between Whatcom County and the State of Washington Department of Ecology to fund administrative support and action projects for the Whatcom County Marine Resources Committee, in the amount of \$182,313 (Council Acting as the Whatcom County Flood Control Zone District Board of Supervisors

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

This grant agreement will be used to fund administrative support and action projects for the Whatcom County Marine Resources Committee through the period of October 1, 2019 through September 30, 2021

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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**WHATCOM COUNTY
PUBLIC WORKS DEPARTMENT**

**Jon Hutchings
Director**





NATURAL RESOURCES

322 N. Commercial, Suite 110
Bellingham, WA 98225
Telephone: (360) 778-6230
FAX: (360) 778-6231
www.whatcomcounty.us

MEMORANDUM

TO: The Honorable Jack Louws, and the Honorable Members of the Whatcom County Flood Control Zone District Board of Supervisors

THROUGH: Jon Hutchings, Public Works Director 

FROM: Gary Stoyka, Natural Resources Manager 
Austin Rose, Planner I, Natural Resources

DATE: September 17, 2019

RE: State of Washington Department of Ecology Grant Agreement SEANWS-2019-WhCoPW-00001 Northwest Straits Project: Marine Resources Committee (MRC) Operations and Projects

Please find enclosed for your review and signature two (2) originals of Grant Agreement SEANWS-2019-WhCoPW-00001, Northwest Straits Project: Marine Resources Committee (MRC) Operation and Projects, between the Washington State Department of Ecology (DOE) and Whatcom County for the sum of \$182,313.00.

Background and Purpose

This grant agreement will fund administrative support and action projects for the Whatcom County Marine Resources Committee including education and outreach, water quality monitoring, bull kelp surveys, forage fish spawning surveys, and monitoring of a pilot Olympia oyster restoration project.

This agreement represents an increase in funding of \$16,000 in FY2020 and \$16,363 in FY2021. This increased funding will be used in part to increase staff allocation for MRC from 0.7FTE to 0.95FTE to support increased needs for meeting coordination, contract administration, project implementation, and monitoring.

Funding Amount and Source

This grant agreement with Washington Department of Ecology provides the County with \$182,313.00 for administrative and technical support to the MRC and to implement action projects. No match is required.

Please contact Austin Rose at extension 6286 or Gary Stoyka at extension 6218, if you have any questions or concerns regarding the terms of this agreement.

Encl.

Whatcom County Contract No.

Originating Department:		Public Works	
Division/Program: (i.e. Dept. Division and Program)		Natural Resources – Whatcom Marine Resources Committee - 907010	
Contract or Grant Administrator:		Austin Rose, Planner I	
Contractor's / Agency Name:		Washington State Department of Ecology	
Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____			
Does contract require Council Approval? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> 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?		SEANWS- 2019- WhCoPW- 00001 CFDA#: 66.456	
Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If yes, grantor agency contract number(s):		_____	
Is this contract grant funded? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes, Whatcom County grant contract number(s): _____			
Is this contract the result of a RFP or Bid process? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes, RFP and Bid number(s): _____		Contract Cost Center: 813001	
Is this agreement excluded from E-Verify? No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> 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 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 checked="" 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): \$ 182,313.00		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: 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.	
This Amendment Amount: \$ _____			
Total Amended Amount: \$ _____			
Summary of Scope: This grant agreement will fund administrative support and action projects for the Whatcom County Marine Resources Committee			
Term of Contract: October 1, 2019		Expiration Date: September 30, 2021	
Contract Routing: 1. Prepared by: ARose Date: 9/17/2019 2. Attorney signoff: Christopher Quinn Date: 9/17/2019 3. AS Finance reviewed: M Caldwell Date: 9/17/19 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 CONTRACT
ATTORNEY REVIEW**
[submit via electronic transmittal]

Whatcom County Contract No.

Originating Department:	Public Works – Natural Resources
Contact Person:	Austin Rose, Marine Resources Planner
Contractor's Name:	Washington State Department of Ecology
First Review: <input checked="" type="checkbox"/> xx Approved As Is ; Prepare Hardcopy for Signoff <input type="checkbox"/> Needs Revision ; Attorney Comments for suggested changes:	
Second Review: <input type="checkbox"/> Implemented Attorney Corrections as Indicated <input type="checkbox"/> Approved ; Prepare Hardcopy for Signoff <input type="checkbox"/> Additional Corrections Needed ; Attorney Comments for suggested changes	
Please indicate any Special Dates or clauses that require calendaring:	

Agreement No. SEANWS-2019-WhCoPW-00001**SHORELANDS NORTHWEST STRAITS AGREEMENT****BETWEEN****THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY****AND****WHATCOM COUNTY**

This is a binding Agreement entered into by and between the state of Washington, Department of Ecology, hereinafter referred to as "ECOLOGY," and Whatcom County, hereinafter referred to as the "RECIPIENT," to carry out with the provided funds activities described herein.

GENERAL INFORMATION

Project Title:	Whatcom Marine Resources Committee (MRC) Operations and Projects
Total Cost:	\$182,313.00
Total Eligible Cost:	\$182,313.00
Ecology Share:	\$182,313.00
Recipient Share:	\$0.00
The Effective Date of this Agreement is:	10/01/2019
The Expiration Date of this Agreement is no later than:	09/30/2021
Project Type:	Northwest Straits Grant

Project Short Description:

The Whatcom MRC works to achieve important goals of resource conservation and habitat protection within the Northwest Straits, through implementing priorities of the Puget Sound Action Agenda. This grant will support the Whatcom MRC operations and projects for 2019-2021.

Project Long Description:

The MRC is focused on two Action Agenda strategic initiatives: 1) protecting and restoring marine habitats; 2) restore and reopen shellfish beds. In addition to projects, this funding provides education and outreach programming and administrative support for the Whatcom MRC to accomplish these goals.

Overall Goal:

The overall goal is to implement projects that improve health of marine waters, shorelines, and aquatics resources of

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Project Title: Whatcom Marine Resources Committee (MRC) Operations and Projects

Recipient Name: Whatcom County

Whatcom County.

Agreement No: SEANWS-2019-WhCoPW-00001

Project Title: Whatcom Marine Resources Committee (MRC) Operations and Projects

Recipient Name: Whatcom County

RECIPIENT INFORMATION

Organization Name: Whatcom County

Federal Tax ID: 91-6001383

DUNS Number: 060044641

Mailing Address: 322 N. Commercial Street, Suite 220
Bellingham, Washington 98225

Physical Address: 322 N. Commercial Street, Suite 220
Bellingham, Washington 98225

Organization Email: rrydel@co.whatcom.wa.us

Contacts

Agreement No: SEANWS-2019-WhCoPW-00001

Project Title: Whatcom Marine Resources Committee (MRC) Operations and Projects

Recipient Name: Whatcom County

Project Manager	Austin Rose Planner I - Marine Resources Committee Staff 322 N. Commercial St Bellingham, Washington 98225 Email: arose@co.whatcom.wa.us Phone: (360) 778-6286
Billing Contact	Christy Fowler 322 N. Commercial St. Suite 210 Bellingham, Washington 98225 Email: cfowler@co.whatcom.wa.us Phone: (360) 778-6214
Authorized Signatory	Jack Louws County Executive 311 Grand Avenue, Suite 108 Bellingham, Washington 98225 Email: jlouws@co.whatcom.wa.us Phone: (360) 676-6717

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Project Title: Whatcom Marine Resources Committee (MRC) Operations and Projects
Recipient Name: Whatcom County

ECOLOGY INFORMATION

Mailing Address: Department of Ecology
Shorelands
PO BOX 47600
Olympia, WA 98504-7600

Physical Address: Shorelands
300 Desmond Drive SE
Lacey, WA 98503

Contacts

Project Manager	Sasha Horst Breazeale-Padilla Bay Interp. Center 10441 Bayview Edison Rd. Mt Vernon, Washington 98273-7242 Email: horst@nwstraits.org Phone: (360) 428-1084
Financial Manager	Layne Slone Financial Manager PO Box 47600 Olympia, Washington 98504-7600 Email: lnak461@ecy.wa.gov Phone: (360) 407-7540
Technical Advisor	Dana Oster Breazeale-Padilla Bay Interp. Center 10441 Bayview Edison Rd. Mt Vernon, Washington 98273-7242 Email: DAOS461@ecy.wa.gov Phone: (360) 428-1043

Agreement No: SEANWS-2019-WhCoPW-00001

Project Title: Whatcom Marine Resources Committee (MRC) Operations and Projects

Recipient Name: Whatcom County

AUTHORIZING SIGNATURES

RECIPIENT agrees to furnish the necessary personnel, equipment, materials, services, and otherwise do all things necessary for or incidental to the performance of work as set forth in this Agreement.

RECIPIENT acknowledges that they had the opportunity to review the entire Agreement, including all the terms and conditions of this Agreement, Scope of Work, attachments, and incorporated or referenced documents, as well as all applicable laws, statutes, rules, regulations, and guidelines mentioned in this Agreement. Furthermore, the RECIPIENT has read, understood, and accepts all requirements contained within this Agreement.

This Agreement contains the entire understanding between the parties, and there are no other understandings or representations other than as set forth, or incorporated by reference, herein.

No subsequent modifications or amendments to this agreement will be of any force or effect unless in writing, signed by authorized representatives of the RECIPIENT and ECOLOGY and made a part of this agreement. ECOLOGY and RECIPIENT may change their respective staff contacts without the concurrence of either party.

This Agreement shall be subject to the written approval of Ecology's authorized representative and shall not be binding until so approved.

The signatories to this Agreement represent that they have the authority to execute this Agreement and bind their respective organizations to this Agreement.

Washington State
Department of Ecology

Whatcom County

By: _____

By: _____

Gordon White

Date

Shorelands

Program Manager

Template Approved to Form by
Attorney General's Office

Jack Louws

Date

County Executive

*See attached
County Sig.
Page*

Recommended for Approval:

Approved as to form:

Approved:

Agreement No: SEANWS-2019-WhCoPW-00001

Project Title: Whatcom Marine Resources Committee (MRC) Operations and Projects

Recipient Name: Whatcom County

SCOPE OF WORK

Task Number: 1

Task Cost: \$155,938.00

Task Title: MRC Operations

Task Description:

1.1 MRC Meetings and Communication: schedule and hold regular meetings of the MRC; prepare and distribute agenda; prepare and distribute meeting minutes; invite speakers on topics of community interest; and other logistical and communication functions as needed. Provide summary of activities for MRC representative to share at Northwest Straits Commission (NWSC) meetings.

1.2 Grant administration: Prepare progress reports, final report and closeout report for Northwest Straits Commission; track and administer budget; document matching funds and volunteer time; perform contract management; and prepare grant applications for MRC projects.

1.3 MRC Web Site: Existing MRC web site will be maintained and regularly updated with notices of upcoming meetings and agendas and other timely and relevant information.

1.4 Annual Report: This report will summarize MRC activities and progress on projects, including progress in achieving the Northwest Straits Initiative's performance benchmarks and connection to Puget Sound Action Agenda.

1.5 Annual Workplan: The workplan will include the objectives, timeframe, products, and benchmarks addressed in this scope of work.

1.6 Training: The MRC members will attend the Northwest Straits Commission training and/or additional conferences, trainings, and workshops as appropriate.

1.7 Representation at NWSC meetings: A representative of the MRC will attend each Northwest Straits Commission meeting and provide an update on current activities of the MRC.

1.8 Local Integrating Organization: The MRC will participate in meetings and operations of the Local Integrating Organization (LIO) in order to participate in the local planning process and action agenda update, including identification of Near Term Actions.

Task Goal Statement:

To carry out administrative functions in support of the mission (including work plan preparation, developing and preparing grant proposals, programmatic staff support, project monitoring and performance tracking, education programs and grant writing), travel, planning and participation in training opportunities.

Task Expected Outcome:

a. MRCs have a documented process to recruit and train members to be active participants and contributors to the work of the MRC.

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Project Title: Whatcom Marine Resources Committee (MRC) Operations and Projects

Recipient Name: Whatcom County

- b. Information about projects and the work of the MRC is accessible and shared regularly through presentations, meetings and web site.
- c. The MRC meets regularly in a public forum that is promoted locally to community members and decision makers.
- d. The MRC is informed of and contributes to the work of the Northwest Straits Commission.
- e. The value of volunteer hours and other local contributions to the work of the MRC is documented and shared with the Commission and the County.
- f. The work of the MRC is planned in advance through an annual workplan and documented in an annual report.
- g. MRC members and staff contribute to other relevant local and regional processes related to marine issues.

Agreement No: SEANWS-2019-WhCoPW-00001

Project Title: Whatcom Marine Resources Committee (MRC) Operations and Projects

Recipient Name: Whatcom County

Recipient Task Coordinator: Austin Rose**MRC Operations****Deliverables**

Number	Description	Due Date
1.1	Progress Report	01/10/2020
1.2	Reporting (meeting agendas and minutes, reports to the Commission, list of meeting/conference/workshop participation)	01/10/2020
1.3	Matching Funds/Volunteer Time Tracking	01/10/2020
1.4	Annual Workplan	01/10/2020
1.5	Progress Report	04/10/2020
1.6	Reporting (meeting agendas and minutes, reports to the Commission, list of meeting/conference/event participation)	04/10/2020
1.7	Matching Funds/Volunteer Time Tracking	04/10/2020
1.8	Web Site Screen Shots of Up-to-Date Content	04/10/2020
1.9	Annual Report	04/10/2020
1.10	Progress Report	07/10/2020
1.11	Reporting (meeting agendas and minutes, reports to the Commission, list of meeting/conference/event participation)	07/10/2020
1.12	Matching Funds/Volunteer Time Tracking	07/10/2020
1.13	Progress Report	09/30/2020
1.14	Reporting (meeting agendas and minutes, reports to the Commission, list of meeting/conference/event participation)	09/30/2020
1.15	Matching Funds/Volunteer Time Tracking	09/30/2020
1.16	Progress Report	01/11/2021
1.17	Reporting (meeting agendas and minutes, reports to the Commission, list of meeting/conference/workshop participation)	01/11/2021
1.18	Matching Funds/Volunteer Time Tracking	01/11/2021
1.19	Annual Workplan	01/11/2021
1.20	Progress Report	04/12/2021
1.21	Reporting (meeting agendas and minutes, reports to the Commission, list of meeting/conference/event participation)	04/12/2021

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Project Title: Whatcom Marine Resources Committee (MRC) Operations and Projects

Recipient Name: Whatcom County

1.22	Matching Funds/Volunteer Time Tracking	04/12/2021
1.23	Web Site Screen Shots of Up-to-Date Content	04/12/2021
1.24	Annual Report	04/12/2021
1.25	Progress Report	07/12/2021
1.26	Reporting (meeting agendas and minutes, reports to the Commission, list of meeting/conference/event participation)	07/12/2021
1.27	Matching Funds/Volunteer Time Tracking	07/12/2021
1.28	Progress Report	09/30/2021
1.29	Reporting (meeting agendas and minutes, reports to the Commission, list of meeting/conference/event participation)	09/30/2021
1.30	Matching Funds/Volunteer Time Tracking	09/30/2021

Agreement No: SEANWS-2019-WhCoPW-00001

Project Title: Whatcom Marine Resources Committee (MRC) Operations and Projects

Recipient Name: Whatcom County

SCOPE OF WORK

Task Number: 2

Task Cost: \$11,900.00

Task Title: Education and Outreach

Task Description:

2.1 Community education and outreach: The MRC will attend at least three community and outreach events with their display and interactive tools to provide a forum for the exchange of marine resource issues information, develop community curiosity and concern about marine issues, and help develop the community's stewardship ethic through continued education and exposure to marine resource issues. Information about current MRC projects will be provided as well as general MRC program brochures.

2.2 Public speaker series: Whatcom MRC will partner with the Whatcom Watershed Information Network (WWIN) to plan and implement a Public Speaker Series that will contribute to informing citizens about marine resources and issues specifically. Speaker Series events will range from a single evening speaker to multi-day symposiums. Whatcom MRC will host at least four speaker series events and help plan and promote other speaker series events. Evaluations will be provided at each event in order to learn how attendees are hearing about the event, if they felt their knowledge on the speaker topic increased after the presentation, and suggestions for future topics.

2.3 North Sound Stewards: Whatcom MRC will implement a volunteer program, in partnership with RE Sources for Sustainable Communities, supporting volunteer citizen scientists who contribute to scientific research for the health of the Salish Sea. Whatcom MRC will secure an intern to serve as the North Sound Stewards Volunteer Program Coordinator who will be responsible for planning, promoting, and implementing the volunteer training program, recruiting volunteers, connecting volunteers to volunteer opportunities, and continued volunteer communications and engagement under the guidance of MRC Staff and the North Sound Stewards Advisory Committee, which includes representatives from RE Sources and the Whatcom MRC.

Task Goal Statement:

2.1 Community education and outreach: increase public awareness and recognition of the MRC, MRC projects, marine resources in Whatcom County, and provide another way for the MRC to identify future volunteers and MRC members.

2.2 Public speaker series: to utilize partnerships in order to provide and exchange information on marine related topics to the MRC and the broader local community.

2.3 North Sound Stewards: increase public awareness of the issues impacting the Salish Sea and its inhabitants, foster stewardship, and build, engage, and support a strong volunteer base of citizen scientists to support the Whatcom MRC, partner organizations, and increase the visibility of the Whatcom MRC.

Task Expected Outcome:

2.1 Community education and outreach: The MRC will communicate with at least 250 community members about local marine resource issues and will track the number of fact sheets, MRC brochures, and crabber outreach information distributed at events, and at least 20 visitors to the MRC table will sign up to receive MRC information or volunteer for MRC projects.

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Project Title: Whatcom Marine Resources Committee (MRC) Operations and Projects

Recipient Name: Whatcom County

2.2 Public speaker series: Local leaders and community members will be better informed on marine topics after attending events.

2.3 North Sound Stewards: Workstudy internship will be completed; the number of new and active volunteer participants in the program increases and the MRC will offer three trainings to participants in addition to other learning opportunities.

Recipient Task Coordinator: 2.1 Kristen Murray 2.2 Elizabeth Kilanowski 2.3 Glen Alexander

Education and Outreach

Deliverables

Number	Description	Due Date
2.1	Community education and outreach workplan.	04/10/2020
2.2	Community education and outreach final report (including summary of events, jpg images, number of direct contacts and MRC sign-ups).	09/30/2020
2.3	Public Speaker Series Workplan.	01/10/2020
2.4	Public Speaker Series Final report (including number of events, estimated number of participants, press releases, flyers, jpg images, evaluation materials, and summary of survey results).	09/30/2020
2.5	North Sound Stewards workstudy/internship agreement.	01/10/2020
2.6	North Sound Stewards final report (including workstudy/internship announcement, volunteer solicitation/ recruitment, promotion of training events, number of volunteer hours, photos from volunteer participation in projects, promotional materials and newsletter generated by intern and Advisory Committee).	09/30/2020

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Project Title: Whatcom Marine Resources Committee (MRC) Operations and Projects

Recipient Name: Whatcom County

SCOPE OF WORK

Task Number: 3

Task Cost: \$14,475.00

Task Title: Monitoring

Task Description:

3.1 Chuckanut Pollution Identification and Correction (PIC): Following the monitoring protocols outlined in the North Chuckanut Bay PIC Water Quality Monitoring: Fecal Coliform Quality Assurance Project Plan, Whatcom MRC will complete bi-weekly sampling of seven freshwater sites and six marine sites from October 2019 through September 2020 in North Chuckanut Bay. Monthly sampling will occur if bi-weekly is not possible due to weather, or field staff capacity. Monitoring efforts will continue under the recommendation of Washington State Department of Health based on patterns of water quality results. Whatcom MRC will continue ongoing community outreach and engagement on best management practices for healthy water quality, and will recruit community volunteers to help with sampling. The MRC will distribute one community newsletter to residents in the Chuckanut Village with water quality information and additional ways to be informed about the PIC project.

3.2 Bull kelp monitoring: Working in collaboration with the Northwest Straits Commission, using existing kayak-based monitoring protocols and a motorized boat-based variation, the Whatcom MRC will monitor floating bull kelp beds at four locations in Whatcom County to provide information on the status (presence, size, and health) of floating kelp communities in Whatcom County: SW Lummi Island, Aiston Preserve, Cherry Point/Gulf Rd, and Alden Bank. The MRC will explore the use of a motorized boat to survey at Alden Bank due to the strength of the currents at that location. The MRC will begin efforts to complete a presence/absence survey of kelp along the Whatcom County shoreline, to be completed by motorized boat.

3.3 Forage fish spawning surveys: Using existing protocols developed by WA Dept of Fish and Wildlife, Whatcom MRC will participate in a regional effort to characterize populations of the two species of forage fish that spawn on Puget Sound beaches: Pacific sand lance and surf smelt. Whatcom MRC will recruit and train volunteers and hire a student intern to conduct spawning surveys at two priority beaches monthly using existing protocols, and will conduct forage fish egg presence/absence analysis from beach substrate samples.

3.4 Olympia oyster monitoring: Whatcom MRC is continuing a pilot project to establish a self-sustaining population of Olympia oyster while enhancing habitat complexity and diversity in N. Chuckanut Bay. Following the pilot planting of approximately 95,000 oysters in test plots in May 2018, Whatcom MRC will follow a monitoring plan to collect physical and biological parameter data to determine the status of restoration potential and assess needs for adaptive changes following restoration actions. A spring monitoring event will involve students from local college/universities. The MRC will develop an evaluation of oyster retention within pilot restoration plots, and changes in habitat characterization will be determined by assessing changes in restoration plots against an identified reference plot.

Task Goal Statement:

3.1 Chuckanut Pollution Identification and Correction: Provide WA State Dept of Health with sufficient data that demonstrates improvement in water quality, to encourage them to appropriately modify the recreational shellfish harvesting restrictions, and to continue outreach and engagement with the Chuckanut Village community so that observed water quality improvements are maintained.

3.2 Bull kelp monitoring: Support a larger regional kelp monitoring program and provide a better understanding of kelp

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Project Title: Whatcom Marine Resources Committee (MRC) Operations and Projects

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distribution, bed sizes, kelp speciation, and bull kelp health within the Salish Sea.

3.3 Forage fish spawning surveys: Support state wide sampling and to inform potential soft shore restoration projects for Whatcom County.

3.4 Olympia oyster monitoring: Involve local community members in monitoring the seven test plots to quantify ecological parameters, evaluate restoration success, and facilitate adaptive management practices, in order to inform restoration potential. The long-term goal is to re-establish a native Olympia oyster population in N. Chuckanut Bay.

Task Expected Outcome:

3.1 Chuckanut Pollution Identification and Correction: Water quality monitoring will be completed and the MRC will meet with Washington Department of Health to discuss their evaluation of current water quality status and next steps toward lifting the shellfish harvesting restriction.

3.2 Bull kelp monitoring: Completion of at least one kelp survey at four locations in Whatcom County.

3.3 Forage fish spawning surveys: A student intern to assist with recruiting and training volunteers, conducting surveys, and processing the samples on a monthly basis, and at least five volunteers will participate in monthly surveys.

3.4 Olympia oyster monitoring: Monitoring completed to assess oyster abundance, to provide information on population recruitment; and the live oyster size distribution.

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Project Title: Whatcom Marine Resources Committee (MRC) Operations and Projects

Recipient Name: Whatcom County

Recipient Task Coordinator: 3.1 Ryan McLaughlin 3.2 Eleanor Hines 3.3 Bob Seaman 3.4 Chris Brown**Monitoring****Deliverables**

Number	Description	Due Date
3.1	2019-20 N. Chuckanut Bay PIC Water Quality Monitoring: Fecal Coliform QAPP.	01/10/2020
3.2	Chuckanut PIC: Copy of data collected and water quality summary reports, summary report on all outreach activities.	09/30/2020
3.3	Bull kelp QAPP covering motorized and boat-based surveys.	01/10/2020
3.4	Bull kelp monitoring workplan (including list of anticipated survey dates, locations, and volunteers).	04/10/2020
3.5	Bull kelp survey final report (including location of surveys, volunteer hours, photos, maps of survey areas, copies of data collected).	09/30/2020
3.6	Forage Fish Survey QAPP.	01/10/2020
3.7	Forage Fish final report (including list of volunteers, photographs of surveys, maps of survey locations, copy of data collected, and any media articles).	09/30/2020
3.8	2020 Olympia oyster monitoring plan.	01/10/2020
3.9	Olympia Oyster Population Abundance and Habitat Characteristics Survey QAPPs.	04/10/2020
3.10	Olympia Oyster Final Report (including .jpg photos and observations of test plots, list of volunteers, summary report on restoration potential, copy of data collected).	09/30/2020

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Project Title: Whatcom Marine Resources Committee (MRC) Operations and Projects

Recipient Name: Whatcom County

BUDGET**Funding Distribution EG200110**

NOTE: The above funding distribution number is used to identify this specific agreement and budget on payment remittances and may be referenced on other communications from ECOLOGY. Your agreement may have multiple funding distribution numbers to identify each budget.

Funding Title: 2019-20 Washington State

Funding Type: Grant

Funding Effective Date: 10/01/2019

Funding Expiration Date: 06/30/2020

Funding Source:

Title: General Fund - State

Type: State

Funding Source %: 100%

Description: Washington State general funds, 2019-2021 biennium

Approved Indirect Costs Rate: Approved Rate Negotiated Between ECOLOGY and RECIPIENT: 0%

Recipient Match %: 0%

InKind Interlocal Allowed: No

InKind Other Allowed: No

Is this Funding Distribution used to match a federal grant? No

2019-20 Washington State	Task Total
MRC Operations	\$ 49,000.00
Education and Outreach	\$ 8,000.00
Monitoring	\$ 8,000.00

Total: \$ 65,000.00

Agreement No: SEANWS-2019-WhCoPW-00001
Project Title: Whatcom Marine Resources Committee (MRC) Operations and Projects
Recipient Name: Whatcom County

BUDGET**Funding Distribution EG200111**

NOTE: *The above funding distribution number is used to identify this specific agreement and budget on payment remittances and may be referenced on other communications from ECOLOGY. Your agreement may have multiple funding distribution numbers to identify each budget.*

Funding Title: 2019-20 Puget Sound Partnership/EPA Funding Type: Grant
Funding Effective Date: 10/01/2019 Funding Expiration Date: 09/30/2020
Funding Source:

Title: Puget Sound Partnership/EPA
Type: Federal
Funding Source %: 100%
Description: Northwest Straits Commission and Marine Resources Committees

Federal Awarding Agency: Environmental Protection Agency
Federal Awarding Agency Contact: Karin Berkholtz - Puget Sound Partnership
Federal Awarding Agency Phone: 360-999-3848
Federal Awarding Agency Email: karin.berkholtz@psp.wa.gov
Federal Awarding Agency Address: 326 East D Street Tacoma WA 98421-1801

CFDA Catalog Name: National Estuary Program

CFDA Number: 66.456
FAIN: CE-01J02301-0
Research Grant: No
Federal Award Date: 10/1/2019
Total Federal Award Amount: \$1,600,000.00
Federal Funds Obligated To Recipient: \$26,000.00

Approved Indirect Costs Rate: Approved Rate Negotiated Between ECOLOGY and RECIPIENT: 0%
Recipient Match %: 0%
InKind Interlocal Allowed: No
InKind Other Allowed: No
Is this Funding Distribution used to match a federal grant? No

Agreement No: SEANWS-2019-WhCoPW-00001

Project Title: Whatcom Marine Resources Committee (MRC) Operations and Projects

Recipient Name: Whatcom County

2019-20 Puget Sound Partnership/EPA	Task Total
MRC Operations	\$ 15,625.00
Education and Outreach	\$ 3,900.00
Monitoring	\$ 6,475.00

Total: \$ 26,000.00

Agreement No: SEANWS-2019-WhCoPW-00001
 Project Title: Whatcom Marine Resources Committee (MRC) Operations and Projects
 Recipient Name: Whatcom County

BUDGET**Funding Distribution EG200112**

NOTE: *The above funding distribution number is used to identify this specific agreement and budget on payment remittances and may be referenced on other communications from ECOLOGY. Your agreement may have multiple funding distribution numbers to identify each budget.*

Funding Title: 2020-21 Washington State Funding Type: Grant
 Funding Effective Date: 07/01/2020 Funding Expiration Date: 06/30/2021

Funding Source:

Title: General Fund - State
 Type: State
 Funding Source %: 100%
 Description: Washington State general funds, 2019-2021 biennium

Approved Indirect Costs Rate: Approved Rate Negotiated Between ECOLOGY and RECIPIENT: 0%
 Recipient Match %: 0%
 InKind Interlocal Allowed: No
 InKind Other Allowed: No
 Is this Funding Distribution used to match a federal grant? No

2020-21 Washington State	Task Total
MRC Operations	\$ 65,000.00

Total: \$ 65,000.00

Agreement No: SEANWS-2019-WhCoPW-00001
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Recipient Name: Whatcom County

BUDGET

Funding Distribution EG200113

NOTE: *The above funding distribution number is used to identify this specific agreement and budget on payment remittances and may be referenced on other communications from ECOLOGY. Your agreement may have multiple funding distribution numbers to identify each budget.*

Funding Title: 2020-21 Puget Sound Partnership/EPA Funding Type: Grant
Funding Effective Date: 10/01/2020 Funding Expiration Date: 09/30/2021
Funding Source:

Title: Puget Sound Partnership/EPA
Type: Federal
Funding Source %: 100%
Description: Northwest Straits Commission and Marine Resources Committees

Federal Awarding Agency: Environmental Protection Agency
Federal Awarding Agency Contact: Karin Berkholtz - Puget Sound Partnership
Federal Awarding Agency Phone: 360-999-3848
Federal Awarding Agency Email: karin.berkholtz@psp.wa.gov
Federal Awarding Agency Address: 326 East D Street Tacoma WA 98421-1801

CFDA Catalog Name: National Estuary Program

CFDA Number: 66.456
FAIN: CE-01J02301-0
Research Grant: No
Federal Award Date: 10/1/2019
Total Federal Award Amount: \$1,600,000.00
Federal Funds Obligated To Recipient: \$26,313.00

Approved Indirect Costs Rate: Approved Rate Negotiated Between ECOLOGY and RECIPIENT: 0%
Recipient Match %: 0%
InKind Interlocal Allowed: No
InKind Other Allowed: No
Is this Funding Distribution used to match a federal grant? No

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2020-21 Puget Sound Partnership/EPA	Task Total
MRC Operations	\$ 26,313.00

Total: \$ 26,313.00

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Recipient Name: Whatcom County

Funding Distribution Summary**Recipient / Ecology Share**

Funding Distribution Name	Recipient Match %	Recipient Share	Ecology Share	Total
2019-20 Puget Sound Partnership/EPA	0.00 %	\$ 0.00	\$ 26,000.00	\$ 26,000.00
2019-20 Washington State	0.00 %	\$ 0.00	\$ 65,000.00	\$ 65,000.00
2020-21 Puget Sound Partnership/EPA	0.00 %	\$ 0.00	\$ 26,313.00	\$ 26,313.00
2020-21 Washington State	0.00 %	\$ 0.00	\$ 65,000.00	\$ 65,000.00
Total		\$ 0.00	\$ 182,313.00	\$ 182,313.00

AGREEMENT SPECIFIC TERMS AND CONDITIONS

N/A

SPECIAL TERMS AND CONDITIONS**SUB-RECIPIENT FEDERAL REQUIREMENTS****CREDIT AND ACKNOWLEDGEMENT**

Reports, documents, signage, videos, or other media, developed as part of projects funded by EPA funded Agreements shall display the Puget Sound Partnership logo and the following credit line: "This project has been funded wholly or in part by the United States Environmental Protection Agency under Assistance Agreement CE-01J65401. The contents of this document do not necessarily reflect the views and policies of the Environmental Protection Agency, nor does mention of trade names or commercial products constitute endorsement or recommendation for use."

1. INTRODUCTION

This contains provisions that are not listed on OMB Standard Form 424B (Rev 4-2012). These provisions apply only to sub-recipients.

2. AUDIT REQUIREMENTS

Recipient shall meet the provisions in Office of Management and Budget (OMB) Guidance, Subpart F, §200.501 (Audit Requirements), if the RECIPIENT expends \$750,000 or more in total Federal funds in a fiscal year. The \$750,000 threshold for each year is a cumulative total of all federal funding from all sources. The RECIPIENT shall forward a copy of the audit along with the RECIPIENT'S response and the final corrective action plan to AGENCY within ninety (90) days of the date of the audit report. For complete information on how to accomplish the single audit submissions, visit the Federal Audit Clearinghouse Web site: <http://harvester.census.gov/facweb/>

3. COST PRINCIPLES/INDIRECT COSTS FOR STATE AGENCIES

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RECIPIENT agrees to comply with the cost principles of 2 CFR 200 Subpart E as appropriate to the award.

If the recipient does not have a previously established indirect cost rate, it agrees to prepare and submit its indirect cost rate proposal in accordance with 2 CFR 200 Appendix VII.

4. CIVIL RIGHTS OBLIGATIONS

This term and condition incorporates by reference the signed assurance provided by the recipient's authorized representative on Standard Form 424B. These assurances and this term and condition obligate the recipient to comply fully with applicable civil rights statutes and implementing EPA regulations.

5. NON DISCRIMINATION AND DISADVANTAGED, MBE, WBE BUSINESS ENTERPRISES ADDITIONAL REQUIREMENTS

RECIPIENT agrees to comply with the requirements of EPA's Program for Utilization of Small, Minority, and Women's Business Enterprises in procurement, contained in 40 CFR, Part 33. RECIPIENT shall include the following provision in all subcontracts involving use of federal funds:

In accordance with 40 CFR 33.106 and its Appendix A, the RECIPIENT shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The RECIPIENT administration shall carry out applicable requirements of 40 CFR part 33 in the award of contracts awarded under EPA financial assistance agreements. Failure by the RECIPIENT to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.

6. DRUG FREE WORKPLACE

RECIPIENT shall make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in Title 2 CFR Part 1536 Subpart B. Additionally, in accordance with these regulations, the recipient organization shall identify all known workplaces under its federal award and keep this information on file during the performance of the award. RECIPIENTS who are individuals must comply with the drug-free provisions set forth in Title 2 CFR Part 1536 Subpart C. The consequences for violating this condition are detailed under Title 2 CFR Part 1536 Subpart E. Recipient can access the Code of Federal Regulations (CFR) Title 2 Part 1536 at: <http://ecfr.gpoaccess.gov>.

7. INTERNATIONAL TRAVEL (Including Canada)

All International Travel must be approved by the Office of International and Tribal Affairs (OITA) BEFORE travel occurs. Even a brief trip to a foreign country, for example to attend a conference, requires OITA approval. Please contact your Ecology project manager as soon as possible if travel is planned out of the country, including Canada and/or Mexico, so that they can submit a request to the EPA Project Officer if they approve of such travel.

8. LEP (Limited English Proficiency) Title VI

As a recipient of EPA financial assistance, you are required by Title VI of the Civil Rights Act to provide meaningful access to LEP individuals. In implementing that requirement, the recipient agrees to use as a guide the Office of Civil Rights (OCR) document entitled "Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons." The guidance can be found at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2004_register&docid=fr25jn04-79.pdf.

In accepting this contract, the recipient acknowledges it has an affirmative obligation to implement effective Title VI compliance programs and ensure that its actions do not involve discriminatory treatment and do not have discriminatory effects even when facially neutral. The recipient must be prepared to demonstrate to EPA/PSP that such compliance programs exist and are being implemented or to otherwise demonstrate how it is meeting its Title VI obligations. For example, if RECIPIENT's responsibilities under this contract include gathering public input on an environmental issue, RECIPIENT's communication with

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the public should attempt to minimize barriers that interfere with the ability of LEP persons to meaningfully participate.

9. MANAGEMENT FEES

Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term "management fees or similar charges" refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs which are not allowable under this CONTRACT. Management fees or similar charges may not be used to improve or expand the project funded under this Agreement, except to the extent authorized as a direct cost of carrying out the scope of work.

10. PEER REVIEW

The results of this project may affect management decisions relating to Puget Sound. Prior to finalizing any significant technical products the Principal Investigator (PI) of this project must solicit advice, review, and feedback from a technical review or advisory group consisting of relevant subject matter specialists. A record of comments and a brief description of how respective comments are addressed by the PI will be provided to the Project Monitor prior to releasing any final reports or products resulting from the funded study.

11. REIMBURSEMENT LIMITATION

If RECIPIENT expends more than the amount of the Environmental Protection Agency (EPA) funding in this agreement in anticipation of receiving additional funds from EPA, it does so at its own risk. EPA is not legally obligated to reimburse PSP, nor its sub-recipients, for costs incurred in excess of the EPA approved budget.

12. SIX GOOD FAITH EFFORTS, 40 CFR, PART 33, SUBPART C

Pursuant to 40 CFR, Section 33.301, the recipient agrees to make the following good faith efforts whenever procuring construction, equipment, service and supplies under an EPA financial assistance agreement, and to require that sub-recipients, loan recipients, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained:

- a) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local Government recipients, this will include placing DBEs on solicitation lists and soliciting whenever they are potential sources.
- b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
- c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
- d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
- e) Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.
- f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraph (a) through (e) of this section.

13. SUB-AWARDS

If RECIPIENT makes sub-awards under this contract, RECIPIENT is responsible for selecting its sub-awardees and, if applicable, for conducting sub-award competitions. RECIPIENT agrees to:

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- a. Establish all sub-award agreements in writing;
- b. Maintain primary responsibility for ensuring successful completion of the approved project (Sub-Recipient cannot delegate or transfer this responsibility to a sub-awardee);
- c. Ensure that any sub-awards comply with the standards in Section 210(a)-(d) of OMB Circular A-133, and are not used to acquire commercial goods or services for the sub-awardee;
- d. Ensure that any sub-awards to 501(c)(4) organizations do not involve lobbying activities;
- e. Monitor the performance of sub-awardees, and ensure sub-awardees comply with all applicable regulations, statutes, and terms and conditions which flow down in the sub-award;
- f. Obtain AGENCY's consent before making a sub-award to a foreign or international organization, or a sub-award to be performed in a foreign country; and
- g. Obtain approval from AGENCY for any new sub-award work that is not outlined in the approved work plan in accordance with 40 CFR Parts 30.25 and 31.30, as applicable.

14. TRAFFICKING IN PERSONS AND TRAFFICKING VICTIM PROTECTION ACT OF 2000 (TVPA) AS AMENDED IN 22 U.S.C. 7104(g)

This provision applies only to a sub-recipient, and all sub-awardees of sub-recipient, if any. Sub-Recipient shall include the following statement in all sub-awards made to any private entity under this Agreement.

"You as the sub-recipient, your employees, sub-awardees under this award, and sub-awardees' employees may not engage in severe forms of trafficking in persons during the period of time that the award is in effect; procure a commercial sex act during the period of time that the award is in effect; or use forced labor in the performance of the award or sub-awards under this Award."

Sub-recipient, and all sub-awardees of sub-recipient must inform AGENCY immediately of any information you receive from any source alleging a violation of this prohibition during the award term.

Federal agency funding this agreement may unilaterally terminate, without penalty, the funding award if this prohibition is violated, Section 106 of the Trafficking Victims Protection Act of 2000, as amended.

15. UNLIQUIDATED OBLIGATIONS (ULO)

Recipients, sub-recipients, and all sub-awardees of sub-recipients, if any, should manage their agreement and subaward funding in ways that reduce the length of time that federal funds obligated and committed to subaward projects are unspent (not yet drawn down through disbursements to sub-recipients and sub-awardees).

GENERAL FEDERAL CONDITIONS

If a portion or all of the funds for this agreement are provided through federal funding sources or this agreement is used to match a federal grant award, the following terms and conditions apply to you.

A. CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY

EXCLUSION:

1. The RECIPIENT/CONTRACTOR, by signing this agreement, certifies that it is not suspended, debarred, proposed for debarment, declared ineligible or otherwise excluded from contracting with the federal government, or from receiving contracts paid for with federal funds. If the RECIPIENT/CONTRACTOR is unable to certify to the statements contained in the certification, they must provide an explanation as to why they cannot.
2. The RECIPIENT/CONTRACTOR shall provide immediate written notice to ECOLOGY if at any time the RECIPIENT/CONTRACTOR learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
3. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set

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out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact ECOLOGY for assistance in obtaining a copy of those regulations.

4. The RECIPIENT/CONTRACTOR agrees it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under the applicable Code of Federal Regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.
5. The RECIPIENT/CONTRACTOR further agrees by signing this agreement, that it will include this clause titled "CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY EXCLUSION" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
6. Pursuant to 2CFR180.330, the RECIPIENT/CONTRACTOR is responsible for ensuring that any lower tier covered transaction complies with certification of suspension and debarment requirements.
7. RECIPIENT/CONTRACTOR acknowledges that failing to disclose the information required in the Code of Federal Regulations may result in the delay or negation of this funding agreement, or pursuance of legal remedies, including suspension and debarment.
8. RECIPIENT/CONTRACTOR agrees to keep proof in its agreement file, that it, and all lower tier recipients or contractors, are not suspended or debarred, and will make this proof available to ECOLOGY before requests for reimbursements will be approved for payment. RECIPIENT/CONTRACTOR must run a search in <http://www.sam.gov> and print a copy of completed searches to document proof of compliance.

B. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA) REPORTING REQUIREMENTS:

CONTRACTOR/RECIPIENT must complete the FFATA Data Collection Form (ECY 070-395) and return it with the signed agreement to ECOLOGY.

Any CONTRACTOR/RECIPIENT that meets each of the criteria below must report compensation for its five top executives using the FFATA Data Collection Form.

- Receives more than \$25,000 in federal funds under this award.
- Receives more than 80 percent of its annual gross revenues from federal funds.
- Receives more than \$25,000,000 in annual federal funds.

Ecology will not pay any invoices until it has received a completed and signed FFATA Data Collection Form. Ecology is required to report the FFATA information for federally funded agreements, including the required DUNS number, at www.fsrs.gov <http://www.fsrs.gov> within 30 days of agreement signature. The FFATA information will be available to the public at www.usaspending.gov <http://www.usaspending.gov>.

For more details on FFATA requirements, see www.fsrs.gov <http://www.fsrs.gov>.

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GENERAL TERMS AND CONDITIONS

Pertaining to Grant and Loan Agreements With the state of Washington, Department of Ecology

GENERAL TERMS AND CONDITIONS AS OF LAST UPDATED 7-1-2019 VERSION

1. ADMINISTRATIVE REQUIREMENTS

- a) RECIPIENT shall follow the "Administrative Requirements for Recipients of Ecology Grants and Loans – EAGL Edition." (<https://fortress.wa.gov/ecy/publications/SummaryPages/1701004.html>)
- b) RECIPIENT shall complete all activities funded by this Agreement and be fully responsible for the proper management of all funds and resources made available under this Agreement.
- c) RECIPIENT agrees to take complete responsibility for all actions taken under this Agreement, including ensuring all subgrantees and contractors comply with the terms and conditions of this Agreement. ECOLOGY reserves the right to request proof of compliance by subgrantees and contractors.
- d) RECIPIENT's activities under this Agreement shall be subject to the review and approval by ECOLOGY for the extent and character of all work and services.

2. AMENDMENTS AND MODIFICATIONS

This Agreement may be altered, amended, or waived only by a written amendment executed by both parties. No subsequent modification(s) or amendment(s) of this Agreement will be of any force or effect unless in writing and signed by authorized representatives of both parties. ECOLOGY and the RECIPIENT may change their respective staff contacts and administrative information without the concurrence of either party.

3. ACCESSIBILITY REQUIREMENTS FOR COVERED TECHNOLOGY

The RECIPIENT must comply with the Washington State Office of the Chief Information Officer, OCIO Policy no. 188, Accessibility (<https://ocio.wa.gov/policy/accessibility>) as it relates to "covered technology." This requirement applies to all products supplied under the agreement, providing equal access to information technology by individuals with disabilities, including and not limited to web sites/pages, web-based applications, software systems, video and audio content, and electronic documents intended for publishing on Ecology's public web site.

4. ARCHAEOLOGICAL AND CULTURAL RESOURCES

RECIPIENT shall take reasonable action to avoid, minimize, or mitigate adverse effects to archeological and historic resources. The RECIPIENT must agree to hold harmless the State of Washington in relation to any claim related to historical or cultural artifacts discovered, disturbed, or damaged due to the RECIPIENT's project funded under this Agreement.

RECIPIENT shall:

- a) Contact the ECOLOGY Program issuing the grant or loan to discuss any Cultural Resources requirements for their project:
 - For capital construction projects or land acquisitions for capital construction projects, if required, comply with Governor Executive Order 05-05, Archaeology and Cultural Resources.
 - For projects with any federal involvement, if required, comply with the National Historic Preservation Act.
 - Any cultural resources federal or state requirements must be completed prior to the start of any work on the project site.
- b) If required by the ECOLOGY Program, submit an Inadvertent Discovery Plan (IDP) to ECOLOGY prior to implementing any project that involves ground disturbing activities. ECOLOGY will provide the IDP form.

RECIPIENT shall:

- Keep the IDP at the project site.

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- Make the IDP readily available to anyone working at the project site.
 - Discuss the IDP with staff and contractors working at the project site.
 - Implement the IDP when cultural resources or human remains are found at the project site.
- c) If any archeological or historic resources are found while conducting work under this Agreement:
- Immediately stop work and notify the ECOLOGY Program, the Department of Archaeology and Historic Preservation at (360) 586-3064, any affected Tribe, and the local government.
- d) If any human remains are found while conducting work under this Agreement:
- Immediately stop work and notify the local Law Enforcement Agency or Medical Examiner/Coroner's Office, and then the ECOLOGY Program.
- e) Comply with RCW 27.53, RCW 27.44.055, and RCW 68.50.645, and all other applicable local, state, and federal laws protecting cultural resources and human remains.

5. ASSIGNMENT

No right or claim of the RECIPIENT arising under this Agreement shall be transferred or assigned by the RECIPIENT.

6. COMMUNICATION

RECIPIENT shall make every effort to maintain effective communications with the RECIPIENT's designees, ECOLOGY, all affected local, state, or federal jurisdictions, and any interested individuals or groups.

7. COMPENSATION

- a) Any work performed prior to effective date of this Agreement will be at the sole expense and risk of the RECIPIENT. ECOLOGY must sign the Agreement before any payment requests can be submitted.
- b) Payments will be made on a reimbursable basis for approved and completed work as specified in this Agreement.
- c) RECIPIENT is responsible to determine if costs are eligible. Any questions regarding eligibility should be clarified with ECOLOGY prior to incurring costs. Costs that are conditionally eligible require approval by ECOLOGY prior to expenditure.
- d) RECIPIENT shall not invoice more than once per month unless agreed on by ECOLOGY.
- e) ECOLOGY will not process payment requests without the proper reimbursement forms, Progress Report and supporting documentation. ECOLOGY will provide instructions for submitting payment requests.
- f) ECOLOGY will pay the RECIPIENT thirty (30) days after receipt of a properly completed request for payment.
- g) RECIPIENT will receive payment through Washington State's Office of Financial Management's Statewide Payee Desk. To receive payment you must register as a statewide vendor by submitting a statewide vendor registration form and an IRS W-9 form at website, <https://ofm.wa.gov/it-systems/statewide-vendorpayee-services>. If you have questions about the vendor registration process, you can contact Statewide Payee Help Desk at (360) 407-8180 or email PayeeRegistration@ofm.wa.gov.
- h) ECOLOGY may, at its sole discretion, withhold payments claimed by the RECIPIENT if the RECIPIENT fails to satisfactorily comply with any term or condition of this Agreement.
- i) Monies withheld by ECOLOGY may be paid to the RECIPIENT when the work described herein, or a portion thereof, has been completed if, at ECOLOGY's sole discretion, such payment is reasonable and approved according to this Agreement, as appropriate, or upon completion of an audit as specified herein.
- j) RECIPIENT must submit within thirty (30) days after the expiration date of this Agreement, all financial, performance, and other reports required by this agreement. Failure to comply may result in delayed reimbursement.

8. COMPLIANCE WITH ALL LAWS

RECIPIENT agrees to comply fully with all applicable federal, state and local laws, orders, regulations, and permits related to this Agreement, including but not limited to:

- a) RECIPIENT agrees to comply with all applicable laws, regulations, and policies of the United States and the State of

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Washington which affect wages and job safety.

- b) RECIPIENT agrees to be bound by all applicable federal and state laws, regulations, and policies against discrimination.
- c) RECIPIENT certifies full compliance with all applicable state industrial insurance requirements.
- d) RECIPIENT agrees to secure and provide assurance to ECOLOGY that all the necessary approvals and permits required by authorities having jurisdiction over the project are obtained. RECIPIENT must include time in their project timeline for the permit and approval processes.

ECOLOGY shall have the right to immediately terminate for cause this Agreement as provided herein if the RECIPIENT fails to comply with above requirements.

If any provision of this Agreement violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

9. CONFLICT OF INTEREST

RECIPIENT and ECOLOGY agree that any officer, member, agent, or employee, who exercises any function or responsibility in the review, approval, or carrying out of this Agreement, shall not have any personal or financial interest, direct or indirect, nor affect the interest of any corporation, partnership, or association in which he/she is a part, in this Agreement or the proceeds thereof.

10. CONTRACTING FOR GOODS AND SERVICES

RECIPIENT may contract to buy goods or services related to its performance under this Agreement. RECIPIENT shall award all contracts for construction, purchase of goods, equipment, services, and professional architectural and engineering services through a competitive process, if required by State law. RECIPIENT is required to follow procurement procedures that ensure legal, fair, and open competition.

RECIPIENT must have a standard procurement process or follow current state procurement procedures. RECIPIENT may be required to provide written certification that they have followed their standard procurement procedures and applicable state law in awarding contracts under this Agreement.

ECOLOGY reserves the right to inspect and request copies of all procurement documentation, and review procurement practices related to this Agreement. Any costs incurred as a result of procurement practices not in compliance with state procurement law or the RECIPIENT's normal procedures may be disallowed at ECOLOGY's sole discretion.

11. DISPUTES

When there is a dispute with regard to the extent and character of the work, or any other matter related to this Agreement the determination of ECOLOGY will govern, although the RECIPIENT shall have the right to appeal decisions as provided for below:

- a) RECIPIENT notifies the funding program of an appeal request.
- b) Appeal request must be in writing and state the disputed issue(s).
- c) RECIPIENT has the opportunity to be heard and offer evidence in support of its appeal.
- d) ECOLOGY reviews the RECIPIENT's appeal.
- e) ECOLOGY sends a written answer within ten (10) business days, unless more time is needed, after concluding the review. The decision of ECOLOGY from an appeal will be final and conclusive, unless within thirty (30) days from the date of such decision, the RECIPIENT furnishes to the Director of ECOLOGY a written appeal. The decision of the Director or duly authorized representative will be final and conclusive.

The parties agree that this dispute process will precede any action in a judicial or quasi-judicial tribunal.

Appeals of the Director's decision will be brought in the Superior Court of Thurston County. Review of the Director's decision will not be taken to Environmental and Land Use Hearings Office.

Pending final decision of a dispute, the RECIPIENT agrees to proceed diligently with the performance of this Agreement and in

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accordance with the decision rendered.

Nothing in this Agreement will be construed to limit the parties' choice of another mutually acceptable method, in addition to the dispute resolution procedure outlined above.

12. ENVIRONMENTAL DATA STANDARDS

a) RECIPIENT shall prepare a Quality Assurance Project Plan (QAPP) for a project that collects or uses environmental measurement data. RECIPIENTS unsure about whether a QAPP is required for their project shall contact the ECOLOGY Program issuing the grant or loan. If a QAPP is required, the RECIPIENT shall:

- Use ECOLOGY's QAPP Template/Checklist provided by the ECOLOGY, unless ECOLOGY Quality Assurance (QA) officer or the Program QA coordinator instructs otherwise.
- Follow ECOLOGY's Guidelines for Preparing Quality Assurance Project Plans for Environmental Studies, July 2004 (Ecology Publication No. 04-03-030).
- Submit the QAPP to ECOLOGY for review and approval before the start of the work.

b) RECIPIENT shall submit environmental data that was collected on a project to ECOLOGY using the Environmental Information Management system (EIM), unless the ECOLOGY Program instructs otherwise. The RECIPIENT must confirm with ECOLOGY that complete and correct data was successfully loaded into EIM, find instructions at:

<http://www.ecy.wa.gov/eim>.

c) RECIPIENT shall follow ECOLOGY's data standards when Geographic Information System (GIS) data is collected and processed. Guidelines for Creating and Accessing GIS Data are available at:

<https://ecology.wa.gov/Research-Data/Data-resources/Geographic-Information-Systems-GIS/Standards>. RECIPIENT, when requested by ECOLOGY, shall provide copies to ECOLOGY of all final GIS data layers, imagery, related tables, raw data collection files, map products, and all metadata and project documentation.

13. GOVERNING LAW

This Agreement will be governed by the laws of the State of Washington, and the venue of any action brought hereunder will be in the Superior Court of Thurston County.

14. INDEMNIFICATION

ECOLOGY will in no way be held responsible for payment of salaries, consultant's fees, and other costs related to the project described herein, except as provided in the Scope of Work.

To the extent that the Constitution and laws of the State of Washington permit, each party will indemnify and hold the other harmless from and against any liability for any or all injuries to persons or property arising from the negligent act or omission of that party or that party's agents or employees arising out of this Agreement.

15. INDEPENDENT STATUS

The employees, volunteers, or agents of each party who are engaged in the performance of this Agreement will continue to be employees, volunteers, or agents of that party and will not for any purpose be employees, volunteers, or agents of the other party.

16. KICKBACKS

RECIPIENT is prohibited from inducing by any means any person employed or otherwise involved in this Agreement to give up any part of the compensation to which he/she is otherwise entitled to or receive any fee, commission, or gift in return for award of a subcontract hereunder.

17. MINORITY AND WOMEN'S BUSINESS ENTERPRISES (MWBE)

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RECIPIENT is encouraged to solicit and recruit, to the extent possible, certified minority-owned (MBE) and women-owned (WBE) businesses in purchases and contracts initiated under this Agreement.

Contract awards or rejections cannot be made based on MWBE participation; however, the RECIPIENT is encouraged to take the following actions, when possible, in any procurement under this Agreement:

- a) Include qualified minority and women's businesses on solicitation lists whenever they are potential sources of goods or services.
- b) Divide the total requirements, when economically feasible, into smaller tasks or quantities, to permit maximum participation by qualified minority and women's businesses.
- c) Establish delivery schedules, where work requirements permit, which will encourage participation of qualified minority and women's businesses.
- d) Use the services and assistance of the Washington State Office of Minority and Women's Business Enterprises (OMWBE) (866-208-1064) and the Office of Minority Business Enterprises of the U.S. Department of Commerce, as appropriate.

18. ORDER OF PRECEDENCE

In the event of inconsistency in this Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: (a) applicable federal and state statutes and regulations; (b) The Agreement; (c) Scope of Work; (d) Special Terms and Conditions; (e) Any provisions or terms incorporated herein by reference, including the "Administrative Requirements for Recipients of Ecology Grants and Loans"; (f) Ecology Funding Program Guidelines; and (g) General Terms and Conditions.

19. PRESENTATION AND PROMOTIONAL MATERIALS

ECOLOGY reserves the right to approve RECIPIENT's communication documents and materials related to the fulfillment of this Agreement:

- a) If requested, RECIPIENT shall provide a draft copy to ECOLOGY for review and approval ten (10) business days prior to production and distribution.
- b) RECIPIENT shall include time for ECOLOGY's review and approval process in their project timeline.
- c) If requested, RECIPIENT shall provide ECOLOGY two (2) final copies and an electronic copy of any tangible products developed.

Copies include any printed materials, and all tangible products developed such as brochures, manuals, pamphlets, videos, audio tapes, CDs, curriculum, posters, media announcements, or gadgets with a message, such as a refrigerator magnet, and any online communications, such as web pages, blogs, and twitter campaigns. If it is not practical to provide a copy, then the RECIPIENT shall provide a description (photographs, drawings, printouts, etc.) that best represents the item.

Any communications intended for public distribution that uses ECOLOGY's logo shall comply with ECOLOGY's graphic requirements and any additional requirements specified in this Agreement. Before the use of ECOLOGY's logo contact ECOLOGY for guidelines.

RECIPIENT shall acknowledge in the communications that funding was provided by ECOLOGY.

20. PROGRESS REPORTING

- a) RECIPIENT must satisfactorily demonstrate the timely use of funds by submitting payment requests and progress reports to ECOLOGY. ECOLOGY reserves the right to amend or terminate this Agreement if the RECIPIENT does not document timely use of funds.
- b) RECIPIENT must submit a progress report with each payment request. Payment requests will not be processed without a progress report. ECOLOGY will define the elements and frequency of progress reports.
- c) RECIPIENT shall use ECOLOGY's provided progress report format.
- d) Quarterly progress reports will cover the periods from January 1 through March 31, April 1 through June 30, July 1 through

Agreement No: SEANWS-2019-WhCoPW-00001
Project Title: Whatcom Marine Resources Committee (MRC) Operations and Projects
Recipient Name: Whatcom County

September 30, and October 1 through December 31. Reports shall be submitted within thirty (30) days after the end of the quarter being reported.

e) RECIPIENT must submit within thirty (30) days of the expiration date of the project, unless an extension has been approved by ECOLOGY, all financial, performance, and other reports required by the agreement and funding program guidelines. RECIPIENT shall use the ECOLOGY provided closeout report format.

21. PROPERTY RIGHTS

- a) Copyrights and Patents. When the RECIPIENT creates any copyrightable materials or invents any patentable property under this Agreement, the RECIPIENT may copyright or patent the same but ECOLOGY retains a royalty free, nonexclusive, and irrevocable license to reproduce, publish, recover, or otherwise use the material(s) or property, and to authorize others to use the same for federal, state, or local government purposes.
- b) Publications. When the RECIPIENT or persons employed by the RECIPIENT use or publish ECOLOGY information; present papers, lectures, or seminars involving information supplied by ECOLOGY; or use logos, reports, maps, or other data in printed reports, signs, brochures, pamphlets, etc., appropriate credit shall be given to ECOLOGY.
- c) Presentation and Promotional Materials. ECOLOGY shall have the right to use or reproduce any printed or graphic materials produced in fulfillment of this Agreement, in any manner ECOLOGY deems appropriate. ECOLOGY shall acknowledge the RECIPIENT as the sole copyright owner in every use or reproduction of the materials.
- d) Tangible Property Rights. ECOLOGY's current edition of "Administrative Requirements for Recipients of Ecology Grants and Loans," shall control the use and disposition of all real and personal property purchased wholly or in part with funds furnished by ECOLOGY in the absence of state and federal statutes, regulations, or policies to the contrary, or upon specific instructions with respect thereto in this Agreement.
- e) Personal Property Furnished by ECOLOGY. When ECOLOGY provides personal property directly to the RECIPIENT for use in performance of the project, it shall be returned to ECOLOGY prior to final payment by ECOLOGY. If said property is lost, stolen, or damaged while in the RECIPIENT's possession, then ECOLOGY shall be reimbursed in cash or by setoff by the RECIPIENT for the fair market value of such property.
- f) Acquisition Projects. The following provisions shall apply if the project covered by this Agreement includes funds for the acquisition of land or facilities:
1. RECIPIENT shall establish that the cost is fair value and reasonable prior to disbursement of funds provided for in this Agreement.
 2. RECIPIENT shall provide satisfactory evidence of title or ability to acquire title for each parcel prior to disbursement of funds provided by this Agreement. Such evidence may include title insurance policies, Torrens certificates, or abstracts, and attorney's opinions establishing that the land is free from any impediment, lien, or claim which would impair the uses intended by this Agreement.
- g) Conversions. Regardless of the Agreement expiration date, the RECIPIENT shall not at any time convert any equipment, property, or facility acquired or developed under this Agreement to uses other than those for which assistance was originally approved without prior written approval of ECOLOGY. Such approval may be conditioned upon payment to ECOLOGY of that portion of the proceeds of the sale, lease, or other conversion or encumbrance which monies granted pursuant to this Agreement bear to the total acquisition, purchase, or construction costs of such property.

22. RECORDS, AUDITS, AND INSPECTIONS

RECIPIENT shall maintain complete program and financial records relating to this Agreement, including any engineering documentation and field inspection reports of all construction work accomplished.

All records shall:

- a) Be kept in a manner which provides an audit trail for all expenditures.
- b) Be kept in a common file to facilitate audits and inspections.
- c) Clearly indicate total receipts and expenditures related to this Agreement.

Agreement No: SEANWS-2019-WhCoPW-00001

Project Title: Whatcom Marine Resources Committee (MRC) Operations and Projects

Recipient Name: Whatcom County

d) Be open for audit or inspection by ECOLOGY, or by any duly authorized audit representative of the State of Washington, for a period of at least three (3) years after the final grant payment or loan repayment, or any dispute resolution hereunder. RECIPIENT shall provide clarification and make necessary adjustments if any audits or inspections identify discrepancies in the records.

ECOLOGY reserves the right to audit, or have a designated third party audit, applicable records to ensure that the state has been properly invoiced. Any remedies and penalties allowed by law to recover monies determined owed will be enforced. Repetitive instances of incorrect invoicing or inadequate records may be considered cause for termination.

All work performed under this Agreement and any property and equipment purchased shall be made available to ECOLOGY and to any authorized state, federal or local representative for inspection at any time during the course of this Agreement and for at least three (3) years following grant or loan termination or dispute resolution hereunder.

RECIPIENT shall provide right of access to ECOLOGY, or any other authorized representative, at all reasonable times, in order to monitor and evaluate performance, compliance, and any other conditions under this Agreement.

23. RECOVERY OF FUNDS

The right of the RECIPIENT to retain monies received as reimbursement payments is contingent upon satisfactory performance of this Agreement and completion of the work described in the Scope of Work.

All payments to the RECIPIENT are subject to approval and audit by ECOLOGY, and any unauthorized expenditure(s) or unallowable cost charged to this Agreement shall be refunded to ECOLOGY by the RECIPIENT.

RECIPIENT shall refund to ECOLOGY the full amount of any erroneous payment or overpayment under this Agreement.

RECIPIENT shall refund by check payable to ECOLOGY the amount of any such reduction of payments or repayments within thirty (30) days of a written notice. Interest will accrue at the rate of twelve percent (12%) per year from the time ECOLOGY demands repayment of funds.

Any property acquired under this Agreement, at the option of ECOLOGY, may become ECOLOGY's property and the RECIPIENT's liability to repay monies will be reduced by an amount reflecting the fair value of such property.

24. SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, and to this end the provisions of this Agreement are declared to be severable.

25. STATE ENVIRONMENTAL POLICY ACT (SEPA)

RECIPIENT must demonstrate to ECOLOGY's satisfaction that compliance with the requirements of the State Environmental Policy Act (Chapter 43.21C RCW and Chapter 197-11 WAC) have been or will be met. Any reimbursements are subject to this provision.

26. SUSPENSION

When in the best interest of ECOLOGY, ECOLOGY may at any time, and without cause, suspend this Agreement or any portion thereof for a temporary period by written notice from ECOLOGY to the RECIPIENT. RECIPIENT shall resume performance on the next business day following the suspension period unless another day is specified by ECOLOGY.

27. SUSTAINABLE PRACTICES

In order to sustain Washington's natural resources and ecosystems, the RECIPIENT is fully encouraged to implement sustainable practices and to purchase environmentally preferable products under this Agreement.

a) Sustainable practices may include such activities as: use of clean energy, use of double-sided printing, hosting low impact meetings, and setting up recycling and composting programs.

b) Purchasing may include such items as: sustainably produced products and services, EPEAT registered computers and

Agreement No: SEANWS-2019-WhCoPW-00001

Project Title: Whatcom Marine Resources Committee (MRC) Operations and Projects

Recipient Name: Whatcom County

imaging equipment, independently certified green cleaning products, remanufactured toner cartridges, products with reduced packaging, office products that are refillable, rechargeable, and recyclable, 100% post-consumer recycled paper, and toxic free products.

For more suggestions visit ECOLOGY's web page, Green Purchasing,

<https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Sustainable-purchasing>.

28. TERMINATION

a) For Cause

ECOLOGY may terminate for cause this Agreement with a seven (7) calendar days prior written notification to the RECIPIENT, at the sole discretion of ECOLOGY, for failing to perform an Agreement requirement or for a material breach of any term or condition. 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.

Failure to Commence Work. ECOLOGY reserves the right to terminate this Agreement if RECIPIENT fails to commence work on the project funded within four (4) months after the effective date of this Agreement, or by any date mutually agreed upon in writing for commencement of work, or the time period defined within the Scope of Work.

Non-Performance. The obligation of ECOLOGY to the RECIPIENT is contingent upon satisfactory performance by the RECIPIENT of all of its obligations under this Agreement. In the event the RECIPIENT unjustifiably fails, in the opinion of ECOLOGY, to perform any obligation required of it by this Agreement, ECOLOGY may refuse to pay any further funds, terminate in whole or in part this Agreement, and exercise any other rights under this Agreement.

Despite the above, the RECIPIENT shall not be relieved of any liability to ECOLOGY for damages sustained by ECOLOGY and the State of Washington because of any breach of this Agreement by the RECIPIENT. ECOLOGY may withhold payments for the purpose of setoff until such time as the exact amount of damages due ECOLOGY from the RECIPIENT is determined.

b) For Convenience

ECOLOGY may terminate for convenience this Agreement, in whole or in part, for any reason when it is the best interest of ECOLOGY, with a thirty (30) calendar days prior written notification to the RECIPIENT, except as noted below. 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.

Non-Allocation of Funds. ECOLOGY's ability to make payments is contingent on availability of funding. In the event funding from state, federal or other sources is withdrawn, reduced, or limited in any way after the effective date and prior to the completion or expiration date of this Agreement, ECOLOGY, at its sole discretion, may elect to terminate the Agreement, in whole or part, or renegotiate the Agreement, subject to new funding limitations or conditions. ECOLOGY may also elect to suspend performance of the Agreement until ECOLOGY determines the funding insufficiency is resolved. ECOLOGY may exercise any of these options with no notification or restrictions, although ECOLOGY will make a reasonable attempt to provide notice.

In the event of termination or suspension, ECOLOGY will reimburse eligible costs incurred by the RECIPIENT through the effective date of termination or suspension. Reimbursed costs must be agreed to by ECOLOGY and the RECIPIENT. In no event shall ECOLOGY's reimbursement exceed ECOLOGY's total responsibility under the agreement and any amendments. If payments have been discontinued by ECOLOGY due to unavailable funds, the RECIPIENT shall not be obligated to repay monies which had been paid to the RECIPIENT prior to such termination.

RECIPIENT's obligation to continue or complete the work described in this Agreement shall be contingent upon availability of funds by the RECIPIENT's governing body.

c) By Mutual Agreement

Agreement No: SEANWS-2019-WhCoPW-00001

Project Title: Whatcom Marine Resources Committee (MRC) Operations and Projects

Recipient Name: Whatcom County

ECOLOGY and the RECIPIENT may terminate this Agreement, in whole or in part, at any time, by mutual written agreement.

d) In Event of Termination

All finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, reports or other materials prepared by the RECIPIENT under this Agreement, at the option of ECOLOGY, will become property of ECOLOGY and the RECIPIENT shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Nothing contained herein shall preclude ECOLOGY from demanding repayment of all funds paid to the RECIPIENT in accordance with Recovery of Funds, identified herein.

29. THIRD PARTY BENEFICIARY

RECIPIENT shall ensure that in all subcontracts entered into by the RECIPIENT pursuant to this Agreement, the state of Washington is named as an express third party beneficiary of such subcontracts with full rights as such.

30. WAIVER

Waiver of a default or breach of any provision of this Agreement is not a waiver of any subsequent default or breach, and will not be construed as a modification of the terms of this Agreement unless stated as such in writing by the authorized representative of ECOLOGY.



Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2019-498

File ID:	AB2019-498	Version:	1	Status:	Agenda Ready
File Created:	09/24/2019	Entered by:	BBushaw@co.whatcom.wa.us		
Department:	Public Works Department	File Type:	Contract (WCFCZDBS)		
Assigned to:	Council Finance and Administrative Services Committee				Final Action:
Agenda Date:	10/08/2019	Enactment #:			

Primary Contact Email: sdraper@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Birch Bay Water and Sewer District for implementation of stormwater and water quality programs (Council acting as the Whatcom County Flood Control Zone District Board of Supervisors)

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

An interlocal agreement between Whatcom County Flood Control Zone District and the Birch Bay Water and Sewer District concerning implementation of mutually beneficial stormwater and water quality programs

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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**WHATCOM COUNTY
PUBLIC WORKS DEPARTMENT**

Jon Hutchings
Director



STORMWATER
322 N. Commercial, Suite 224
Bellingham, WA 98225
Main: (360) 778-6210
FAX: (360) 778-6201
www.whatcomcounty.us

MEMORANDUM

TO: The Whatcom County Flood Control Zone District Board of Supervisors and
The Honorable Jack Louws, County Executive

THROUGH: Jon Hutchings, Public Works Director *JH*

FROM: Kraig Olason, Stormwater Program Manager *KO*

DATE: September 5, 2019

RE: Interlocal Agreement between Whatcom County Flood Control Zone
District and Birch Bay Water and Sewer District

Requested Action

Please find attached for your review and approval two (2) originals of an interlocal agreement between the Birch Bay Water and Sewer District (BBWSD) and Whatcom County Flood Control Zone District (FCZD) concerning implementation of mutually beneficial programs.

Background and Purpose

BBWSD works regularly with the FCZD through its Sub-Flood Zone, the Birch Bay Watershed and Aquatic Resources Management (BBWARM) district. Both districts share the same goals of protecting Birch Bay's water quality, managing stormwater and providing critical utility services to rate payers in the districts. During major storm events, significant volumes of stormwater effluent enter the BBWSD's sanitary sewer system. Excessive stormwater increases treatment plant costs and sewer rates.

The majority of BBWARM rate payers are also BBWSD rate payers. Collaborative efforts that seek to improve stormwater drainage options can often result in reduced quantities of stormwater entering the systems, which can reduce the amount of effluent requiring treatment and subsequent treatment costs. In 2011, an interlocal agreement (ILA) was signed by the two districts that describes the relationship between the two agencies, common areas of concern and shared goals. This agreement also provides a rationale for dispensing with charging fees by either party and emphasizes the types of planning, programming and collaborative projects that would be undertaken. This agreement expired at the end of 2016. Due to a collaborative construction project in 2019, the attached five-year ILA includes minor revisions to reflect recent changes and updates.

Funding Amount and Source

No funding source is required; fees are more than off-set by collaborative programs and current costs of stormwater treatment.

Please contact Holly Faulstich at extension 6290 if you have any questions or concerns regarding the terms of this agreement.

Encl.

WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No. _____

Originating Department:	Public Works
Division/Program: (i.e. Dept. Division and Program)	Stormwater/BBWARM – 907690
Contract or Grant Administrator:	Kraig Olason, Stormwater Program Manager
Contractor's / Agency Name:	Birch Bay Water & Sewer District
Is this a New Contract? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If not, is this an Amendment or Renewal to an Existing Contract? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: 201111014	
Does contract require Council Approval? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> 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="checkbox"/> No <input checked="" type="checkbox"/> If yes, grantor agency contract number(s): _____ CFDA#: _____	
Is this contract grant funded? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes, Whatcom County grant contract number(s): _____	
Is this contract the result of a RFP or Bid process? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes, RFP and Bid number(s): _____ Contract Cost Center: 169250	
Is this agreement excluded from E-Verify? No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> 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 type="checkbox"/> Contract work is for less than 120 days. <input checked="" 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): \$ 0 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 : 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: <i>The BBWSD will work collaboratively with Whatcom County Public Works Staff in the following areas: hold regular meetings, conduct joint planning for major infrastructure projects, share information and implement other collaborative program areas such as public education, inflow and infiltration upgrades, major and minor infrastructure projects, subwatershed masterplan development and other activities of mutual benefit.</i>	
Term of Contract:	N/A
Expiration Date:	12/31/2024

Contract Routing:	1. Prepared by: <u>Holly Faulstich</u>	Date: <u>9/6/19</u>
	2. Attorney signoff: <u>Christopher Quinn</u>	Date: <u>9/6/19</u>
	3. AS Finance reviewed: <u>bbennett</u>	Date: <u>9/17/19</u>
	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: _____

Interlocal Agreement

Whatcom County Flood Control Zone District and Birch Bay Water and Sewer District for the Birch Bay Watershed Aquatic and Resources Management District Program Implementation

This Interlocal Agreement ("Agreement") is entered into by and between the Whatcom County Flood Control Zone District and the Birch Bay Water and Sewer District ("BBWSD"), referred to herein collectively as the "Parties," pursuant to Chapter 39.34 RCW.

WHEREAS, the BBWSD and the Whatcom County Flood Control Zone District ("FCZD") through its Sub-Flood Zone, the Birch Bay Watershed and Aquatic Resources Management District ("BBWARM"), desire to work cooperatively to implement programs that are mutually beneficial; and

WHEREAS, the Parties share common goals and compatible programs that seek to protect Birch Bay's water quality by minimizing impacts of development and limiting negative environmental and economic effects of stormwater; and

WHEREAS, stormwater enters the BBWSD sanitary sewer system in the form of infiltration and inflow (I & I) and is conveyed and treated by BBWSD at a substantial cost to BBWSD rate payers; and

WHEREAS, BBWSD operates under terms of NPDES Permit WA-002955-6 that prohibits discharge to the wastewater treatment plant of stormwater and other direct inflow sources and requires that the BBWSD endeavor to remove excess infiltration and inflow from its system; and

WHEREAS, the BBWSD is committed to removing excess infiltration and inflow from its system; and

WHEREAS, efficiencies gained through improved stormwater conveyance and water quality treatment systems will save community sewer rate payers in both sanitary sewer operation costs as well as capital costs required for increased conveyance and treatment plant capacity; and

WHEREAS, current costs of treating stormwater incurred by BBWSD exceeds their assessed BBWARM fees; and

WHEREAS, the majority of the rate payers in the BBWARM District are also rate payers of the BBWSD; and

WHEREAS, collaboration on public education programs, information sharing, joint project planning and coordination of infrastructure development is in the best interest of the rate payers and the community,
NOW THEREFORE, the Parties agree as follows:

- I. *Purpose:* The purpose of this Agreement is to set the terms whereby the Parties will work together on mutually beneficial projects and programs in lieu of charging each other rates or fees for each Party's respective services.
- II. *Administration:* No new or separate legal or administrative entity is created to administer the provisions of this agreement.
- III. *Whatcom County Flood Control Zone District Responsibilities:* The FCZD through the BBWARM Sub-Flood Zone District will implement a comprehensive stormwater program within the

BBWARM District Boundaries area. Implementation of said program will include regular communication and interaction with the BBWSD. Specific activities of the FCZD shall include:


- a. Regular meetings with BBWSD – annually or more often as needed
- b. Joint planning with BBWSD for major infrastructure projects
- c. Information sharing with BBWSD
- d. Collaborative program development with BBWSD, such as:
 - i. Public education
 - ii. Inflow and infiltration program
 - iii. Major and minor infrastructure projects
 - iv. Other activities of mutual benefit

- IV. *Birch Bay Water and Sewer District Responsibilities:* BBWSD hereby agrees to work collaboratively with BBWARM where deemed mutually beneficial to both Parties, including items “III a-d” above and handling infiltration and inflow entering the sanitary sewer system.
- V. *Payment:* Any payments under this Agreement shall be in the form of reimbursement for costs incurred for programs or special projects. Each request for payment herein must be agreed upon in writing by the Parties prior to performance of said services and prior to incurring said costs and is to be submitted in the usual form of a claim for services rendered or costs incurred supported by detailed documentation of the services actually performed or costs incurred so as to comply with auditing requirements. Each reimbursement payment shall be made upon approved claims and in accordance with customary procedures. Reimbursement payments due pursuant to this paragraph shall survive termination of this Agreement.
- VI. *Fees:* Neither Party will impose fees for utility service provided; except as provided herein. The FCZD and BBWARM will not charge the BBWSD for fees associated with impervious surfaces attributed to the BBWSD, and the BBWSD will not charge BBWARM for any costs associated with BBWSD’s treatment of stormwater entering the sanitary sewer system. Notwithstanding the foregoing, the fee exemption set forth herein shall not apply to connection or service charges due to BBWSD in the event FCZD or BBWARM require water or sewer utility service for an office or other facility.
- VII. *Term:* This Agreement shall be in effect retroactive to January 1, 2019 and shall expire on December 31, 2024. This Agreement may be renewed for additional five (5) year terms by mutual written agreement of both Parties hereto.
- VIII. *Termination:* This Agreement may be terminated by any Party effective January 1st of any year in which this Agreement is in effect by giving written notice to the other Party on or before September 30th of the immediately preceding year.
- IX. *Responsible Persons:* The persons responsible for administration of this Agreement shall be the Whatcom County Public Works Director and the BBWSD General Manager, or their designees.

- X. *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.
- XI. *Indemnification:* Each Party agrees to be responsible and assume liability for its own wrongful and/or negligent acts or omissions or those of their officials, officers, agents, or employees to the fullest extent required by law, and further agree to save, indemnify, defend and hold the other Party harmless from any such liability. It is further provided that no liability shall attach to the Parties by reason of entering into this Agreement except as expressly provided herein.
- XII. *Modifications:* This 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.
- XIII. *Applicable Law:* In the performance of this Agreement, it is mutually understood and agreed upon by the Parties hereto that this Agreement shall be governed by the laws of the State of Washington both as to interpretation and performance, and the venue of any action arising herefrom shall be in the Superior Court of the State of Washington in and for Whatcom County.
- XIV. *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 that can be given effect without the invalid term, condition, or application. To this end the terms and conditions of this agreement are declared severable.
- XV. *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.
- XVI. *Recordation:* Upon execution of this Agreement, Whatcom County FCZD shall record a copy of it with the office of the Whatcom County Auditor pursuant to the requirements of RCW 39.34 and provide a copy of same to BBWSD.

IN WITNESS WHEREOF, the parties have signed this Agreement this _____ of _____, 2019.

BIRCH BAY WATER AND SEWER DISTRICT



By: Dan Eisses, General Manager

WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT

By: Jack Louws, Whatcom County Executive

see attached Whatcom
County signature page

STATE OF WASHINGTON)
) ss
COUNTY OF WHATCOM)

On this 22nd day of September, 2019, before me personally appeared Dan Eisses, to me known to be the General Manager of the Birch Bay Water and Sewer District, who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.



Sandra L. McMillan
NOTARY PUBLIC in and for the State of Washington, residing at
7096 Point Whitcomb Birch Bay, WA
My commission expires November 5, 2021

STATE OF WASHINGTON)
) ss
COUNTY OF WHATCOM)

On this ____ day of _____, 2019, before me personally appeared Jack Louws, to me known to be the Board of Supervisors Chair of Whatcom County Flood Control Zone District, who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

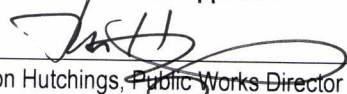
NOTARY PUBLIC in and for the State of Washington, residing at

My commission expires _____.

see attached Whatcom County
Signature page

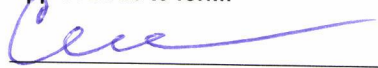
WHATCOM COUNTY:

Recommended for Approval:


Jon Hutchings, Public Works Director

9/25/19
Date

Approved as to form:


Christopher Quinn
Senior Deputy Prosecuting Attorney-Civil Division

9/26/19
Date

Approved:

Accepted for Whatcom County:

By: _____
Jack Louws, Whatcom County Executive for the Flood Control Zone District

STATE OF WASHINGTON)
) ss
COUNTY OF WHATCOM)

On this _____ day of _____, 20 __, before me personally appeared Jack Louws, to me known to be the Executive of Whatcom County, who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

NOTARY PUBLIC in and for the State of Washington, residing at
_____. My commission expires _____.



Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2019-494

File ID:	AB2019-494	Version:	1	Status:	Agenda Ready
File Created:	09/23/2019	Entered by:	RKlein@co.whatcom.wa.us		
Department:	Public Works Department	File Type:	Contract (WCFCZDBS)		
Assigned to:	Council Finance and Administrative Services Committee	Final Action:			
Agenda Date:	10/08/2019	Enactment #:			

Primary Contact Email: sdraper@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into a contract between Whatcom County and Geneva Consulting Services for coordination of the Whatcom Lead Integrating Organization, in the amount of \$68,616.11

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

The WRIA 1 (Water Resources Inventory Area No.1) Watershed Management Board acts as Local Integrating Organization (LIO) for water resources programs in the WRIA 1 region. The WRIA 1 Management Team met on August 1, 2019 and approved the draft FFY 2019 LIO Coordination Scope of Work for Whatcom County Flood Control Zone District as fiscal agent, acting on behalf of the WRIA 1 Watershed Management Board, for negotiating a contract with the Puget Sound Partnership.

The purpose of this contract is to implement the scope of work in the LIO grant agreement to coordinate the Whatcom County LIO including the following tasks: 1) organize, support, administer, facilitate, and coordinate a Local Integrating Organization, 2) steward and implement the Puget Sound Action Agenda 2018-2022, 3) performance management, and 4) support communication, adaptive management, and synthesis of LIO Ecosystem Recovery Plans. Geneva Consulting Services was chosen for this contract through a competitive selection process using the annual Whatcom County Request for Qualifications (RFQ 19-01)

HISTORY OF LEGISLATIVE FILE

Date:

Acting Body:

Action:

Sent To:

Jon Hutchings
Director



NATURAL RESOURCES
322 N. Commercial, Suite 110
Bellingham, WA 98225
Telephone: (360) 778-6230
FAX: (360) 778-6231
www.whatcomcounty.us

MEMORANDUM

TO: The Honorable Jack Louws, and the Honorable Members of the Whatcom County Flood Control Zone District Board of Supervisors

THROUGH: Jon Hutchings, Public Works Director *JH*

FROM: Gary Stoyka, Natural Resources Manager *WS*
Austin Rose, Planner I

RE: Contract between Whatcom County Flood Control Zone District and Geneva Consulting Services for Coordination of the Whatcom County LIO

DATE: September 11, 2019

Enclosed are two (2) originals of a contract between Whatcom County Flood Control Zone District (FCZD) and Geneva Consulting Services for coordination of the Whatcom Local Integrating Organization (LIO) for your review and signature.

▪ Background and Purpose

The WRIA 1 Watershed Management Board acts as the Local Integrating Organization (LIO) for protection and recovery of the WRIA in coordination with the Puget Sound Partnership. The WRIA 1 Management Team met on August 1, 2019 and approved the draft FFY 2019 LIO Coordination Scope of Work for FCZD as fiscal agent, acting on behalf of the WRIA 1 Watershed Management Board, for negotiating a grant agreement with the Puget Sound Partnership. The FCZD received a grant agreement from the Puget Sound Partnership (Agreement Number: 2020-21) to provide funding for LIO Coordination.

The purpose of this contract is to implement the scope of work in the LIO grant agreement to coordinate the Whatcom County LIO including the following tasks: 1) organize, support, administer, facilitate, and coordinate a Local Integrating Organization, 2) steward and implement the Puget Sound Action Agenda 2018-2022, 3) performance management, and 4) support communication, adaptive management, and synthesis of LIO Ecosystem Recovery Plans. Geneva Consulting Services was chosen for this contract through a competitive selection process using the annual Whatcom County Request for Qualifications (RFQ 19-01).

▪ Funding Amount and Source

This contract, for the amount of \$68,616.11, is fully funded through a grant from the Puget Sound Partnership. The FCZD has adequate budget authority in the 2019 budget and in the proposed 2020 budget for this contract.

Please contact Gary Stoyka at extension 6218 or Austin Rose at extension 6286, if you have any questions or concerns regarding the terms of this agreement,

Enclosures

WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No. _____

Originating Department:		Public Works	
Division/Program: (i.e. Dept. Division and Program)		Natural Resources/Whatcom LIO 907010	
Contract or Grant Administrator:		Gary Stoyka/Austin Rose	
Contractor's / Agency Name:		Geneva Consulting Services	
Is this a New Contract? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		If not, is this an Amendment or Renewal to an Existing Contract? If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____	
Does contract require Council Approval? Already approved? Council Approved Date: _____		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If No, include WCC: _____ (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)	
Is this a grant agreement? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		If yes, grantor agency contract number(s): _____ CFDA#: _____	
Is this contract grant funded? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		If yes, Whatcom County grant contract number(s): <u>pending</u>	
Is this contract the result of a RFP or Bid process? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		Contract Cost Center: <u>169121</u>	
If yes, RFP and Bid number(s): <u>RFP 19-01</u>			
Is this agreement excluded from E-Verify? No <input type="checkbox"/> Yes <input checked="" type="checkbox"/>		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 checked="" type="checkbox"/> Contract work is for less than \$100,000. <input type="checkbox"/> Contract work is for less than 120 days. <input type="checkbox"/> Interlocal Agreement (between Governments).			
Contract Amount:(sum of original contract amount and any prior amendments): \$ <u>68,616.11</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: 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: The purpose of this contract is to implement the scope of work in the LIO grant agreement to coordinate the Whatcom County LIO including the following tasks: 1) organize, support, administer, facilitate, and coordinate a Local Integrating Organization, 2) steward and implement the Puget Sound Action Agenda 2018-2022, 3) performance management, and 4) support communication, adaptive management, and synthesis of LIO Ecosystem Recovery Plans.			
Term of Contract: <u>October 1, 2019</u>		Expiration Date: <u>September 30, 2020</u>	
Contract Routing:			
1. Prepared by: <u>Austin Rose</u>		Date: <u>09/11/19</u>	
2. Attorney signoff: <u>Christopher Quinn</u>		Date: <u>9/16/2019</u>	
3. AS Finance reviewed: <u>M Caldwell</u>		Date: <u>9/12/19</u>	
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 CONTRACT
ATTORNEY REVIEW**
[submit via electronic transmittal]

Whatcom County Contract No. _____
--

<i>Originating Department:</i>	<i>Public Works – Natural Resources</i>
<i>Contact Person:</i>	<i>Austin Rose – Planner I</i>
<i>Contractor's Name:</i>	<i>Geneva Consulting Services</i>
<u><i>First Review:</i></u> <input checked="" type="checkbox"/> Approved As Is; Prepare Hardcopy for Signoff CDQ <input type="checkbox"/> Needs Revision; Attorney Comments for suggested changes: 	
<u><i>Second Review:</i></u> <input type="checkbox"/> Implemented Attorney Corrections as Indicated <input type="checkbox"/> Approved; Prepare Hardcopy for Signoff <input type="checkbox"/> Additional Corrections Needed; Attorney Comments for suggested changes: 	
<i>Please indicate any Special Dates or clauses that require calendaring:</i> 	

Leave this page attached to summary coversheet until final signoff by attorney. Do not leave attached when routing to Contractor for signature.

Whatcom County Contract No. _____

CONTRACT FOR SERVICES AGREEMENT
Between Whatcom County Flood Control Zone District and Geneva Consulting Services

Geneva Consulting Services, hereinafter called **Contractor**, and the Whatcom County Flood Control Zone District, hereinafter referred to as **County**, agree and contract as set forth in this Agreement, including:

General Conditions, pp. 3 to 9,
Exhibit A (Scope of Work), pp. 10 to 12,
Exhibit B (Compensation), pp. 13
Exhibit C (Certificate of Insurance), pp. 14
Exhibit D (Grant Terms and Conditions), pp. 15 to 23

Copies of these items are attached hereto and incorporated herein by this reference as if fully set forth herein.

The term of this Agreement shall commence on the 1st day of October, 2019, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 30th day of September, 2020.

The general purpose or objective of this Agreement is to: support the coordination of the Whatcom Local Integrating Organization (LIO), as more fully and definitively described in Exhibit A hereto. The language of Exhibit A controls in case of any conflict between it and that provided here.

The maximum consideration for the initial term of this agreement or for any renewal term shall not exceed \$ 68,616.11. The Contract Number, set forth above, shall be included on all billings or correspondence in connection therewith.

Contractor acknowledges and by signing this contract agrees that the Indemnification provisions set forth in Paragraphs 11.1, 21.1, 30.1, 31.2, 32.1, 34.2, and 34.3, if included, are totally and fully part of this contract and have been mutually negotiated by the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement this 20 day of September, 20 19.

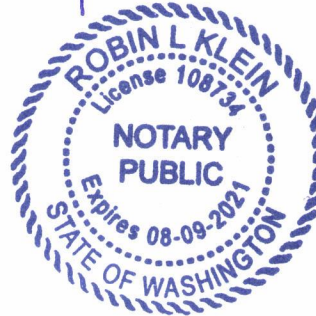
CONTRACTOR:

GENEVA CONSULTING SERVICES

Becky Peterson
Becky Peterson, Sole Proprietor

STATE OF WASHINGTON)
COUNTY OF Whatcom) ss.

On this 20 day of Sept, 20 19 before me personally appeared Becky Peterson to me known to be the sole proprietor (title) of Geneva Consult (Company) and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.



Robin Klein
NOTARY PUBLIC in and for the State of Washington, residing at Poclingham. My commission expires 8/9/21.

Recommended for Approval:

Date _____

Christopher Quinn D
Senior Civil Deputy Prosecuting Attorney

Accepted for Whatcom County on behalf of the Whatcom County Flood Control Zone District

By: _____ Date _____
Jack Louws
County Executive

STATE OF WASHINGTON)
) ss
COUNTY OF WHATCOM)

On this _____ day of _____, 20 __, before me personally appeared Jack Louws, to me known to be the Executive of Whatcom County, who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

NOTARY PUBLIC in and for the State of Washington, residing at _____
_____. My commission expires _____

CONTRACTOR INFORMATION:

Geneva Consulting Services

Becky Peterson
Sole Proprietor

Address:
1020 Austin St.
Bellingham, WA 98229

Mailing Address:
1020 Austin St.
Bellingham, WA 98229

Contact Name: Becky Peterson

Contact Phone: 360-392-1301

Contact Email: genevaconsulting@comcast.net

GENERAL CONDITIONS

Series 00-09: Provisions Related to Scope and Nature of Services

0.1 Scope of Services:

The Contractor agrees to provide to the County services and any materials as set forth in the project narrative identified as Exhibit "A", during the agreement period. No material, labor, or facilities will be furnished by the County, unless otherwise provided for in the Agreement.

Series 10-19: Provisions Related to Term and Termination

10.1 Term:

Services provided by Contractor prior to or after the term of this contract shall be performed at the expense of Contractor and are not compensable under this contract unless both parties hereto agree to such provision in writing. The term of this Agreement may be extended by mutual agreement of the parties; provided, however, that the Agreement is in writing and signed by both parties.

10.2 Extension: Not Applicable

11.1 Termination for Default:

If the Contractor defaults by failing to perform any of the obligations of the contract or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the County may, by depositing written notice to the Contractor in the U.S. mail, first class postage prepaid, terminate the contract, and at the County's option, obtain performance of the work elsewhere. Termination shall be effective upon Contractor's receipt of the written notice, or within three (3) days of the mailing of the notice, whichever occurs first. If the contract is terminated for default, the Contractor shall not be entitled to receive any further payments under the contract until all work called for has been fully performed. Any extra cost or damage to the County resulting from such default(s) shall be deducted from any money due or coming due to the Contractor. The Contractor shall bear any extra expenses incurred by the County in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the County by reason of such default.

11.2 Termination for Reduction in Funding:

In the event that funding from State, Federal or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement, and prior to its normal completion, the County may summarily terminate this Agreement as to the funds withdrawn, reduced, or limited, notwithstanding any other termination provisions of this Agreement. If the level of funding withdrawn, reduced or limited is so great that the County deems that the continuation of the programs covered by this Agreement is no longer in the best interest of the County, the County may summarily terminate this Agreement in whole, notwithstanding any other termination provisions of this Agreement. Termination under this section shall be effective upon receipt of written notice as specified herein, or within three days of the mailing of the notice, whichever occurs first.

11.3 Termination for Public Convenience:

The County may terminate the Agreement in whole or in part whenever the County determines, in its sole discretion, that such termination is in the interests of the County. Whenever the Agreement is terminated in accordance with this paragraph, the Contractor shall be entitled to payment for actual work performed at unit contract prices for completed items of work. An equitable adjustment in the contract price for partially completed items of work will be made, but such adjustment shall not include provision for loss of anticipated profit on deleted or uncompleted work. Termination of this Agreement by the County at any time during the term, whether for default or convenience, shall not constitute breach of contract by the County.

Series 20-29: Provisions Related to Consideration and Payments

20.1 Accounting and Payment for Contractor Services:

Payment to the Contractor for services rendered under this Agreement shall be as set forth in Exhibit "B." Where Exhibit "B" requires payments by the County, payment shall be based upon written claims supported, unless otherwise provided in Exhibit "B," by documentation of units of work actually performed and amounts earned, including, where appropriate, the actual number of days worked each month, total number of hours for the month, and the total dollar payment requested, so as to comply with municipal auditing requirements.

Unless specifically stated in Exhibit "B" or approved in writing in advance by the official executing this Agreement for the County or his designee (hereinafter referred to as the "Administrative Officer") the County will not reimburse the Contractor for any costs or expenses incurred by the Contractor in the performance of this contract. Where required, the County shall, upon receipt of appropriate documentation, compensate the Contractor, no more often than monthly, in accordance with the County's customary procedures, pursuant to the fee schedule set forth in Exhibit "B."

21.1 Taxes:

The Contractor understands and acknowledges that the County will not withhold Federal or State income taxes. Where required by State or Federal law, the Contractor authorizes the County to withhold for any taxes other than income taxes (i.e., Medicare). All compensation received by the Contractor will be reported to the Internal Revenue Service at the end of the calendar year in accordance with the applicable IRS regulations. It is the responsibility of the Contractor to make the necessary estimated tax payments throughout the year, if any, and the Contractor is solely liable for any tax obligation arising from the Contractor's performance of this Agreement. The Contractor hereby agrees to indemnify the County against any demand to pay taxes arising from the Contractor's failure to pay taxes on compensation earned pursuant to this Agreement.

The County will pay sales and use taxes imposed on goods or services acquired hereunder as required by law. The Contractor must pay all other taxes, including, but not limited to, Business and Occupation Tax, taxes based on the Contractor's gross or net income, or personal property to which the County does not hold title. The County is exempt from Federal Excise Tax.

22.1 Withholding Payment:

In the event the County's Administrative Officer determines that the Contractor has failed to perform any obligation under this Agreement within the times set forth in this Agreement, then the County may withhold from amounts otherwise due and payable to Contractor the amount determined by the County as necessary to cure the default, until the Administrative Officer determines that such failure to perform has been cured. Withholding under this clause shall not be deemed a breach entitling Contractor to termination or damages, provided that the County promptly gives notice in writing to the Contractor of the nature of the default or failure to perform, and in no case more than 10 days after it determines to withhold amounts otherwise due. A determination of the Administrative Officer set forth in a notice to the Contractor of the action required and/or the amount required to cure any alleged failure to perform shall be deemed conclusive, except to the extent that the Contractor acts within the times and in strict accord with the provisions of the Disputes clause of this Agreement. The County may act in accordance with any determination of the Administrative Officer which has become conclusive under this clause, without prejudice to any other remedy under the Agreement, to take all or any of the following actions: (1) cure any failure or default, (2) to pay any amount so required to be paid and to charge the same to the account of the Contractor, (3) to set off any amount so paid or incurred from amounts due or to become due the Contractor. In the event the Contractor obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to Contractor by reason of good faith withholding by the County under this clause.

23.1 Labor Standards:

The Contractor agrees to comply with all applicable state and federal requirements, including but not limited to those pertaining to payment of wages and working conditions, in accordance with RCW 39.12.040, the Prevailing Wage Act; the Americans with Disabilities Act of 1990; the Davis-Bacon Act; and the Contract Work Hours and Safety Standards Act providing for weekly payment of prevailing wages, minimum overtime pay, and providing that no laborer or mechanic shall be required to work in surroundings or under conditions which are unsanitary, hazardous, or dangerous to health and safety as determined by regulations promulgated by the Federal Secretary of Labor and the State of Washington.

Series 30-39: Provisions Related to Administration of Agreement

30.1 Independent Contractor:

The Contractor's services shall be furnished by the Contractor as an independent contractor, and nothing herein contained shall be construed to create a relationship of employer-employee or master-servant, but all payments made hereunder and all services performed shall be made and performed pursuant to this Agreement by the Contractor as an independent contractor.

The Contractor acknowledges that the entire compensation for this Agreement is specified in Exhibit "B" and the Contractor is not entitled to any benefits including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, or any other rights or privileges afforded to employees of the County. The Contractor represents that he/she/it maintains a separate place of business, serves clients other than the County, will report all income and expense accrued under this contract to the Internal Revenue Service, and has a tax account with the State of Washington Department of Revenue for payment of all sales and use and Business and Occupation taxes collected by the State of Washington.

Contractor will defend, indemnify and hold harmless the County, its officers, agents or employees from any loss or expense, including, but not limited to, settlements, judgments, setoffs, attorneys' fees or costs incurred by reason of claims or demands because of breach of the provisions of this paragraph.

30.2 Assignment and Subcontracting:

The performance of all activities contemplated by this agreement shall be accomplished by the Contractor. No portion of this contract may be assigned or subcontracted to any other individual, firm or entity without the express and prior written approval of the County.

30.3 No Guarantee of Employment:

The performance of all or part of this contract by the Contractor shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of the Contractor or any employee of the Contractor or any subcontractor or any employee of any subcontractor by the County at the present time or in the future.

31.1 Ownership of Items Produced:

All writings, programs, data, public records or other materials prepared by the Contractor and/or its consultants or subcontractors, in connection with performance of this Agreement, shall be the sole and absolute property of the County.

31.1 Ownership of Items Produced:

When the Contractor creates any copyrightable materials or invents any patentable property, the Contractor may copyright or patent the same, but the County retains a royalty-free, nonexclusive and irrevocable license to reproduce, publish, recover, or otherwise use the materials or property and to authorize other governments to use the same for state or local governmental purposes. Contractor further agrees to make research, notes, and other work products produced in the performance of this Agreement available to the County upon request.

31.2 Patent/Copyright Infringement:

Contractor will defend and indemnify the County from any claimed action, cause or demand brought against the County, to the extent such action is based on the claim that information supplied by the Contractor infringes any patent or copyright. The Contractor will pay those costs and damages attributable to any such claims that are finally awarded against the County in any action. Such defense and payments are conditioned upon the following:

A. The Contractor shall be notified promptly in writing by the County of any notice of such claim.

B. Contractor shall have the right, hereunder, at its option and expense, to obtain for the County the right to continue using the information, in the event such claim of infringement, is made, provided no reduction in performance or loss results to the County.

32.1 Confidentiality:

The Contractor, its employees, subcontractors, and their employees shall maintain the confidentiality of all information provided by the County or acquired by the Contractor in performance of this Agreement, except upon the prior written consent of the County or an order entered by a court after having acquired jurisdiction over the County. Contractor shall immediately give to the County notice of any judicial proceeding seeking disclosure of such information. Contractor shall indemnify and hold harmless the County, its officials, agents or employees from all loss or expense, including, but not limited to, settlements, judgments, setoffs, attorneys' fees and costs resulting from Contractor's breach of this provision.

33.1 Right to Review:

This contract is subject to review by any Federal, State or County auditor. The County or its designee shall have the right to review and monitor the financial and service components of this program by whatever means are deemed expedient by the Administrative Officer or by the County Auditor's Office. Such review may occur with or without notice and may include, but is not limited to, on-site inspection by County agents or employees, inspection of all records or other materials which the County deems pertinent to the Agreement and its performance, and any and all communications with or evaluations by service recipients under this Agreement. The Contractor shall preserve and maintain all financial records and records relating to the performance of work under this Agreement for three (3) years after contract termination, and shall make them available for such review, within Whatcom County, State of Washington, upon request. Contractor also agrees to notify the Administrative Officer in advance of any inspections, audits, or program review by any individual, agency, or governmental unit whose purpose is to review the services provided within the terms of this Agreement. If no advance notice is given to the Contractor, then the Contractor agrees to notify the Administrative Officer as soon as it is practical.

34.1 Proof of Insurance:

The Contractor shall carry for the duration of this Agreement general liability and property damage insurance with the following minimums:

Property Damage per occurrence - \$500,000.00

General Liability & Property Damage for bodily injury- \$1,000,000.00

A Certificate of insurance, that also identifies the County as an additional insured, is attached hereto as Exhibit "C". This insurance shall be considered as primary and shall waive all rights of subrogation. The County insurance shall be noncontributory.

- a. Professional Liability - \$1,000,000 per occurrence: Not Applicable

34.2 Industrial Insurance Waiver:

With respect to the performance of this agreement and as to claims against the County, its officers, agents and employees, the Contractor expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, for injuries to its employees and agrees that the obligations to indemnify, defend and hold harmless provided in this agreement extend to any claim brought by or on behalf of any employee of the Contractor. This waiver is mutually negotiated by the parties to this agreement.

34.3 Defense & Indemnity Agreement:

The Contractor agrees to defend, indemnify and save harmless the County, its appointed and elective officers and employees, from and against all loss or expense, including, but not limited to, judgments, settlements, attorneys' fees and costs by reason of any and all claims and demands upon the County, 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, whether such injury to persons or damage to property is due to the negligence of the Contractor, its subcontractors, its successor or assigns, or its agents, servants, or employees, the County, its appointed or elected officers, employees or their agents, except only such injury or damage as shall have been occasioned by the sole negligence of the County or its appointed or elected officials or employees. In case of damages caused by the concurrent negligence of Contractor, its subcontractors, its successors or assigns, or its agents, servants, or employees, and the County, its appointed or elected officers, employees or their agents, then this indemnification provision is enforceable only to the extent of the negligence of the Contractor, its agents, or its employees.

It is further provided that no liability shall attach to the County by reason of entering into this contract, except as expressly provided herein. The parties specifically agree that this agreement is for the benefit of the parties only and this agreement shall create no rights in any third party.

35.1 Non-Discrimination in Employment:

The County's policy is to provide equal opportunity in all terms, conditions and privileges of employment for all qualified applicants and employees without regard to race, color, creed, religion, national origin, sex, sexual orientation, age, marital status, disability, or veteran status. The Contractor shall comply with all laws prohibiting discrimination against any employee or applicant for employment on the grounds of race, color, creed, religion, national origin, sex, sexual orientation, age, marital status, disability, or veteran status, except where such constitutes a bona fide occupational qualification.

Furthermore, in those cases in which the Contractor is governed by such laws, the Contractor shall take affirmative action to insure that applicants are employed, and treated during employment, without regard to their race, color, creed, religion, national origin, sex, age, marital status, sexual orientation, disability, or veteran status, except where such constitutes a bona fide occupational qualification. Such action shall include, but not be limited to: advertising, hiring, promotions, layoffs or terminations, rate of pay or other forms of compensation benefits, selection for training including apprenticeship, and participation in recreational and educational activities. In all solicitations or advertisements for employees placed by them or on their behalf, the Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

The foregoing provisions shall also be binding upon any subcontractor, provided that the foregoing provision shall not apply to contracts or subcontractors for standard commercial supplies or raw materials, or to sole proprietorships with no employees.

35.2 Non-Discrimination in Client Services:

The Contractor shall not discriminate on the grounds of race, color, creed, religion, national origin, sex, age, marital status, sexual orientation, disability, or veteran status; or deny an individual or business any service or benefits under this Agreement; or subject an individual or business to segregation or separate treatment in any manner related to his/her/its receipt any service or services or other benefits provided under this Agreement; or deny an individual or business an opportunity to participate in any program provided by this Agreement.

36.1 Waiver of Noncompetition:

Contractor irrevocably waives any existing rights which it may have, by contract or otherwise, to require another person or corporation to refrain from submitting a proposal to or performing work or providing supplies to the County, and contractor further promises that it will not in the future, directly or indirectly, induce or solicit any person or corporation to refrain from submitting a bid or proposal to or from performing work or providing supplies to the County.

36.2 Conflict of Interest:

If at any time prior to commencement of, or during the term of this Agreement, Contractor or any of its employees involved in the performance of this Agreement shall have or develop an interest in the subject matter of this Agreement that is potentially in conflict with the County's interest, then Contractor shall immediately notify the County of the same. The notification of the County shall be made with sufficient specificity to enable the County to make an informed judgment as to whether or not the County's interest may be compromised in any manner by the existence of the conflict, actual or potential. Thereafter, the County may require the Contractor to take reasonable steps to remove the conflict of interest. The County may also terminate this contract according to the provisions herein for termination.

37.1 Administration of Contract:

This Agreement shall be subject to all laws, rules, and regulations of the United States of America, the State of Washington, and political subdivisions of the State of Washington. The Contractor also agrees to comply with applicable federal, state, county or municipal standards for licensing, certification and operation of facilities and programs, and accreditation and licensing of individuals.

The County hereby appoints, and the Contractor hereby accepts, the Whatcom County Executive, and his or her designee, as the County's representative, hereinafter referred to as the Administrative Officer, for the purposes of administering the provisions of this Agreement, including the County's right to receive and act on all reports and documents, and any auditing performed by the County related to this Agreement. The Administrative Officer for purposes of this agreement is:

Gary Stoyka, Whatcom County Public Works Natural Resources Manager, 322 N. Commercial St. Suite 110, Bellingham, WA 98225

37.2 Notice:

Except as set forth elsewhere in the Agreement, for all purposes under this Agreement except service of process, notice shall be given by the Contractor to the County's Administrative Officer under this Agreement. Notice to the Contractor for all purposes under this Agreement shall be given to the address provided by the Contractor herein above in the "Contractor Information" section. Notice may be given by delivery or by depositing in the US Mail, first class, postage prepaid.

38.1 Certification of Public Works Contractor's Status under State Law:

Contractor certifies that it has fully met the responsibility criteria required of public works contractors under RCW 39.04.350 (1), which include: (a) having a certificate of registration in compliance with RCW 18.27; (b) having a current state unified business identifier number; (c) if applicable, having industrial insurance coverage for its employees working in Washington as required in Title 51 RCW, an employment security department number as required in Title 50 RCW, and a state excise tax registration number as required in Title 82 RCW; and (d) not being disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065 (3).

38.2 Certification Regarding Federal Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions:

The Contractor further certifies, by executing this contract, that neither it nor its principles is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or Agency.

The Contractor also agrees that it shall not knowingly enter into any lower tier covered transactions (a transaction between the Contractor and any other person) with a person who is proposed for debarment, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, and the Contractor agrees to include this clause titled "Certification Regarding Federal Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction" without modification, in all lower tier covered transactions and in all solicitations for lower tier transactions.

The "Excluded Parties List System in the System for Award Management (SAM) website is available to research this information at WWW.SAM.GOV. Contractor shall immediately notify Whatcom County if, during the term of this Contract, Contractor becomes debarred.

38.3 E-Verify:

The E-Verify contractor program for Whatcom County applies to contracts of \$100,000 or more and sub contracts for \$25,000 or more if the primary contract is for \$100,000 or more. Contractor represents and warrants that it will, for at least the duration of this contract, register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work for Whatcom County. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor/Seller agrees to maintain records of such compliance and, upon request of the County, to provide a copy of each such verification to the County. Contractor/Seller further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Washington. Contractor/Seller understands and agrees that any breach of these warranties may subject Contractor/Seller to the following: (a) termination of this Agreement and ineligibility for any Whatcom County contract for up to three (3) years, with notice of such cancellation/termination being made public. In the event of such termination/cancellation, Contractor/Seller would also be liable for any additional costs incurred by the County due to contract cancellation or loss of license or permit." Contractor will review and enroll in the E-Verify program through this website: www.uscis.gov

Series 40-49: Provisions Related to Interpretation of Agreement and Resolution of Disputes

40.1 Modifications:

Either party may request changes in the Agreement. Any and all agreed modifications, to be valid and binding upon either party, shall be in writing and signed by both of the parties.

40.2 Contractor Commitments, Warranties and Representations:

Any written commitment received from the Contractor concerning this Agreement shall be binding upon the Contractor, unless otherwise specifically provided herein with reference to this paragraph. Failure of the Contractor to fulfill such a commitment shall render the Contractor liable for damages to the County. A commitment includes, but is not limited to, any representation made prior to execution of this Agreement, whether or not

incorporated elsewhere herein by reference, as to performance of services or equipment, prices or options for future acquisition to remain in effect for a fixed period, or warranties.

41.1 Severability:

If any term or condition of this contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this contract are declared severable.

41.2 Waiver:

Waiver of any breach or condition of this contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this contract shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto. The failure of the County to insist upon strict performance of any of the covenants and agreements of this Agreement, 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, or any other covenants or agreements, but the same shall be and remain in full force and effect.

42.1 Disputes:

a. General:

Differences between the Contractor and the County, arising under and by virtue of the Contract Documents, shall be brought to the attention of the County at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Except for such objections as are made of record in the manner hereinafter specified and within the time limits stated, the records, orders, rulings, instructions, and decisions of the Administrative Officer shall be final and conclusive.

b. Notice of Potential Claims:

The Contractor shall not be entitled to additional compensation which otherwise may be payable, or to extension of time for (1) any act or failure to act by the Administrative Officer or the County, or (2) the happening of any event or occurrence, unless the Contractor has given the County a written Notice of Potential Claim within ten (10) days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the County. The written Notice of Potential Claim shall set forth the reasons for which the Contractor believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. Contractor shall keep full and complete daily records of the work performed, labor and material used, and all costs and additional time claimed to be additional.

c. Detailed Claim:

The Contractor shall not be entitled to claim any such additional compensation, or extension of time, unless within thirty (30) days of the accomplishment of the portion of the work from which the claim arose, and before final payment by the County, the Contractor has given the County a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or the extension of time claimed to be due.

d. Arbitration:

Other than claims for injunctive relief brought by a party hereto (which may be brought either in court or pursuant to this arbitration provision), and consistent with the provisions hereinabove, any claim, dispute or controversy between the parties under, arising out of, or related to this Agreement or otherwise, including issues of specific performance, shall be determined by arbitration in Bellingham, Washington, under the applicable American Arbitration Association (AAA) rules in effect on the date hereof, as modified by this Agreement. There shall be one arbitrator selected by the parties within ten (10) days of the arbitration demand, or if not, by the AAA or any other group having similar credentials. Any issue about whether a claim is covered by this Agreement shall be determined by the arbitrator. The arbitrator shall apply substantive law and may award injunctive relief, equitable relief (including specific performance), or any other remedy available from a judge, including expenses, costs and attorney fees to the prevailing party and pre-award interest, but shall not have the power to award punitive damages. The decision of the arbitrator shall be final and binding and an order confirming the award or judgment upon the award may be entered in any court having jurisdiction. The parties agree that the decision of the arbitrator shall be the sole and exclusive remedy between them regarding any dispute presented or pled before the arbitrator. At the request of either party made not later than forty-five (45) days after the arbitration demand, the parties agree to submit the dispute to nonbinding mediation, which shall not delay the arbitration hearing date; provided, that either party may decline to mediate and proceed with arbitration.

Unless otherwise specified herein, this Agreement shall be governed by the laws of Whatcom County and the State of Washington.

43.1 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 courts of the State of Washington in and for the County of Whatcom. This Agreement shall be governed by the laws of the State of Washington.

- 44.1 Survival:
The provisions of paragraphs 11.1, 11.2, 11.3 , 21.1, 22.1, 30.1, 31.1, 31.2, 32.1, 33.1, 34.2, 34.3, 36.1, 40.2, 41.2, 42.1, and 43.1, if utilized, shall survive, notwithstanding the termination or invalidity of this Agreement for any reason.
- 45.1 Entire Agreement:
This written Agreement, comprised of the writings signed or otherwise identified and attached hereto, represents the entire Agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

EXHIBIT "A"
(SCOPE OF WORK)

Task 1: Organize, Support, Administer, Facilitate and Coordinate a Local Integrating Organization

Project Approach:

- Maintain a public e-mail list for notification of WRIA1 Management Team and WRIA 1 Watershed Management Board meetings and other activities or events the community may have an interest in. Direct general inquiries to appropriate entity or individual as needed.
- Coordinate meeting logistics and facilitation for Watershed Work Group (4 meetings), LIO Staff Team (6 meetings), Steering Committee (5 meetings), WRIA1 Management Team (6 meetings), and WRIA 1 Board(s) (4 meetings). This includes agenda preparation, meeting summaries, and preparation of other supporting materials.
- Maintain the Whatcom LIO webpage to provide information on process and status of LIO work. This will include meeting agenda, summaries, and progress on near-term actions.
- Ensure cross-posting and distribution of Whatcom LIO relevant information with the WRIA1 Watershed Project, WRIA1 Salmon Recovery Program, and as appropriate, WWIN/ Whatcom ECONet.
- Maintain communication links to Puget Sound Partnership including with the Ecosystem Recovery Coordinator assigned to Whatcom LIO and report and distribute regional information from the Puget Sound Partnership to the Whatcom LIO participants as applicable.
- Attend EPA convened meetings with LIO Coordinators (2 meetings), regional LIO Coordinator meetings (4 meetings), trainings or workshops (2), and other coordination meetings or conference calls as directed (2) for purposes of information gathering and reporting back to the appropriate WRIA1 Team.
- Participate in PSP facilitated workshops, discussions, and/or trainings related to LIO and salmon lead entity integration and mobilizing funding.
- Provide support, as requested, to Whatcom LIO Ecosystem Coordination Board representative and alternate in the form of coordinating local positions and/or briefing papers with or for the WRIA 1 Watershed Management Board, Watershed Management Team, and/or other groups as directed.

Assumptions:

- Operational communication is considered correspondence and information that is received from PSP, other LIOs, and other entities, will be distributed to the appropriate LIO Team or the Policy Boards.
- The consultant works with the LIO Staff Team and fiscal agent staff- depending on the information received- to frame up topics for discussion by the Management Team and/or Policy Boards, as needed.
- External communication that is considered outside of typical process-coordination communication will be referred to the fiscal agent staff and/or Management Team as applicable.
- Participation in regional meetings will be prioritized given budget considerations.

Work Products:

- Progress reports describing general communication and distribution of LIO-related materials to WRIA 1 Boards, Management Team, Steering Committee, Watershed Work Group, LIO Staff Team, and interested community members. January 15, 2020; April 15, 2020; July 15, 2020; and September 30, 2020.
- Agendas, supporting materials, and meeting summaries for Whatcom County LIO Staff Team, Watershed Work Group, Steering Committee, WRIA 1 Management Team, and WRIA 1 Boards. January 15, 2020; April 15, 2020; July 15, 2020; and September 30, 2020.
- Agendas from regional meetings and trainings attended. January 15, 2020; April 15, 2020; July 15, 2020; and September 30, 2020.
- Briefing papers or other material prepared in support of Whatcom LIO Ecosystem Coordination Board representative and alternate. January 15, 2020; April 15, 2020; July 15, 2020; and September 30, 2020.

Budget Estimate: \$30,879.80

Labor: \$30,149.00

Mileage: \$730.80

Task 2: Steward and Implement Puget Sound Action Agenda 2018-2022

Project Approach:

- Coordinate and facilitate implementation of near-term actions identified in the 2018-2022 Action Agenda. This will include:

- Facilitate process for LIO to address common barriers, gaps, opportunities, and encourage best practices throughout LIO geography
- Assistance with identifying existing funding sources and leveraging existing partnerships that can contribute to NTA implementation
- Provide assistance for identifying funding opportunities for NTAs. In addition to direct notification of funding opportunities to owners of near-term actions and ongoing programs, information will be provided to the WWIN/Whatcom ECONet for broader public distribution.
- Coordinate a local process for priority NTA selection within the existing Whatcom LIO meeting structure and schedule. Provide a summary of LIO priority NTAs to Strategic Initiative Leads and PSP.
- Provide input on the 2022-2026 Action Agenda Comprehensive Plan update.
- Coordinate local input to the Strategic Initiative Leads and Implementation Strategy Work Group
- Engage with ECB representative

Assumptions:

- The LIO Staff Team, Steering Committee, and Management Team have a critical role in the tasks and approaches listed for Task 2.

Work Products:

- Progress reports describing coordination of near-term action implementation. January 15, 2020; April 15, 2020; July 15, 2020; and September 30, 2020.
- Copy of process to identify LIO priority NTAs for direct funding including a list of selected priority NTAs. November 2019.
- Copy of comments on the 2022-2026 Action Agenda Comprehensive Plan update, if any, submitted to Puget Sound Partnership September 30, 2020
- Copy of comments submitted to Puget Sound Partnership, Strategic Initiative Leads, and/or Implementation Strategy Work Groups, if any. September 30, 2020

Budget Estimate: \$11,205.50

Labor: \$11,205.50

Task 3: Performance Management

Project Approach:

- Support Whatcom County Public Works- Natural Resources staff with invoicing and reporting to Puget Sound Partnership. Provide support for other grant agreement tasks as needed.
- Coordinate twice yearly reporting on progress of near-term actions to WRIA 1 Management Team using Puget Sound Reporting format.

Assumptions:

- The near-term action owners have a critical role in providing information twice yearly to the Management Team and Puget Sound Partnership.

Work Products:

- Twice yearly reports on status of near-term actions to WRIA 1 Management Team. April 15 and September 30, 2020.

Budget Estimate: \$1,679

Labor: \$2,590

Task 4: Support Communication, Adaptive Management, and Synthesis of LIO Ecosystem Recovery Plans

Project Approach:

- Provide feedback to PSP on PSP communications development, products, and progress report formats and templates.
- Coordinate adaptive management of the LIO plan and strategies and supporting advancement of priority tasks.
- Communicate and provide Adaptive Management needs and update to the PSP for purposes of updating Miradi files.

- Maintain and Update LIO Plan Miradi files.
- Coordinate Whatcom LIO input to PSP related to PSP synthesis process.
- Support implementation and coordination of education/outreach related to the Whatcom LIO Ecosystem Recovery Plan.
- Update content for LIO geographic page in Action Agenda Tracker
- Coordinate input to PSP related to revisions of Puget Sound vital signs and Puget Sound Information website.

Assumptions:

- The WRIA 1 Management Team and Steering Committee will have critical roles in providing information on Task 4 coordination.
- The WRIA 1 Management Team, Steering Committee, and LIO Staff Team have critical roles in identifying priorities and adaptive management of the LIO plan.

Work Products:

- Presentations.
- Summary of Changes to the Ecosystem Recovery Plan via Adaptive Management.
- Updated Miradi files.
- Summary of outreach conducted in support of the Whatcom LIO Ecosystem Recovery Plan and electronic files or images of outreach materials.

Budget Estimate: \$24,851

Labor: \$23,798

Supplies and Graphics: \$1053.81

EXHIBIT "B"
(COMPENSATION)

As consideration for the services provided pursuant to Exhibit A, "Scope of Work", the County agrees to compensate the Contractor according to the hourly rates provided (below). Other reasonable expenses incurred in the course of performing the duties herein shall be reimbursed including: mileage at IRS rate, lodging and per diem at a rate not to exceed the GSA rate for location services are provided. Reimbursement for air travel will be at coach rates. Other expenditures such as printing, postage, telephone charges, and outreach supplies shall be reimbursed at actual cost plus 10%.

Contractor will invoice monthly. Invoices will include hours worked by employee by day together with tasks accomplished. Requests for reimbursement of expenses must be accompanied by copies of paid invoices itemizing costs incurred. Costs of alcoholic beverages are not eligible for reimbursement. **Compensation shall not exceed \$68,616.11.** Any work performed prior to the effective date of this contract or continuing after the completion date of the same unless otherwise agreed upon in writing, will be at the contractor's expense.

Budget Summary

Task	Hours	Labor (\$ 73/hr)	Expenses	Totals
Task 1.0	413	\$30,149	\$730.80*	\$30,879.80
Task 2.0	153.5	\$11,205.50		\$11,205.50
Task 3.0	23	\$1,679		\$1,679
Task 4.0	326	\$23,798	\$1,053.81**	\$24,851.81
Totals			Not to Exceed	\$68,616.11

* Mileage

** Supplies/Graphics

EXHIBIT "C"
(CERTIFICATE OF INSURANCE)



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
06/24/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Rice Insurance LLC 1400 Broadway P.O. Box 639 Bellingham WA 98227		CONTACT NAME: Lacey Larsen PHONE (A/C, No, Ext): (360) 734-1161 FAX (A/C, No): (360) 734-1173 E-MAIL ADDRESS: laceyr@riceinsurance.com	
INSURED Rebecca Peterson 1020 Austin St Bellingham WA 98229		INSURER(S) AFFORDING COVERAGE INSURER A: Ohio Security Insurance Co. NAIC # 24082 INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:	

COVERAGES CERTIFICATE NUMBER: CL1962464169 REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y	Y	BLS56214770	07/09/2019	07/09/2020	EACH OCCURRENCE \$ 1,000,000
	DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000						
	MED EXP (Any one person) \$ 15,000						
	PERSONAL & ADV INJURY \$ 1,000,000						
							GENERAL AGGREGATE \$ 2,000,000
							PRODUCTS - COMP/OP AGG \$ 2,000,000
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$
							BODILY INJURY (Per person) \$
							BODILY INJURY (Per accident) \$
							PROPERTY DAMAGE (Per accident) \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED \$ RETENTION \$						EACH OCCURRENCE \$
							AGGREGATE \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/>
							E.L. EACH ACCIDENT \$
							E.L. DISEASE - EA EMPLOYEE \$
							E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Whatcom County is included as an additional insured for the above-noted insurance per form CG8810.0413. This Commercial General Liability insurance shall be considered as primary and non-contributory, and shall waive all rights of subrogation. The County insurance shall not serve as a source of contribution.

CERTIFICATE HOLDER Whatcom County Public Works 322 N. Commercial St Suite 210 Bellingham WA 98225	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
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ACORD 25 (2016/03)

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EXHIBIT "D"
(GRANT TERMS AND CONDITIONS)

1. DEFINITIONS

As used throughout this contract, the following terms shall have the meaning set forth below:

- A. "AGENCY" means the Puget Sound Partnership (PSP) of the State of Washington, any division, section, office, unit or other entity of the AGENCY, or any of the officers or other officials lawfully representing that AGENCY.
- B. "AGENT" means the Director, and/or the delegate authorized in writing to act on the Director's behalf.
- C. "CONTRACTOR" means that firm, provider, organization, individual or other entity performing service(s) under this contract, and shall include all employees of the CONTRACTOR.
- D. "DEBARMENT" means an action taken by a Federal agency or official to exclude a person or business entity from participating in transactions involving certain federal funds.
- E. "EPA" means U.S. Environmental Protection Agency.
- F. "SUBCONTRACTOR" means one not in the employment of the CONTRACTOR, who is performing all or part of those services under this contract under a separate contract with the CONTRACTOR. The terms "SUBCONTRACTOR" and "SUBCONTRACTORS" means SUBCONTRACTOR(s) in any tier.
- G. "SUB-RECIPIENT" means a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency. Guidance on distinguishing between a subrecipient and a contractor is provided in 2 CFR §200.330. Subrecipient and contractor determinations.

2. AMERICANS WITH DISABILITIES ACT (ADA)

If the contract includes federal funding, the CONTRACTOR must comply with Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities by entities receiving Federal financial assistance. The CONTRACTOR may also be required to comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

3. ADVANCE PAYMENTS PROHIBITED

No payments in advance of or in anticipation of goods or services to be provided under this contract shall be made by the AGENCY.

4. AMENDMENT

This Agreement may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

5. ASSIGNMENT

The work to be provided under this Agreement, and any claim arising under this Agreement, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

6. ASSURANCES

The parties agree that all activity pursuant to this Agreement shall be in accordance with all applicable federal, state and local laws, rules, and regulations as they currently exist or as amended.

7. CONFIDENTIALITY

Confidential information: The CONTRACTOR shall not use or disclose any information that is identified as such, for any purpose not directly connected with the administration of this contract, except with prior written consent of the AGENCY, or as may be required by law. 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. However, the parties acknowledge that state and local agencies are subject to chapter 42.56 RCW, the Public Records Act.

Personal Information (one form of confidential information): Personal information including, but not limited to, "Protected Health Information," collected, used, or acquired in connection with this contract shall be protected against unauthorized use, disclosure, modification or loss. CONTRACTOR shall ensure its directors, officers, employees, subcontractors or agents use personal information solely for the purposes of accomplishing the services set forth herein. CONTRACTOR and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the agency or as otherwise required by law. Any breach of this provision may result in termination of the contract and the demand for return of all personal information. The CONTRACTOR agrees to indemnify and hold harmless the AGENCY for any damages related to the CONTRACTOR'S unauthorized use of personal information.

8. CREDIT AND ACKNOWLEDGEMENT

Reports, documents, signage, videos, or other media, developed as part of projects funded by EPA funded Agreements shall display both the EPA and Puget Sound Partnership logos and the following credit line: "This project has been funded wholly or in part by the United States Environmental Protection Agency under Assistance Agreement [CE-01J65401]. The contents of this document do not necessarily reflect the views and policies of the Environmental Protection Agency, nor does mention of trade names or commercial products constitute endorsement or recommendation for use."

9. DEBARMENT AND SUSPENSION

CONTRACTOR, by signature to this Contract, certifies that CONTRACTOR is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency from participating in transactions (Debarred). CONTRACTOR shall comply with applicable federal agency debarment and suspension rules adopted pursuant to Office of Management and Budget guidance at 2 CFR Part 180, such as 2 CFR Part 1532 for the Environmental Protection Agency, which implement Executive Order 12549. CONTRACTOR acknowledges that failing to disclose the information required at 2 CFR 180.335 may

result in the delay or negation of this contract, or pursuance of legal remedies, including suspension and debarment.

CONTRACTOR shall not award subcontracts or subawards to persons (individuals or organizations) listed on the Excluded Parties List located at www.sam.gov/.

CONTRACTOR agrees to include the above requirements in all subcontracts into which it enters. The CONTRACTOR shall immediately notify AGENCY if, during the term of this Contract, CONTRACTOR becomes debarred. AGENCY may immediately terminate this Contract by providing CONTRACTOR written notice if CONTRACTOR becomes Debarred during the term hereof.

10. DISALLOWED COSTS

CONTRACTOR is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its Subcontractors.

11. DISPUTES

In the event that CONTRACTOR is a state agency and a dispute arises under this Agreement, either of the parties may request intervention by the Governor, as provided by chapter 43.17.330 RCW, in which event the Governor's process will control.

In the event that a dispute arises under this Agreement, and the CONTRACTOR is not a state agency, it shall be determined by a Dispute Board in the following manner: Each party to this Agreement shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall evaluate the facts, Agreement terms, applicable statutes and rules, and make a determination of the dispute. The determination of the Dispute Board shall be final and binding on both parties.

The cost of resolution will be borne as allocated by the Dispute Board or the Governor.

12. DUPLICATION OF BILLED COSTS

The CONTRACTOR shall not bill the Agency for services performed under this contract, and the Agency shall not pay the CONTRACTOR if the CONTRACTOR is entitled to payment or has been or will be paid by any other source, including grants, for that service.

13. GOVERNING LAW AND VENUE

This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington and the venue of any action brought under this Agreement shall be in Superior Court for Thurston County.

14. HOTEL MOTEL FIRE SAFETY ACT

The Hotel and Motel Fire Safety Act of 1990 (Public Law 101-391) establishes a number of fire safety standards which must be met for hotels and motels. Pursuant to 40 CFR 30.18, if applicable, and 15 USC 2225a if any portion of this contract will be paid with federal funds, CONTRACTOR agrees to ensure that all space for conferences, meetings, conventions, or training seminars funded in whole or in part with federal funds complies with the protection and control guidelines of the Hotel and Motel

Fire Safety Act (PL 101-391, as amended. CONTRACTOR may search the Hotel-Motel National Master List at: <http://www.usfa.dhs.gov/applications/hotel> to see if a property is in compliance (FEMA ID is currently not required), or to find other information about the Act.

If necessary, the head of the Federal agency may waive this prohibition in the public interest.

15. INDEPENDENT CAPACITY

The employees or agents of each party who are engaged in the performance of this Agreement shall continue to be employees or agents of that party and shall not be considered for any purpose to be employees or agents of the other party.

16. INTELLECTUAL PROPERTY RIGHTS

Unless otherwise provided, all materials produced under this contract shall be considered "works for hire" as defined by the U.S. Copyright Act 17 U.S.C. § 101, et seq., and shall be owned by the AGENCY. Where federal funding is involved, the awarding federal agency may have a proprietary interest in patent rights to any inventions that are developed by the CONTRACTOR as provided in 35 U.S.C. §§ 200-212 and 37 CFR part 401 and retains a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

CONTRACTOR acknowledges that in accordance with 40 CFR 30.36 and 31.34, EPA has the rights to reproduce, publish, use, and authorize others to use copyrighted works or other data developed under this assistance agreement for Federal purposes.

Examples of a Federal purpose include but are not limited to: (1) Use by EPA and other Federal employees for official Government purposes; (2) Use by Federal contractors performing specific tasks for the Government; (3) Publication in EPA documents provided the document does not disclose trade secrets (e.g. software codes) and the work is properly attributed to the recipient through citation or otherwise; (4) Reproduction of documents for inclusion in Federal depositories; (5) Use by State, tribal and local governments that carry out delegated Federal environmental programs as "co-regulators" or act as official partners with EPA to carry out a national environmental program within their jurisdiction and; (6) Limited use by other grantees to carry out Federal grants provided the use is consistent with the terms of EPA's authorization to the other grantee to use the copyrighted works or other data.

Under Item 6, the grantee acknowledges that EPA may authorize another grantee(s) to use the copyrighted works or other data developed under this grant as a result of:

- the selection of another grantee by EPA to perform a project that will involve the use of the copyrighted works or other data or;
- termination or expiration of this agreement.

In addition, EPA may authorize another grantee to use copyrighted works or other data developed with Agency funds provided under this grant to perform another grant when such use promotes efficient and effective use of Federal grant funds.

Materials means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.

In the event the materials are not considered "works for hire" under the U.S. Copyright laws CONTRACTOR shall grant AGENCY, and any federal entity which provided federal funds used in this contract, retain a royalty-free, nonexclusive and irrevocable license to reproduce, publish, recover or otherwise use the material(s) or property and to authorize others to use the same for federal, state or local government purposes.

Material which CONTRACTOR uses to perform the contract but is not created for or paid for by AGENCY is not "work made for hire"; however, CONTRACTOR grant the AGENCY a nonexclusive, royalty-free, irrevocable license to translate, reproduce,

17. INTERNATIONAL TRAVEL (including Canada) – FOR FEDERAL FUNDED AGREEMENTS ONLY

All International Travel must be approved by the Office of International and Tribal Affairs (OITA) BEFORE travel occurs. Even a brief trip to a foreign country, for example to attend a conference, requires OITA approval. Please contact your EPA Project Officer as soon as possible if travel is planned out of the country, including Canada and/or Mexico, so that they can obtain appropriate approvals from EPA Headquarters. If you have questions, please contact your EPA Project Officer listed on the front page of the Award Document

18. LOBBYING PROHIBITED

- a. By signing this contract, CONTRACTOR agrees to comply with Title 40 CFR Part 34, New Restrictions on Lobbying, 31 U.S.C. § 1352, and 40 CFR Part 30 if applicable. CONTRACTOR shall include the language of this provision in subcontracts that exceed \$100,000 of federal funds and require all subcontractors to certify and disclose accordingly.
- b. No Federal appropriated funds shall be paid by or on behalf of the CONTRACTOR to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- c. If this contract includes federal funds exceeding \$100,000, CONTRACTOR shall sign and submit to AGENCY Exhibit D, Attachment 2, PSP Certification Regarding Lobbying (based on EPA Form 6600-06 (Rev. 06/2008)). If CONTRACTOR signed and submitted the PSP Certification Regarding Lobbying form during the procurement process for this contract it is not necessary to resubmit the certification.
- d. If CONTRACTOR expends non-federal funds in any amount to lobby as detailed in a., above, CONTRACTOR shall complete and submit to Standard Form LLL (Rev. 4/2012), Disclosure of Lobbying Activity. The form can be found at:
http://www.epa.gov/ogd/AppKit/form/sfillin_sec.pdf.

19. LOBBYING AND LITIGATION

a. All recipients

- i. The chief executive officer of this recipient agency shall ensure that no grant funds awarded under this assistance agreement are used to engage in lobbying of the Federal Government or in litigation against the U.S. unless authorized under existing law. The recipient shall abide by the Cost Principles available at 2 CFR 200 which generally prohibits the use of federal grant funds for litigation against the U.S. or for lobbying or other political activities.
- ii. The recipient agrees to comply with Title 40 CFR Part 34, New Restrictions on Lobbying. The recipient shall include the language of this provision in award documents for all subawards exceeding \$100,000, and require that subrecipients submit certification and disclosure forms accordingly.
- iii. In accordance with the Byrd Anti-Lobbying Amendment, any recipient who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.
- iv. Contracts awarded by a recipient shall contain, when applicable, the anti-lobbying provision as stipulated in the Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.
- v. Pursuant to Section 18 of the Lobbying Disclosure Act, the recipient affirms that it is not a nonprofit organization described in Section 501(c)(4) of the Internal Revenue Code of 1986; or that it is a nonprofit organization described in Section 501(c)(4) of the Code but does not and will not engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act. Nonprofit organizations exempt from taxation under section 501(c)(4) of the Internal Revenue Code that engage in lobbying activities are ineligible for EPA subawards.

20. NONDISCRIMINATION and DISADVANTAGED BUSINESS ENTERPRISES

In accordance with 40 CFR 33.106 and its Appendix A, the CONTRACTOR shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.

21. PAYMENT TO CONSULTANTS

EPA will limit its participation in salary rate (excluding overhead) paid to individual consultants retained by recipients or by a recipients' contractors or subcontractors shall be limited to the maximum daily rate for Level IV of the Executive Schedule (formerly GS-18), to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. This rate does not include transportation and subsistence costs for travel performed (the recipient will pay these in accordance with their normal travel reimbursement practices).

Subagreements with firms for services which are awarded using the procurement requirements in 40 CFR Parts 30 or 31, are not affected by this limitation unless the terms of the contract provide the recipient with responsibility for the selection, direction and control of the individual who will be providing services under the contract at an hourly or daily rate of compensation. See 40 CFR 30.27(b) or 40 CFR 31.369j), as applicable, for additional information.

As of January 1, 2019, the limit is \$638.24 per day \$79.77 per hour.
(Calculations: 2019 Level IV Executive Schedule annual pay = \$166,500 / 2087 = \$79.77 per hour or \$638.24 per day).

22. PROJECT APPROVAL

The quality, extent and character of any and all work, deliverables and/or services to be performed under this agreement by the CONTRACTOR shall be subject to the review and approval of the AGENCY through the Project Manager or other designated official. In the event that the AGENCY determines, that

any work, deliverable, and/or service performed by the CONTRACTOR is unsatisfactory, the AGENCY may withhold reimbursement for the unsatisfactory work performed by the CONTRACTOR or require that the CONTRACTOR remediate their work product to get it to the satisfaction of the AGENCY. Such approval and satisfaction not be unreasonably withheld. The Parties may agree in the Statement of Work to specific approval, acceptance, and/or remediation terms. If the Statement of Work is silent on this topic, the Disputes provision, above, will govern the resolution process.

23. RECORDS MAINTENANCE

The parties to this Agreement shall each maintain books, records, documents and other evidence that sufficiently and properly reflect all direct and indirect costs expended by either party in the performance of the service(s) described herein. CONTRACTOR shall retain such records for a period of six years following the date of final payment.

At no additional cost, these records, including materials generated under the contract, shall be subject at all reasonable times to inspection, review or audit by the AGENCY, personnel duly authorized by the AGENCY, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement. If this contract exceeds \$100,000 and any portion of the funding source is federal, the federal funding agency, the Comptroller General of the United States, or any duly authorized representatives shall have access to books documents, papers, and records of CONTRACTOR directly pertinent to this contract for purpose of making audits, examination, excerpts and transcriptions (40 CFR 30.48(d)).

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

24. RECYCLED PAPER

In accordance with Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962) any State agency or agency of a political subdivision of a State which is using appropriated Federal funds shall comply with the requirements set forth. Regulations issued under RCRA Section 6002 apply to any acquisition of an item where the purchase price exceeds \$10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was \$10,000 or more. RCRA Section 6002 requires that preference be given in procurement programs to the purchases of specific products containing recycled materials identified in guidelines developed by EPA. These guidelines are listed in 40 CFR 247.

In accordance with the policies set forth in EPA Order 1000.25 and Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management (January 24, 2007), Sub- Recipient agrees to use recycled paper and double sided printing for all reports which are prepared as part of this Agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration.

25. RESPONSIBILITIES OF THE PARTIES

Each party to this Agreement hereby assumes responsibility for claims and/or damages to persons and/or property resulting from any negligent act or omissions on the part of itself, its employees, its officers, and its agents. Neither party assumes any responsibility to the other party for the consequences of any claim, act, or omission of any person, agency, firm, or corporation not a part to this Agreement.

26. SEVERABILITY

If any term or condition of this Agreement is held invalid, such invalidity shall not affect the validity of the other terms or conditions of this Agreement.

27. SUBCONTRACTING

Neither the CONTRACTOR nor any SUBCONTRACTOR shall enter into subcontracts for any of the work contemplated under this contract without obtaining prior written approval of the AGENCY. In no event shall the existence of the subcontract operate to release or reduce the liability of the contractor to the agency for any breach in the performance of the contractor's duties. This clause does not include contracts of employment between the contractor and personnel assigned to work under this contract.

Additionally, the CONTRACTOR is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this agreement are carried forward to any subcontracts

28. TERMINATION DUE TO FUNDING

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this contract and prior to normal completion, the AGENCY may terminate the contract under the "Termination for Convenience" clause, without the ten-day notice requirement, subject to renegotiation at the AGENCY'S discretion under those new funding limitations and conditions. Agency will reimburse CONTRACTOR for all expenses incurred, including non-cancelable expenses, up until the date of termination.

29. TERMINATION FOR CAUSE

If for any cause either party does not fulfill in a timely and proper manner its obligations under this Agreement, or if either party violates any of these terms and conditions, the aggrieved party will give the other party written notice of such failure or violation. The responsible party will be given the opportunity to

correct the violation or failure within 15 working days. If the failure or violation is not corrected, this Agreement may be terminated immediately by written notice of the aggrieved party to the other.

30. TERMINATION FOR CONVENIENCE

Either party may terminate this Agreement upon 30 calendar days' prior written notification to the other party. If this Agreement is so terminated, the parties shall be liable only for the performance rendered or costs incurred, including NON-CANCELABLE expenses, in accordance with the terms of this Agreement prior to the effective date of termination.

31. TREATMENT OF ASSETS

- a. Title to all property furnished by the AGENCY shall remain in the AGENCY. Title to all property furnished by the CONTRACTOR, for the cost of which the CONTRACTOR is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the AGENCY upon delivery of such property by the CONTRACTOR. Title to other property, the cost of which is reimbursable to the CONTRACTOR under this contract, shall pass to and vest in the AGENCY upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the AGENCY in whole or in part, whichever first occurs.
- b. Any property of the AGENCY furnished to the CONTRACTOR shall, unless otherwise provided herein or approved by the AGENCY, be used only for the performance of this contract.
- c. The CONTRACTOR shall be responsible for any loss or damage to property of the AGENCY that results from the negligence of the CONTRACTOR or which results from the failure on the part of the CONTRACTOR to maintain and administer that property in accordance with sound management practices.
- d. If any AGENCY property is lost, destroyed or damaged, the CONTRACTOR shall immediately notify the AGENCY and shall take all reasonable steps to protect the property from further damage.
- e. The CONTRACTOR shall surrender to the AGENCY all property of the AGENCY prior to settlement upon completion, termination or cancellation of this contract.
- f. All reference to the CONTRACTOR under this clause shall also include CONTRACTOR'S employees, agents or SUBCONTRACTORS.

32. WAIVER

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Agreement unless stated to be such in writing and signed by personnel authorized to bind each of the parties.



Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2019-485

File ID:	AB2019-485	Version:	1	Status:	Agenda Ready
File Created:	09/19/2019	Entered by:	JThomson@co.whatcom.wa.us		
Department:	Health Department	File Type:	Interlocal		
Assigned to:	Council Finance and Administrative Services Committee	Final Action:			
Agenda Date:	10/08/2019	Enactment #:			

Primary Contact Email: JFuller@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Washington State Health Care Authority for substance use prevention services in high-need communities, in the amount of \$577,550

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attachments.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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MEMORANDUM

TO: Jack Louws, County Executive

FROM: *RAD* Regina A. Delahunt, Director

RE: Washington State Healthcare Authority – DBHR CPWI Prevention Services Contract

DATE: September 11, 2019

Enclosed is one (1) original of a contract between Whatcom County and Washington State Health Care Authority – Division of Behavioral Health and Recovery, for your review and signature.

▪ **Background and Purpose**

This revenue contract provides funding and defines requirements for the coordination and implementation of prevention programs and strategies that are designed to delay the misuse of alcohol and drugs, increase mental health promotion, and prevent suicide. These services support the Health Care Authority's Community Prevention and Wellness Initiative (CPWI) which focuses substance use prevention services in high-need communities in Washington State.

▪ **Funding Amount and Source**

This contract provides \$577,550 in funding for the 2019 – 2021 biennium. Funding includes \$458,770 in federal funds. County Council approval is required per RCW 39.34.030(2) for agreements between public agencies.

Please contact Kathleen Roy at extension #6007 if you have any questions regarding this agreement.

Encl.



WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No. _____

Originating Department:	85 Health		
Division/Program: (i.e. Dept. Division and Program)	8550 Human Services / 855060 Substance Use Program		
Contract or Grant Administrator:	Kathleen Roy		
Contractor's / Agency Name:	WA State HCA		
Is this a New Contract? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If not, is this an Amendment or Renewal to an Existing Contract? Yes <input type="checkbox"/> No <input type="checkbox"/> If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____			
Does contract require Council Approval? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> 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 checked="" type="checkbox"/> No <input type="checkbox"/> If yes, grantor agency contract number(s): K3950 CFDA#: 93.778, 93.243, 94.959, 93.788 Is this contract grant funded? Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, Whatcom County grant contract number(s): _____			
Is this contract the result of a RFP or Bid process? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes, RFP and Bid number(s): _____ Contract Cost Center: 677200 / 677250 / 677260 / 677360			
Is this agreement excluded from E-Verify? No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> 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 type="checkbox"/> Contract work is for less than 120 days. <input checked="" 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): \$ 577,550 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 : 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: This contract provides funding and defines requirements for the County's Substance Abuse Prevention Program.			
Term of Contract: 2 Years		Expiration Date: 06/30/2021	

Contract Routing:	1. Prepared by: JT	Date: 09/10/2019
	2. Attorney signoff: _____	Date: 9-17-19
	3. AS Finance reviewed: _____	Date: 9/18/19
	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: _____

	INTERAGENCY AGREEMENT for CPWI Prevention Services		HCA Contract Number: K3950	
			Contractor/Vendor Contract Number:	

THIS CONTRACT is made by and between Washington State Health Care Authority (HCA) and Contractor.


CONTRACTOR NAME Whatcom County		CONTRACTOR DOING BUSINESS AS (DBA)		
CONTRACTOR ADDRESS	Street 509 Girard Street	City Bellingham	State WA	Zip Code 98225
CONTRACTOR CONTACT Joe Fuller	CONTRACTOR TELEPHONE 360-778-6055	CONTRACTOR E-MAIL ADDRESS jfuller@co.whatcom.wa.us		
Is Contractor a Subrecipient under this Contract? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		CFDA NUMBER(S): 93.959, 93.243, 93.788	FFATA Form Required <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	

HCA PROGRAM DBHR	HCA DIVISION/SECTION Prevention
HCA CONTACT NAME AND TITLE Alicia Hughes, Agreement Manager	HCA CONTACT ADDRESS Health Care Authority 621 8 th Avenue SE Olympia, WA 98504
HCA CONTACT TELEPHONE 360-725-1687	HCA CONTACT E-MAIL ADDRESS alicia.hughes@hca.wa.gov

CONTRACT START DATE 7/1/2019	CONTRACT END DATE 6/30/2021	TOTAL MAXIMUM CONTRACT AMOUNT \$577,550
---------------------------------	--------------------------------	--

PURPOSE OF CONTRACT:
Obtaining CPWI Prevention Services in order to increase capacity to implement direct and environmental substance use prevention services in high need communities qualified to immediately implement identified evidence-based practices and programs to prevent and reduce the misuse and abuse of alcohol, tobacco, marijuana, opioids, and other drugs.

The parties signing below warrant that they have read and understand this Contract, and have authority to execute this Contract. This Contract will be binding on HCA only upon signature by HCA.

CONTRACTOR SIGNATURE 	PRINTED NAME AND TITLE Regina A Delahunt	DATE SIGNED 9/12/19
HCA SIGNATURE	PRINTED NAME AND TITLE Kerry J. Breen, Acting Contracts Administrator Division of Legal Affairs	DATE SIGNED

DEPARTMENT APPROVAL


Anne Deacon, Human Services Manager

9/12/19
Date

WHATCOM COUNTY

JACK LOUWS
County Executive

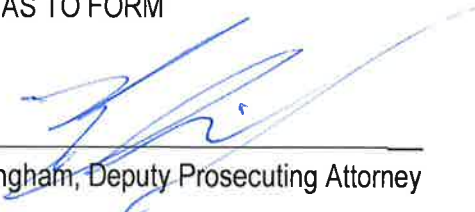
STATE OF WASHINGTON)
)
COUNTY OF WHATCOM)

On this _____ day of _____, 2019, before me personally appeared Jack Louws, 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.

NOTARY PUBLIC in and for the State of Washington, residing at
Bellingham.

My Commission expires: _____

APPROVED AS TO FORM



Royce Buckingham, Deputy Prosecuting Attorney

9-17-19
Date

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Attachments

Attachment 1: Confidential Information Security Requirements

Attachment 2: Federal Compliance, Certifications and Assurances

Attachment 3: Federal Funding Accountability and Transparency Act Data Collection Form

Attachment 4: HIPAA Compliance

Attachment 5: SAMSHA Award Terms

Schedules

Schedule A: Statement of Work (SOW) CPWI Prevention Services Expansion Project

Exhibits

Exhibit A: DBHR-SUD Fiscal Policies Standards for Reimbursable Costs

Exhibit B: Federal Award Identification for Subrecipients

Exhibit C: Data Security Requirements

Exhibit D: Awards and Revenues

Exhibit E: SOR CBO (attached if applicable)

Exhibit F: PSF NCE (attached if applicable)

**Agreement #K3950 for Washington State Community Prevention and Wellness Initiative
(CPWI) Prevention Services Project**

Recitals

NOW THEREFORE, HCA awards to Whatcom County this Agreement, the terms and conditions of which will govern Contractor's providing to HCA the coordination and implementation of prevention programs and strategies designed to prevent or delay the misuse and abuse of alcohol, marijuana, tobacco, opioids, and other drugs, increase mental health promotion and prevent suicide in support of the CPWI Prevention Services Project.

IN CONSIDERATION of the mutual promises as set forth in this Agreement, the parties agree as follows:

1. STATEMENT OF WORK (SOW)

The Contractor will furnish the necessary personnel, equipment, material, and/or service(s) and otherwise do all things necessary for or incidental to the performance of work set forth in Schedule A, Statement of Work, attached and incorporated herein.

2. DEFINITIONS

"Authorized Representative" means a person to whom signature authority has been delegated in writing acting within the limits of his/her authority.

"Awards" means the total funding of all individual awards HCA allocates to the Contractor, and the total of all awards in this Agreement's Maximum Amount, which is itemized in Exhibit D.

"Awards and Revenues" or **"A&R"** details the Contractor's Awards and Revenues attached as Exhibit D.

"Budget, Accounting, and Reporting System" or **"BARS"** means the "Fiscal/Program Requirements". See below, which replaces BARS document.

"Breach" means the unauthorized acquisition, access, use, or disclosure of Confidential Information that compromises the security, confidentiality, or integrity of the Confidential Information.

"Business Associate" means a Business Associate as defined in 45 Code of Federal Regulations (CFR) 160.103, who performs or assists in the performance of an activity for or on behalf of HCA, a Covered Entity, that involves the use or disclosure of protected health information (PHI). Any reference to Business Associate in this DSA includes Business Associate's employees, agents, officers, Subcontractors, third party contractors, volunteers,

or directors.

“Business Days and Hours” means Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, except for holidays observed by the state of Washington.

“Certified Prevention Professional” or **“CPP”** means the Prevention Specialist certification recognized by the International Credentialing and Reciprocity Consortium (IC&RC) and supported by the Prevention Specialist Certification Board of Washington, www.pscbw.com.

“CFR” means the Code of Federal Regulations. All references in this Agreement to CFR chapters or sections include any successor, amended, or replacement regulation. The CFR may be accessed at <http://www.ecfr.gov/cgi-bin/ECFR?page=browse>.

“Coalition” means a formal arrangement for cooperation and collaboration between groups or sectors of a community. Each participant in the Coalition retains their identity, but all agree to work together toward a common goal of building a safe, healthy, and drug-free community.

“Community” means an approved geographic area within school district boundaries, or within High School Attendance Areas (HSAA) and their feeder schools.

“Community Prevention and Wellness Initiative” or **“CPWI”** means the HCA substance use disorder prevention delivery system that focuses prevention services in high-need communities in Washington State as selected by Contractor and approved by HCA.

“Confidential Information” means information that may be exempt from disclosure to the public or other unauthorized persons under chapter 42.56 RCW or chapter 70.02 RCW or other state or federal statutes or regulations. Confidential Information includes, but is not limited to, any information identifiable to an individual that relates to a natural person’s health, (see also Protected Health Information); finances, education, business, use or receipt of governmental services, names, addresses, telephone numbers, social security numbers, driver license numbers, financial profiles, credit card numbers, financial identifiers and any other identifying numbers, law enforcement records, HCA source code or object code, or HCA or State security information.

“Contract” or **“Agreement”** or **“Interagency Agreement”** means this Agreement document and all schedules, exhibits, attachments, incorporated documents and amendments.

“Contractor” means the named contractor contact on the cover sheet, its employees and agents. Contractor additionally includes any firm, provider, organization, individual or other entity performing services under this Agreement. It also includes any Subcontractor retained by Contractor as permitted under the terms of this Agreement.

“Covered entity” means a health plan, a health care clearinghouse or a health care provider who transmits any health information in electronic form to carry out financial or administrative activities related to health care, as defined in 45 CFR 160.103.

“CSAP” means SAMHSA’s Center for Substance Abuse Prevention. CSAP works with federal, state, public, and private organizations to develop a comprehensive prevention system.

“Data” means information produced, furnished, acquired, or used by Contractor in meeting requirements under this Agreement.

“DBHR” means the Division of Behavioral Health and Recovery or its successor.

“DEA” means United States Drug Enforcement Agency.

“Dedicated Marijuana Account” or **“DMA”** means revenue generated by the taxation of retail marijuana as a result of the implementation of Initiative 502 (I-502) as authorized by the Washington State Legislature in 2E2SHB 2136.

“DUNS” or **“Data Universal Numbering System”** means a unique identifier for businesses. DUNS numbers are assigned and maintained by Dun and Bradstreet (D&B) and are used for a variety of purposes, including applying for government contracting opportunities.

“Effective Date” means the first date this Agreement is in full force and effect. It may be a specific date agreed to by the parties; or, if not so specified, the date of the last signature of a party to this Agreement.

“EPA” means the Environmental Protection Agency.

“Evidence-Based Program” or **“EBP”** means a program that has been tested in heterogeneous or intended populations that can be implemented with a set of procedures to all successful replication in Washington. An EBP has had multiple randomized and/or statistically-controlled evaluations, or one large multiple-site randomized and/or statistically-controlled evaluations, and the weight of the evidence from a systematic review demonstrates sustained improvements in at least one of the desired outcomes.

“Fiscal/Program Requirements” means the Supplementary Instructions and Fiscal Policy Standards for Reimbursable Costs otherwise known as the Billing Guide for Substance Use Disorder Prevention and Mental Health Promotion and is located at:

<https://www.hca.wa.gov/billers-providers-partners/prior-authorization-claims-and-billing/provider-billing-guides-and-fee-schedules#>.

“General Fund State” or **“GFS”** means the administrative allocation awarded for Substance Abuse Block Grant.

“HCA Agreement Manager” means the individual identified on the cover page of this Agreement who will provide oversight of the Contractor’s activities conducted under this Agreement.

“Health Care Authority” or **“HCA”** means the Washington State Health Care Authority, any division, section, office, unit or other entity of HCA, or any of the officers or other officials lawfully representing HCA.

“Health Disparities” means “a particular type of health difference that is closely linked with social, economic, and/or environmental disadvantage. Health disparities adversely affect groups of people who have systematically experienced greater obstacles to health based on their racial or ethnic group; religion; socioeconomic status; gender; age; mental health; cognitive sensory, or physical disability; sexual orientation or gender identity; geographic location; or other characteristics historically linked to discrimination or exclusion.” (Healthy People 2020)

“Health Equity” means the “attainment of the highest level of health for all people. Achieving health equity requires valuing everyone equally with focused and ongoing societal efforts to address avoidable inequalities, historical and contemporary injustices, and the elimination of health and health care disparities.” (Healthy People 2020)

“Innovation Program” means a program that does not fall into the other categories of Evidenced-based, Research-based, or Promising.

“Media materials and publications” means (1) News Release: A brief written announcement the agency provides to reporters highlighting key events, research, results, new funding and programs, and other news; (2) Paid Media: Any advertising space/time that is purchased for prevention/coalition messages)printed publications/newspapers, online, outdoor, on-screen, TV and radio); (3) Earned Media: Published news stories (print, broadcast or online) resulting from the Contractor’s Agreements with reporters; (4) Donated Media, including public service announcements. Any free advertising space or time from broadcast, print, outdoor, online, and other advertising vendors; (5) Social Media: Also referred to as new media: messaged posted online of Facebook, Twitter, YouTube, Instagram, Snapchat and similar sites.

“Overpayment” means any payment or benefit to the Contractor in excess of that to which the Contractor is entitled by law, rule, or this Agreement, including amounts in dispute.

“Partnership for Success” or **“PFS”** means the Federal Substance Abuse and Mental Health Services Administration (SAMHSA) Grant 2013 and 2018, CFDA number 93.243.

“Promising Program” means a program that is based on statistical analyses or a well-established theory of change, shows potential for meeting the “evidence-based” or “research- based” criteria, and could include the use of a program that is evidenced-based for outcomes other than the alternative use.

“Proprietary Information” means information owned by Contractor to which Contractor claims a protectable interest under law. Proprietary Information includes, but is not limited to, information protected by copyright, patent, trademark, or trade secret laws.

“Protected Health Information” or “PHI” means individually identifiable information that relates to the provision of health care to an individual; the past, present, or future physical or mental health or condition of an individual; or past, present, or future payment for provision of health care to an individual, as defined in 45 CFR 160.103. Individually identifiable information is information that identifies the individual or about which there is a reasonable basis to believe it can be used to identify the individual, and includes demographic information. PHI is information transmitted, maintained, or stored in any form or medium. 45 CFR 164.501. PHI does not include education records covered by the Family Educational Rights and Privacy Act, as amended, 20 United States Code (USC) 1232g(a)(4)(b)(iv).

“Prevention Activity Data” means information input to the “Substance Use Disorder Prevention Mental Health Promotion Online Reporting System: or “Minerva” to record all active prevention services including outcome measures. This information will be used to verify services identified in A-19 invoices prior to payment and must be entered into Minerva by the close of business of the fifteenth (15th) of each month for prevention activities provided during the previous month.

“Prevention System Manager” or “PSM” means the designee assigned to manage day to day responsibilities associated with this Agreement.

“Regular Annual Schedule” means consistent, reliable services with a pattern of implementation intervals throughout the year.

“Research-Based Program” means a program that has been tested with a single randomized and/or statistically controlled evaluation, demonstrates sustained desirable outcomes; or where the weight of the evidence from a systematic review supports sustained outcomes as identified in the term “evidence-based,” but does not meet the full criteria for “evidence-based.” For the purposes of this project, only programs from the list in Exhibit A are to be considered Research-based.

“RCW” means the Revised Code of Washington. All references in this Agreement to RCW chapters or sections include any successor, amended, or replacement statute. Pertinent RCW chapters can be accessed at: <http://apps.leg.wa.gov/rcw/>.

“Substance Abuse Block Grant” or “SABG” means Federal Substance Abuse Block Grant funded by the Substance Abuse and Mental Health Services Administration (SAMHSA), CFDA number 93.959.

“SAMHSA” means the Substance Abuse and Mental Health Services Administration.

“Statement of Work” or “SOW” means a detailed description of the work activities the Contractor is required to perform under the terms and conditions of this Agreement, including the deliverables and timeline, and is Schedule A hereto.

“State Opioid Response” or “SOR” means the Federal Substance Abuse and Mental Health Services Administration (SAMHSA) Grant, CFDA number 93.788.

“Subcontractor” means a person or entity that is not in the employment of the Contractor, who is performing all or part of the business activities under this Agreement under a separate contract with Contractor. The term “Subcontractor” means subcontractor(s) of any tier.

“Subrecipient” means a contractor operating a federal or state assistance program receiving federal funds and having the authority to determine both the services rendered and disposition of program. See Office of Management and Budget (OMB) Super Circular 2 CFR 200.501 and 45 CFR 75.501, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards for additional detail.

“Substance Use Disorder Prevention and Mental Health Promotion Online Reporting System” or “Minerva” means the management information system maintained by HCA that collects planning, demographic, and prevention service data.

“USC” means the United States Code. All references in this Agreement to USC chapters or sections shall include any successor, amended, or replacement statute. The USC may be accessed at <http://uscode.house.gov/>

3. SPECIAL TERMS AND CONDITIONS

3.1 Performance expectations expected performance under this agreement includes, but is not limited to, the following:

3.1.1 Knowledge of applicable state and federal laws and regulations pertaining to subject of Agreement;

3.1.1.1 21 CFR Food and Drugs
Chapter 1, Subchapter C, Drugs: General
<https://www.law.cornell.edu/cfr/text/21/chapter-I/subchapter-C>

3.1.1.2 42 CFR Subchapter A-General Provisions Part 2 Confidentiality of Alcohol and Drug Abuse Patient Records
<https://www.law.cornell.edu/cfr/text/45/part-96/subpart-L>

3.1.1.3 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards 2 CFR Part 200 in 45 CFR Part 75 <https://www.law.cornell.edu/cfr/text/2/part-200>

- 3.1.2 Use of professional judgment;
- 3.1.3 Collaboration with HCA staff in Contractor's conduct of the services;
- 3.1.4 Conformance with HCA directions regarding the delivery of the services;
- 3.1.5 Timely, accurate and informed communications;
- 3.1.6 Regular completion and updating of project plans, reports, documentation and communications;
- 3.1.7 Ensure all services and activities provided by the Contractor or subcontractor, shall be designed and delivered in a manner sensitive to the needs of all diverse populations;
- 3.1.8 Regular, punctual attendance at all meetings; and
- 3.1.9 Provision of high quality services.
- 3.1.10 Prior to payment of invoices, HCA will review and evaluate the performance of Contractor in accordance with Agreement and these performance expectations and may withhold payment if expectations are not met or Contractor's performance is unsatisfactory.

3.2 TERM

- 3.2.1 The initial term of the Agreement will commence on July 1, 2019, and continue through June 30, 2021, unless terminated sooner as provided herein.
- 3.2.2 This Agreement may be extended in whatever time increments HCA deems appropriate.
- 3.2.3 Work performed without an Agreement or amendment signed by the authorized representatives of both parties will be at the sole risk of the Contractor. HCA will not pay any costs incurred before an Agreement or any subsequent amendment(s) is fully executed.

3.3 COMPENSATION

- 3.3.1 The Maximum Compensation payable to Contractor for the performance of all things necessary for or incidental to the performance of work as set forth in Schedule A, Statement of Work is \$577,550 and additional Exhibits as applicable to Contractor, and includes any allowable expenses. Payment for

satisfactory performance of the work will not exceed this amount unless the parties mutually agree to a higher amount.

3.3.1.1 The fund sources and maximums for this Contract are \$577,550.

3.3.2 Contractor's compensation for services rendered will be based on the amounts listed in the Exhibit D, A&R and/or in accordance with the terms outlined in the Fiscal/Program Requirements and Invoices and Payments. In addition, the Contractor must meet the schedule set forth in Schedule A, Statement of Work and additional Exhibits as applicable to the Contractor.

3.3.2.1 Total compensation payable to Contractor for satisfactory performance of the work under this Agreement is \$577,550. The fund sources and maximums for this Agreement are up to \$321,220 from the Substance Abuse Block Grant (SABG) Block Grant, CFDA #93.959; \$27,932 from General Fund State; \$90,848 Dedicated Marijuana Account (DMA) Funds; \$41,850 Partnership for Success (PFS) 2018 CFDA #93.243; \$77129 State Opioid Response (SOR) and/or SOR supplemental CFDA #93.788; \$18,571 State Targeted Response (STR) no cost extension CFDA #93.788; and \$0 Partnership for Success (PFS) 2013 no cost extension CDFA #93.243.

3.3.3 Federal funds disbursed through this Agreement were received by HCA.

3.3.3.1 Contractor agrees to comply with applicable rules and regulations associated with these federal funds and has signed Attachment 2: Federal Compliance, Certification and Assurances, attached.

3.4 INVOICE AND PAYMENT

3.4.1 Contractor must submit accurate State Form A-19 invoices, or other such forms as designated by HCA, to the following address for all amounts to be paid by HCA via e-mail to: A-19DBHR@hca.wa.gov not more than monthly unless approved by HCA. Contractor may bill for cost reimbursement for month of service if appropriate service data is provided in Minerva. The Contractor must include the HCA Agreement number in the subject line of the email, followed by the Prevention System Naming Convention and cc the Agreement Manager or designee when submitting the invoice.

3.4.2 Invoices must describe and document to HCA's satisfaction a description of the work performed, the progress of the project, and fees. If expenses are invoiced, invoices must provide a detailed breakdown of each type.

3.4.3 HCA shall not be obligated to reimburse the Contractor for any services or

activities performed prior to having a fully executed copy of this Contract.

- 3.4.4 The Contractor assures that work performed and invoiced does not duplicate work to be charged to the State of Washington under any other Contract or agreement with the Contractor.
- 3.4.5 If the Contractor claims and HCA reimburses for expenditures under this Contract which HCA later finds were claimed in error and/or not allowable costs under the terms of this Contract, HCA shall recover these costs and the Contractor shall fully cooperate with the recovery.
- 3.4.6 Contractor must submit properly itemized invoices to include the following information, as applicable:
- 3.4.6.1 HCA Agreement number K3950;
 - 3.4.6.2 Contractor name, address, phone number;
 - 3.4.6.3 Description of Services;
 - 3.4.6.4 Date(s) of delivery;
 - 3.4.6.5 Net invoice price for each item;
 - 3.4.6.6 Applicable taxes;
 - 3.4.6.7 Total invoice price; and
 - 3.4.6.8 Payment terms and any available prompt payment discount.
- 3.4.7 HCA will return incorrect or incomplete invoices to the Contractor for correction and reissue. The Agreement Number must appear on all invoices, bills of lading, packages, and correspondence relating to this Agreement.
- 3.4.8 In order to receive payment for services or products provided to a state agency, Contractor must register with the Statewide Payee Desk at <http://des.wa.gov/services/ContractingPurchasing/Business/VendorPay/Pages/default.aspx>.
- 3.4.9 Payment will be considered timely if made by HCA within thirty (30) calendar days of receipt of properly completed invoices. Payment will be directly deposited in the bank account or sent to the address Contractor designated in its registration.
- 3.4.10 Upon expiration of the Agreement, any claims for payment for costs due and payable under this Agreement that are incurred prior to the expiration date must be submitted by the Contractor to HCA within sixty (60) calendar days after the Agreement expiration date. HCA is under no obligation to pay any claims that are submitted sixty-one (61) or more calendar days after the Agreement expiration date ("Belated Claims"). HCA will pay Belated Claims at its sole discretion, and any such potential payment is contingent upon the availability of funds.

- 3.4.10.1 Submit final billing for services provided within forth-five (45) days after the end of the State Fiscal Year (June 30).
- 3.4.10.2 Submit final billing for services for SOR and PFS within forty-five (45) days after the end of each Federal Fiscal Year (September 29).
- 3.4.10.3 Submit final billing for services for STR within forty-five (45) days after the end of the fiscal period for STR (April 30).
- 3.4.11 The Contractor shall ensure all expenditures for services and activities under the Agreement are submitted on the A-19 invoice appropriate for Minerva data entry. In the event the Contractor or a subcontractor fails to maintain reporting obligations under this Agreement, HCA reserves the right to withhold reimbursements to the Contractor until the obligations are met.
- 3.4.12 Administrative costs shall be billed separately from direct prevention services as indicated on the A-19 invoice.
 - 3.4.12.1 Administrative costs are defined in the Fiscal/Program Requirements.
 - 3.4.12.2 The Contractor shall use no more than eight percent 8% of the SOR, PFS, STR, and/or DMA allocation for administrative costs.
 - 3.4.12.3 No SABG funds allocated in this contract shall be used for administrative costs. Admin for SABG is allocated as GFS.
- 3.4.13 HCA reserves the right to reduce the Prevention funds awarded in the Agreement if the Contractor expenditures are below 60% of expected levels during the fiscal quarter. Expenditures will be reviewed quarterly.
- 3.4.14 SOR, PFS, STR, and DMA funds may not be carried forward from year to year, based upon their respective fiscal year.
- 3.4.15 Based upon Exhibit D, Awards and Revenue (A&R), the source of funds in this contract may include, as applicable, Substance Abuse Block Grant (SABG) CFDA 94.959, the Washington State Dedicated Marijuana Account Fund (DMA), General Fund State (GFS), the State Opioid Response (SOR) Grant CFDA 93.788, the State Targeted Response (STR) Grant CFDA 93.788, and/or the Partnerships for Success (PFS) Grant CFDA 93.243.

3.5 CONTRACTOR AND HCA AGREEMENT MANAGERS

- 3.5.1 Contractor's Agreement Manager or designee will have prime responsibility and final authority for the services provided under this Agreement and be the principal point of contact for the HCA Agreement Manager for all business matters, performance matters, and administrative activities.

- 3.5.2 HCA's Agreement Manager or designee is responsible for monitoring the Contractor's performance and will be the contact person for all communications regarding Agreement performance and deliverables. The HCA Agreement Manager or designee has the authority to accept or reject the services provided and must approve Contractor's invoices prior to payment.
- 3.5.3 The contact information provided below may be changed by written notice of the change (email acceptable) to the other party.

CONTRACTOR		Health Care Authority	
Contract Manager Information		Contract Manager Information	
Name:		Name:	Alicia Hughes
Title:		Title:	Agreement Manager
Address:		Address:	621 8 th Avenue SE Olympia, WA 98504
Phone:		Phone:	360-725-1687
Email:		Email:	alicia.hughes@hca.wa.gov

3.6 LEGAL NOTICES

Any notice or demand or other communication required or permitted to be given under this Agreement or applicable law is effective only if it is in writing and signed by the applicable party, properly addressed, and delivered in person, via email, or by a recognized courier service, or deposited with the United States Postal Service as first-class mail, postage prepaid certified mail, return receipt requested, to the parties at the addresses provided in this section.

- 3.6.1 In the case of notice to the Contractor:

Attention:

- 3.6.2 In the case of notice to HCA:

Attention: Contracts Administrator
Health Care Authority
Division of Legal Services
PO Box 42702
Olympia, WA 98504-2702

- 3.6.3 Notices are effective upon receipt or four (4) Business Days after mailing, whichever is earlier.

- 3.6.4 The notice address and information provided above may be changed by written notice of the change given as provided above.

3.7 SAMHSA AWARD TERMS.

- 3.7.1 General. If the Contractor is a subrecipient of federal awards under any Program Agreement as defined by 2 CFR Part 200, the Contractor shall:
- 3.7.1.1 Comply with the all applicable provisions of the Notice of Awards for SOR, STR, and PFS grants, and SABG.
 - 3.7.1.2 Comply with RCW 69.50.540 Dedicated Marijuana Account Appropriations.
 - 3.7.1.3 Maintain records that identify, in its accounts, all federal awards received and expended and the federal programs under which they were received, by Catalog of Federal Domestic Assistance (CFDA) title and number, award number and year, name of the federal agency, and name of the pass-through entity;
 - 3.7.1.4 Maintain internal controls that provide reasonable assurance that the Contractor is managing federal awards in compliance with laws, regulations, and provisions of contracts or grant agreements that could have a material effect on each of its federal programs;
 - 3.7.1.5 Comply with requirements of Charitable Choice (42 USC 300x-65 and 42 CFR Section 54);
 - 3.7.1.5.1 The Contractor shall ensure that Charitable Choice Requirements of 42 CFR Part 54 are followed and that Faith-Based Organizations (FBO) are provided opportunities to compete with traditional alcohol/drug abuse prevention providers for funding.
 - 3.7.1.5.2 If the Contractor subcontracts with FBOs, the Contractor shall require the FBO to meet the requirements of 42 CFR Part 54 as follows:
 - 3.7.1.5.3 Applicants/recipients for/of services shall be provided with a choice of prevention providers.
 - 3.7.1.5.4 The FBO shall facilitate a referral to an alternative provider within a reasonable time frame when requested by the recipient of services.
 - 3.7.1.5.5 The FBO shall report to the Contractor all referrals made to alternative providers.
 - 3.7.1.5.6 The FBO shall provide recipients with a notice of their

rights.

- 3.7.1.5.7 The FBO provides recipients with a summary of services that includes any inherently religious activities. Prepare appropriate financial statements, including a schedule of expenditures of federal awards;
- 3.7.1.6 Incorporate 2 CFR Part 200, Subpart F audit requirements into all agreements between the Contractor and its Subcontractors who are subrecipients;
- 3.7.1.7 Comply with the applicable requirements of 2 CFR Part 200, including any future amendments to 2 CFR Part 200, and any successor or replacement Office of Management and Budget (OMB) Circular or regulation; and
- 3.7.1.8 Comply with the Omnibus Crime Control and Safe Streets Act of 1968; Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; Title II of the Americans with Disabilities Act of 1990; Title IX of the Education Amendments of 1972; The Age Discrimination Act of 1975; and The Department of Justice Non-Discrimination Regulations at 28 CFR Part 42, Subparts C, D, E, and G, and 28 CFR Parts 35 and 39. (Go to www.ojp.usdoj.gov/ocr/ for additional information and access to the aforementioned Federal laws and regulations.)

3.8 INCORPORATION OF DOCUMENTS AND ORDER OF PRECEDENCE

Each of the documents listed below is by this reference incorporated into this Agreement. In the event of an inconsistency, the inconsistency will be resolved in the following order of precedence:

- 3.8.1 Applicable Federal and State of Washington statutes and regulations;
- 3.8.2 Business Associate Agreement, HCA Agreement Number K3950;
- 3.8.3 Recitals
- 3.8.4 Special Terms and Conditions;
- 3.8.5 General Terms and Conditions;
- 3.8.6 Attachment 1: Confidential Information Security Requirements;
- 3.8.7 Attachment 2: Federal Compliance, Certifications and Assurances;
- 3.8.8 Attachment 3: Federal Funding Accountability and Transparency Act Data Collection Form;

3.8.9 Schedule A: Statement of Work;

3.9 INSURANCE

3.9.1 HCA certifies that it is self-insured under the State's self-insurance liability program, as provided by RCW 4.92.130, and shall pay for losses for which is found liable.

3.9.2 The Contractor certifies by signing this Agreement that either:

3.9.2.1 The Contractor is self-insured or insured through a risk pool and shall pay for losses for which it is found liable, or

3.9.2.2 The Contractor maintains the types and amounts of insurance identified below and shall, if requested by HCA; provide certificates of insurance to that effect to the HCA contact on page one of the Agreement.

3.9.2.2.1 Commercial General Liability Insurance Policy – to include coverage for bodily injury, property damage, and contractual liability, with the following minimum limits: Each occurrence - \$1,000,000; General Aggregate - \$2,000,000. The policy shall include liability arising out of premises, operations, independent contractors, products-completed operations, personal injury, advertising injury, and liability assumed under an insured agreement. The state of Washington, HCA, its elected and appointed officials, agents, and employees shall be named as additional insureds. Additionally, Contractor is responsible for ensuring that any Subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.

3.9.2.2.2 Professional Liability (PL) Insurance. The Contractor shall maintain Professional Liability Insurance or Errors & Omissions insurance, including coverage for losses caused by errors and omissions, with the following minimum limits: Each Occurrence - \$1,000,000; Aggregate - \$2,000,000.

3.10 BACKGROUND CHECKS (RCW 43.43, WAC 388-877 & 388-877B)

Contractor shall follow the requirements below and ensure this information is included in all subcontracts:

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Health Care Authority

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a) Contractor shall ensure a criminal background check is conducted for all staff members, including but not limited to, treatment staff members, prevention staff members, case managers, outreach staff members, etc. or volunteers who have unsupervised access to children, adolescents, vulnerable adults, and persons who have developmental disabilities; and

b) When providing services to youth, Contractor shall ensure that requirements of WAC 388-06-0170 are met.

4. GENERAL TERMS AND CONDITIONS

4.1 ACCESS TO DATA

In compliance with RCW 39.26.180 (2) and federal rules, the Contractor must provide access to any data generated under this Agreement to HCA, the Joint Legislative Audit and Review Committee, the State Auditor, and any other state or federal officials so authorized by law, rule, regulation, or agreement at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the Contractor's reports, including computer models and methodology for those models.

4.2 ADVANCE PAYMENT PROHIBITED

No advance payment will be made for services furnished by the Contractor pursuant to this Agreement.

4.3 AMENDMENTS

This Agreement may be amended by mutual agreement of the parties. Such amendments will not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

4.4 ASSIGNMENT

4.4.1 Contractor may not assign or transfer all or any portion of this Agreement or any of its rights hereunder, or delegate any of its duties hereunder, except delegations as set forth in Section 4.37, *Subcontracting*, without the prior written consent of HCA. Any permitted assignment will not operate to relieve Contractor of any of its duties and obligations hereunder, nor will such assignment affect any remedies available to HCA that may arise from any breach of the provisions of this Agreement or warranties made herein, including but not limited to, rights of setoff. Any attempted assignment, transfer or delegation in contravention of this Subsection 4.4.1 of the Agreement will be null and void.

4.4.2 HCA may assign this Agreement to any public agency, commission, board, or

the like, within the political boundaries of the State of Washington, with written notice of thirty (30) calendar days to Contractor.

- 4.4.3 This Agreement will inure to the benefit of and be binding on the parties hereto and their permitted successors and assigns.

4.5 ATTORNEYS' FEES

In the event of litigation or other action brought to enforce the terms of this Agreement, each party agrees to bear its own attorneys' fees and costs.

4.6 CHANGE IN STATUS

In the event of any substantive change in its legal status, organizational structure, or fiscal reporting responsibility, Contractor will notify HCA of the change. Contractor must provide notice as soon as practicable, but no later than thirty (30) calendar days after such a change takes effect.

4.7 CONFIDENTIAL INFORMATION PROTECTION

- 4.7.1 Contractor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Agreement or its performance may consist of Confidential Information. Contractor agrees to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this Agreement, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this Agreement, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without HCA's express written consent or as provided by law.
- 4.7.2 Contractor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information (See Attachment 1: Confidential Information Security Requirements).
- 4.7.3 Contractors that come into contact with Protected Health Information may be required to enter into a Business Associate Agreement with HCA in compliance with the requirements of the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, as modified by the American Recovery and Reinvestment Act of 2009 ("ARRA"), Sec. 13400 – 13424, H.R. 1 (2009) (HITECH Act) (HIPAA).
- 4.7.4 HCA reserves the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by Contractor through this Agreement. Violation of this section by Contractor or its Subcontractors may result in termination of this Agreement and demand for return of all Confidential

Information, monetary damages, or penalties.

- 4.7.5 The obligations set forth in this Section will survive completion, cancellation, expiration, or termination of this Agreement.

4.8 CONFIDENTIAL INFORMATION SECURITY

The federal government, including the Substance Abuse and Mental Health Services Administration (SAMHSA), and the State of Washington all maintain security requirements regarding privacy, data access, and other areas. Contractor is required to comply with the Confidential Information Security Requirements set out in Attachment 1 to this Agreement and appropriate portions of the Washington OCIO Security Standard, 141.10 (<https://ocio.wa.gov/policies/141-securing-information-technology-assets/14110-securing-information-technology-assets>).

4.9 CONFIDENTIAL INFORMATION BREACH – REQUIRED NOTIFICATION

- 4.9.1 Contractor must notify the HCA Privacy Officer (HCAPrivacyOfficer@hca.wa.gov) within five Business Days of discovery of any Breach or suspected Breach of Confidential Information.
- 4.9.2 Contractor will take steps necessary to mitigate any known harmful effects of such unauthorized access including, but not limited to, sanctioning employees and taking steps necessary to stop further unauthorized access. Contractor agrees to indemnify and hold HCA harmless for any damages related to unauthorized use or disclosure of Confidential Information by Contractor, its officers, directors, employees, Subcontractors or agents.
- 4.9.3 If notification of the Breach or possible Breach must (in the judgment of HCA) be made under the HIPAA Breach Notification Rule, or RCW 42.56.590 or RCW 19.255.010, or other law or rule, then:
- 4.9.3.1 HCA may choose to make any required notifications to the individuals, to the U.S. Department of Health and Human Services Secretary (DHHS) Secretary, and to the media, or direct Contractor to make them or any of them.
 - 4.9.3.2 In any case, Contractor will pay the reasonable costs of notification to individuals, media, and governmental agencies and of other actions HCA reasonably considers appropriate to protect HCA clients (such as paying for regular credit watches in some cases).
 - 4.9.3.3 Contractor will compensate HCA clients for harms caused to them by any Breach or possible Breach.
- 4.9.4 Any breach of this clause may result in termination of the Agreement and the demand for return or disposition (Attachment 1, Section 6) of all Confidential

Information.

- 4.9.5 Contractor's obligations regarding Breach notification survive the termination of this Agreement and continue for as long as Contractor maintains the Confidential Information and for any breach or possible breach at any time.

4.10 CONTRACTOR'S PROPRIETARY INFORMATION

Contractor acknowledges that HCA is subject to chapter 42.56 RCW, the Public Records Act, and that this Agreement will be a public record as defined in chapter 42.56 RCW. Any specific information that is claimed by Contractor to be Proprietary Information must be clearly identified as such by Contractor. To the extent consistent with chapter 42.56 RCW, HCA will maintain the confidentiality of Contractor's information in its possession that is marked Proprietary. If a public disclosure request is made to view Contractor's Proprietary Information, HCA will notify Contractor of the request and of the date that such records will be released to the requester unless Contractor obtains a court order from a court of competent jurisdiction enjoining that disclosure. If Contractor fails to obtain the court order enjoining disclosure, HCA will release the requested information on the date specified.

4.11 COVENANT AGAINST CONTINGENT FEES

Contractor warrants that no person or selling agent has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the Contractor for the purpose of securing business. HCA will have the right, in the event of breach of this clause by the Contractor, to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

4.12 DEBARMENT

By signing this Agreement, Contractor certifies that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded in any Washington State or Federal department or agency from participating in transactions (debarred). Contractor agrees to include the above requirement in any and all subcontracts into which it enters, and also agrees that it will not employ debarred individuals. Contractor must immediately notify HCA if, during the term of this Agreement, Contractor becomes debarred. HCA may immediately terminate this Agreement by providing Contractor written notice, if Contractor becomes debarred during the term hereof.

4.13 DISPUTES

The parties will use their best, good faith efforts to cooperatively resolve disputes and problems that arise in connection with this Agreement. Both parties will continue without delay to carry out their respective responsibilities under this Agreement while attempting to

resolve any dispute. When a genuine dispute arises between HCA and the Contractor regarding the terms of this Agreement or the responsibilities imposed herein and it cannot be resolved between the parties' Agreement Managers, either party may initiate the following dispute resolution process.

4.13.1 The initiating party will reduce its description of the dispute to writing and deliver it to the responding party (email acceptable). The responding party will respond in writing within five (5) Business Days (email acceptable). If the initiating party is not satisfied with the response of the responding party, then the initiating party may request that the HCA Director review the dispute. Any such request from the initiating party must be submitted in writing to the HCA Director within five (5) Business Days after receiving the response of the responding party. The HCA Director will have sole discretion in determining the procedural manner in which he or she will review the dispute. The HCA Director will inform the parties in writing within five (5) Business Days of the procedural manner in which he or she will review the dispute, including a timeframe in which he or she will issue a written decision.

4.13.2 A party's request for a dispute resolution must:

4.13.2.1 Be in writing;

4.13.2.2 Include a written description of the dispute;

4.13.2.3 State the relative positions of the parties and the remedy sought;

4.13.2.4 State the Agreement Number and the names and contact information for the parties;

4.13.3 This dispute resolution process constitutes the sole administrative remedy available under this Agreement. The parties agree that this resolution process will precede any action in a judicial or quasi-judicial tribunal.

4.14 ENTIRE AGREEMENT

HCA and Contractor agree that the Agreement is the complete and exclusive statement of the agreement between the parties relating to the subject matter of the Agreement and supersedes all letters of intent or prior Agreements, oral or written, between the parties relating to the subject matter of the Agreement, except as provided in Section 4.44 Warranties.

4.15 FEDERAL FUNDING ACCOUNTABILITY & TRANSPARENCY ACT (FFATA)

4.15.1 This Agreement is supported by federal funds that require compliance with the Federal Funding Accountability and Transparency Act (FFATA or the Transparency Act). The purpose of the Transparency Act is to make information available online so the public can see how federal funds are spent.

4.15.2 To comply with the act and be eligible to enter into this Agreement, Contractor must have a Data Universal Numbering System (DUNS®) number. A DUNS® number provides a method to verify data about your organization. If Contractor does not already have one, a DUNS® number is available free of charge by contacting Dun and Bradstreet at www.dnb.com.

4.15.3 Information about Contractor and this Agreement will be made available on www.uscontractorregistration.com by HCA as required by P.L. 109-282. HCA's Attachment 3: Federal Funding Accountability and Transparency Act Data Collection Form, is considered part of this Agreement and must be completed and returned along with the Agreement.

4.16 FORCE MAJEURE

A party will not be liable for any failure of or delay in the performance of this Agreement for the period that such failure or delay is due to causes beyond its reasonable control, including but not limited to acts of God, war, strikes or labor disputes, embargoes, government orders or any other force majeure event.

4.17 FUNDING WITHDRAWN, REDUCED OR LIMITED

If HCA determines in its sole discretion that the funds it relied upon to establish this Agreement have been withdrawn, reduced or limited, or if additional or modified conditions are placed on such funding after the effective date of this Agreement but prior to the normal completion of this Agreement, then HCA, at its sole discretion, may:

4.17.1 Terminate this Agreement pursuant to Section 4.41.1, TERMINATION DUE TO CHANGE IN FUNDING;

4.17.2 Renegotiate the Agreement under the revised funding conditions; or

4.17.3 Suspend Contractor's performance under the Agreement upon five (5) Business Days' advance written notice to Contractor. HCA will use this option only when HCA determines that there is reasonable likelihood that the funding insufficiency may be resolved in a timeframe that would allow Contractor's performance to be resumed prior to the normal completion date of this Agreement.

4.17.3.1 During the period of suspension of performance, each party will inform the other of any conditions that may reasonably affect the potential for resumption of performance.

4.17.3.2 When HCA determines in its sole discretion that the funding insufficiency is resolved, it will give Contractor written notice to resume performance. Upon the receipt of this notice, Contractor will provide written notice to HCA informing HCA whether it can resume

performance and, if so, the date of resumption. For purposes of this subsection, "written notice" may include email.

- 4.17.3.3 If the Contractor's proposed resumption date is not acceptable to HCA and an acceptable date cannot be negotiated, HCA may terminate the Agreement by giving written notice to Contractor. The parties agree that the Agreement will be terminated retroactive to the date of the notice of suspension. HCA will be liable only for payment in accordance with the terms of this Agreement for services rendered prior to the retroactive date of termination.

4.18 GOVERNING LAW

This Agreement is governed in all respects by the laws of the state of Washington, without reference to conflict of law principles. The jurisdiction for any action hereunder is exclusively in the Superior Court for the state of Washington, and the venue of any action hereunder is in the Superior Court for Thurston County, Washington. Nothing in this Agreement will be construed as a waiver by HCA of the State's immunity under the 11th Amendment to the United States Constitution.

4.19 HCA NETWORK SECURITY

Contractor agrees not to attach any Contractor-supplied computers, peripherals or software to the HCA Network without prior written authorization from HCA's Chief Information Officer. Unauthorized access to HCA networks and systems is a violation of HCA Policy and constitutes computer trespass in the first degree pursuant to RCW 9A.52.110. Violation of any of these laws or policies could result in termination of the Agreement and other penalties.

Contractor will have access to the HCA visitor Wi-Fi Internet connection while on site.

4.20 INDEMNIFICATION

Contractor must defend, indemnify, and save HCA harmless from and against all claims, including reasonable attorneys' fees resulting from such claims, for any or all injuries to persons or damage to property, or Breach of its confidentiality and notification obligations under Section 4.7 Confidential Information Protection and Section 4.8 Confidentiality Breach-Required Notification, arising from intentional or negligent acts or omissions of Contractor, its officers, employees, or agents, or Subcontractors, their officers, employees, or agents, in the performance of this Agreement.

4.21 INDEPENDENT CAPACITY OF THE CONTRACTOR

The parties intend that an independent contractor relationship will be created by this Agreement. Contractor and its employees or agents performing under this Agreement are not employees or agents of HCA. Contractor will not hold itself out as or claim to be an officer or employee of HCA or of the State of Washington by reason hereof, nor will

Contractor make any claim of right, privilege or benefit that would accrue to such employee under law. Conduct and control of the work will be solely with Contractor.

4.22 INDUSTRIAL INSURANCE COVERAGE

Prior to performing work under this Agreement, Contractor must provide or purchase industrial insurance coverage for the Contractor's employees, as may be required of an "employer" as defined in Title 51 RCW, and must maintain full compliance with Title 51 RCW during the course of this Agreement.

4.23 LEGAL AND REGULATORY COMPLIANCE

4.23.1 During the term of this Agreement, Contractor must comply with all local, state, and federal licensing, accreditation and registration requirements/standards, necessary for the performance of this Agreement and all other applicable federal, state and local laws, rules, and regulations.

4.23.2 While on the HCA premises, Contractor must comply with HCA operations and process standards and policies (e.g., ethics, Internet / email usage, data, network and building security, harassment, as applicable). HCA will make an electronic copy of all such policies available to Contractor.

4.23.3 Failure to comply with any provisions of this section may result in Agreement termination.

4.24 LIMITATION OF AUTHORITY

Only the HCA Authorized Representative has the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Agreement. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this Agreement is not effective or binding unless made in writing and signed by the HCA Authorized Representative.

4.25 NO THIRD-PARTY BENEFICIARIES

HCA and Contractor are the only parties to this Agreement. Nothing in this Agreement gives or is intended to give any benefit of this Agreement to any third parties.

4.26 NONDISCRIMINATION

During the performance of this Agreement, the Contractor must comply with all federal and state nondiscrimination laws, regulations and policies, including but not limited to: Title VII of the Civil Rights Act, 42 U.S.C. §12101 et seq.; the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §12101 et seq., 28 CFR Part 35; and Title 49.60 RCW, Washington Law Against Discrimination. In the event of Contractor's noncompliance or refusal to comply with any nondiscrimination law, regulation or policy, this Agreement may be rescinded, canceled,

or terminated in whole or in part under the Termination for Default sections, and Contractor may be declared ineligible for further Agreements with HCA.

4.27 OVERPAYMENTS TO CONTRACTOR

In the event that overpayments or erroneous payments have been made to the Contractor under this Agreement, HCA will provide written notice to Contractor and Contractor shall refund the full amount to HCA within thirty (30) calendar days of the notice. If Contractor fails to make timely refund, HCA may charge Contractor one percent (1%) per month on the amount due, until paid in full. If the Contractor disagrees with HCA's actions under this section, then it may invoke the dispute resolution provisions of Section 4.13 Disputes.

4.28 PAY EQUITY

- 4.28.1 Contractor represents and warrants that, as required by Washington state law (Laws of 2017, Chap. 1, § 147), during the term of this Agreement, it agrees to equality among its workers by ensuring similarly employed individuals are compensated as equals. For purposes of this provision, employees are similarly employed if (i) the individuals work for Contractor, (ii) the performance of the job requires comparable skill, effort, and responsibility, and (iii) the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed.
- 4.28.2 Contractor may allow differentials in compensation for its workers based in good faith on any of the following: (i) a seniority system; (ii) a merit system; (iii) a system that measures earnings by quantity or quality of production; (iv) bona fide job-related factor(s); or (v) a bona fide regional difference in compensation levels.
- 4.28.3 Bona fide job-related factor(s)" may include, but not be limited to, education, training, or experience, that is: (i) consistent with business necessity; (ii) not based on or derived from a gender-based differential; and (iii) accounts for the entire differential.
- 4.28.4 A "bona fide regional difference in compensation level" must be (i) consistent with business necessity; (ii) not based on or derived from a gender-based differential; and (iii) account for the entire differential.
- 4.28.5 Notwithstanding any provision to the contrary, upon breach of warranty and Contractor's failure to provide satisfactory evidence of compliance within thirty (30) Days of HCA's request for such evidence, HCA may suspend or terminate this Agreement.

4.29 PUBLICITY

- 4.29.1 The award of this Agreement to Contractor is not in any way an endorsement

of Contractor or Contractor's Services by HCA and must not be so construed by Contractor in any advertising or other publicity materials.

- 4.29.2 Contractor agrees to submit to HCA, all advertising, sales promotion, and other publicity materials relating to this Agreement or any Service furnished by Contractor in which HCA's name is mentioned, language is used, or Internet links are provided from which the connection of HCA's name with Contractor's Services may, in HCA's judgment, be inferred or implied. Contractor further agrees not to publish or use such advertising, marketing, sales promotion materials, publicity or the like through print, voice, the Web, and other communication media in existence or hereinafter developed without the express written consent of HCA prior to such use.

4.30 RECORDS AND DOCUMENTS REVIEW

- 4.30.1 The Contractor must maintain books, records, documents, magnetic media, receipts, invoices or other evidence relating to this Agreement and the performance of the services rendered, along with accounting procedures and practices, all of which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. At no additional cost, these records, including materials generated under this Agreement, are subject at all reasonable times to inspection, review, or audit by HCA, the Office of the State Auditor, and state and federal officials so authorized by law, rule, regulation, or agreement [See 42 USC 1396a(a)(27)(B); 42 USC 1396a(a)(37)(B); 42 USC 1396a(a)(42)(A); 42 CFR 431, Subpart Q; and 42 CFR 447.202].
- 4.30.2 The Contractor must retain such records for a period of six (6) years after the date of final payment under this Agreement.
- 4.30.3 If any litigation, claim or audit is started before the expiration of the six (6) year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved.

4.31 REMEDIES NON-EXCLUSIVE

The remedies provided in this Agreement are not exclusive, but are in addition to all other remedies available under law.

4.32 RIGHT OF INSPECTION

The Contractor must provide right of access to its facilities to HCA, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Agreement.

4.33 RIGHTS IN DATA/OWNERSHIP

- 4.33.1 HCA and Contractor agree that all data and work products (collectively "Work Product") produced pursuant to this Agreement will be considered a *work for hire* under the U.S. Copyright Act, 17 U.S.C. §101 *et seq.*, and will be owned by HCA. Contractor is hereby commissioned to create the Work Product. Work Product includes, but is not limited to, discoveries, formulae, ideas, improvements, inventions, methods, models, processes, techniques, findings, conclusions, recommendations, reports, designs, plans, diagrams, drawings, Software, databases, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions, to the extent provided by law. Ownership includes the right to copyright, patent, register and the ability to transfer these rights and all information used to formulate such Work Product.
- 4.33.2 If for any reason the Work Product would not be considered a *work for hire* under applicable law, Contractor assigns and transfers to HCA, the entire right, title and interest in and to all rights in the Work Product and any registrations and copyright applications relating thereto and any renewals and extensions thereof.
- 4.33.3 Contractor will execute all documents and perform such other proper acts as HCA may deem necessary to secure for HCA the rights pursuant to this section.
- 4.33.4 Contractor will not use or in any manner disseminate any Work Product to any third party, or represent in any way Contractor ownership of any Work Product, without the prior written permission of HCA. Contractor shall take all reasonable steps necessary to ensure that its agents, employees, or Subcontractors will not copy or disclose, transmit or perform any Work Product or any portion thereof, in any form, to any third party.
- 4.33.5 Material that is delivered under this Agreement, but that does not originate therefrom ("Preexisting Material"), must be transferred to HCA with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, display, and dispose of such Preexisting Material, and to authorize others to do so. Contractor agrees to obtain, at its own expense, express written consent of the copyright holder for the inclusion of Preexisting Material. HCA will have the right to modify or remove any restrictive markings placed upon the Preexisting Material by Contractor.
- 4.33.6 Contractor must identify all Preexisting Material when it is delivered under this Agreement and must advise HCA of any and all known or potential infringements of publicity, privacy or of intellectual property affecting any

Preexisting Material at the time of delivery of such Preexisting Material. Contractor must provide HCA with prompt written notice of each notice or claim of copyright infringement or infringement of other intellectual property right worldwide received by Contractor with respect to any Preexisting Material delivered under this Agreement.

4.34 RIGHTS OF STATE AND FEDERAL GOVERNMENTS

In accordance with 45 C.F.R. 95.617, all appropriate state and federal agencies, including but not limited to the Centers for Medicare and Medicaid Services (CMS), will have a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, translate, or otherwise use, and to authorize others to use for Federal Government purposes: (i) software, modifications, and documentation designed, developed or installed with Federal Financial Participation (FFP) under 45 CFR Part 95, subpart F; (ii) the Custom Software and modifications of the Custom Software, and associated Documentation designed, developed, or installed with FFP under this Agreement; (iii) the copyright in any work developed under this Agreement; and (iv) any rights of copyright to which Contractor purchases ownership under this Agreement.

4.35 SEVERABILITY

If any provision of this Agreement or the application thereof to any person(s) or circumstances is held invalid, such invalidity will not affect the other provisions or applications of this Agreement that can be given effect without the invalid provision, and to this end the provisions or application of this Agreement are declared severable.

4.36 SITE SECURITY

While on HCA premises, Contractor, its agents, employees, or Subcontractors must conform in all respects with physical, fire or other security policies or regulations. Failure to comply with these regulations may be grounds for revoking or suspending security access to these facilities. HCA reserves the right and authority to immediately revoke security access to Contractor staff for any real or threatened breach of this provision. Upon reassignment or termination of any Contractor staff, Contractor agrees to promptly notify HCA.

4.37 SUBCONTRACTING

4.37.1 Neither Contractor, nor any Subcontractors, may enter into subcontracts for any of the work contemplated under this Agreement without prior written approval of HCA. HCA has sole discretion to determine whether or not to approve any such subcontract. In no event will the existence of the subcontract operate to release or reduce the liability of Contractor to HCA for any breach in the performance of Contractor's duties.

4.37.2 Any agreement between Contractor and a Subcontractor shall include the terms and conditions that meet or exceed all requirements and conditions in

this Agreement that the Contractor is required to meet when providing services to patients, clients, or persons seeking assistance, including but not limited to: (1) identification of funding sources; (b) DUNS number and zip code +4 of subcontractor; (c) determination of eligible clients; (d) payment or reimbursement arrangement in compliance with the Fiscal/Program Requirements; (e) termination of a subcontract shall be grounds for a fair hearing for the service applicant or a grievance for the recipient if similar services are immediately available in the County; (f) Contractor rights in the event of termination of a subcontract to ensure all data on services provided have been entered into the Substance Use Disorder Prevention and Mental Health Promotion Online Reporting System ("Minerva"); (g) informing service applications and recipients of their right to a grievance in the case of a denial or termination of service and/or failure to act upon a request for services with reasonable promptness; (h) audit requirements in compliance with OMB 2, Part 200, Subpart F (A-133); (i) authorizing Contractor to conduct an inspection of any and all subcontractor facilities where services are provided; (j) requiring Subcontractor to perform background checks on its employees and independent contractors used to perform the services; (k) representation and warranty that Subcontractor is not has not been debarred or suspended by any state or the federal government; (l) Business Associate Agreement in compliance with the requirements of HIPAA; (m) protection of the Confidential Information and restrictions on the providing and sharing of data; and (n) identifying unallowable uses of federal funds.

- 4.37.3 If at any time during the progress of the work HCA determines in its sole judgment that any Subcontractor is incompetent or undesirable, HCA will notify Contractor, and Contractor must take immediate steps to terminate the Subcontractor's involvement in the work.
- 4.37.4 The rejection or approval by the HCA of any Subcontractor or the termination of a Subcontractor will not relieve Contractor of any of its responsibilities under the Agreement, nor be the basis for additional charges to HCA.
- 4.37.5 Contractor shall submit a subcontract monitoring plan to Agreement Manager or designee fifteen (15) days prior of entering into first subcontract during Agreement period for review and HCA approval to include a plan for (a) an annual onsite review of each subcontract providing services monitoring the subcontractor's contractual, fiscal, and programmatic compliance; (b) preparation of written documentation of each on-site visit and delivery of such documentation to HCA; (c) ensuring subcontractors have entered services funded under this Agreement in the Minerva database; and (d) ensuring records of additional monitoring activities in the Contractor's subcontractor file are kept and making them available to HCA upon request, including any audit and any independent documentation. Additionally, in the event of subcontractor termination or closure, the Contractor shall withhold final payment of any

subcontract until all required Minerva reporting is complete.

- 4.37.6 The Contractor shall ensure that subcontractors have entered services funded under this contract in Minerva. The Contractor may not require subcontractor to enter duplicate prevention service data that is entered into Minerva into an additional system. The Contractor shall ensure the proper training of staff and designated back-up staff for Minerva data entry to meet report due dates.
- 4.37.7 The Contractor shall maintain records of additional monitoring activities in the Contractor's subcontractor file and make them available to HCA upon request including any audit and any independent documentation.

4.38 SUBRECIPIENT

4.38.1 General

If the Contractor is a subrecipient (as defined in 45 CFR 75.2 and 2 CFR 200.93) of federal awards, then the Contractor, in accordance with 2 CFR 200.501 and 45 CFR 75.501, shall:

- 4.38.1.1 Maintain records that identify, in its accounts, all federal awards received and expended and the federal programs under which they were received, by Catalog of Federal Domestic Assistance (CFDA) title and number, award number and year, name of the federal agency, and name of the pass-through entity;
- 4.38.1.2 Maintain internal controls that provide reasonable assurance that the Contractor is managing federal awards in compliance with laws, regulations, and provisions of contracts or grant agreements that could have a material effect on each of its federal programs;
- 4.38.1.3 Prepare appropriate financial statements, including a schedule of expenditures of federal awards;
- 4.38.1.4 Incorporate OMB Super Circular 2 CFR 200.501 and 45 CFR 75.501 audit requirements into all agreements between the Contractor and its Subcontractors who are subrecipients;
- 4.38.1.5 Comply with any future amendments to OMB Super Circular 2 CFR 200.501 and 45 CFR 75.501 and any successor or replacement Circular or regulation;
- 4.38.1.6 Comply with the applicable requirements of OMB Super Circular 2 CFR 200.501 and 45 CFR 75.501 and any future amendments to OMB Super Circular 2 CFR 200.501 and 45 CFR 75.501, and any successor or replacement Circular or regulation; and
- 4.38.1.7 Comply with the Omnibus Crime Control and Safe streets Act of 1968, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, Title IX of the Education Amendments of 1972, The

Age Discrimination Act of 1975, and The Department of Justice Non-Discrimination Regulations, 28 C.F.R. Part 42, Subparts C.D.E. and G, and 28 C.F.R. Part 35 and 39. (Go to <http://ojp.gov/about/offices/ocr.htm> for additional information and access to the aforementioned Federal laws and regulations.)

4.38.2 Single Audit Act Compliance

If the Contractor is a subrecipient and expends \$750,000 or more in federal awards from any and/or all sources in any fiscal year, the Contractor shall procure and pay for a single audit or a program-specific audit for that fiscal year. Upon completion of each audit, the Contractor shall:

- 4.38.2.1 Submit to the Authority contact person the data collection form and reporting package specified in OMB Super Circular 2 CFR 200.501 and 45 CFR 75.501, reports required by the program-specific audit guide (if applicable), and a copy of any management letters issued by the auditor;
- 4.38.2.2 Follow-up and develop corrective action for all audit findings; in accordance with OMB Super Circular 2 CFR 200.501 and 45 CFR 75.501, prepare a "Summary Schedule of Prior Audit Findings."

4.38.3 Overpayments

- 4.38.3.1 If it is determined by HCA, or during the course of a required audit, that Contractor has been paid unallowable costs under this or any Program Agreement, Contractor shall refund the full amount to HCA as provided in Section 4.27 Overpayments to Contractors.

4.39 SURVIVAL

The terms and conditions contained in this Agreement that, by their sense and context, are intended to survive the completion, cancellation, termination, or expiration of the Agreement will survive. In addition, the terms of the sections titled Confidential Information Protection, Confidential Information Breach – Required Notification, Contractor's Proprietary Information, Disputes, Overpayments to Contractor, Publicity, Records and Documents Review, Rights in Data/Ownership, and Rights of State and Federal Governments will survive the termination of this Agreement. The right of HCA to recover any overpayments will also survive the termination of this Agreement.

4.40 TAXES

All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance, or other expenses for the Contractor or its staff is the sole responsibility of the Contractor.

4.41 TERMINATION

4.41.1 TERMINATION DUE TO CHANGE IN FUNDING

4.41.1.1 If the funds that HCA relied upon to establish any Agreement are withdrawn, reduced, or limited, or if additional modified conditions are placed on such funding, and such changes materially affect the ability of HCA to provide funds or to perform under the Agreement, HCA will notify and consult with the Contractor as soon as practical and, as a last resort, may terminate this Agreement by providing at least fifteen (15) calendar days written notice to the Contractor.

4.41.1.2 If funds are available, HCA will pay the Contractor for its reasonable costs that directly relate to termination of the Agreement. The parties may identify and agree upon such costs. Such costs may include, but are not limited to, closeout costs, unemployment costs, severance pay, retirement benefits, reasonable profits, and termination costs associated with any approved subcontract.

4.41.2 TERMINATION FOR CONVENIENCE

4.41.2.1 Either party may terminate the agreement for Convenience by giving the other party at least thirty (30) days written notice.

4.41.2.2 The Contract must address such notices to:

Health Care Authority Contract Services
Post Office Box 42702
Olympia, Washington 98504-2702

4.41.2.3 HCA must direct such notices to the Contract contact named on the first page of the Agreement.

4.41.2.4 If either party terminates the Agreement for convenience, the terminating party may pay an amount agreed to by the parties for actual costs incurred by the non-terminating party in performance of or in reliance on the Agreement.

4.41.3 TERMINATION FOR DEFAULT

4.41.3.1 The Contracts Administrator may terminate the Agreement for Default, in whole or in part, by written notice to the Contractor if HCA has a reasonable basis to believe the Contract has:

4.41.3.1.1 Failed to meet or maintain any requirement for contracting in this Agreement with HCA:

4.41.3.1.2 Failed to perform under any provision of the Agreement;

- 4.41.3.1.3 Negligently failed to ensure the health or safety of any client for whom services are being provided under the Agreement;
- 4.41.3.1.4 Violated any applicable law, regulation, rule, or ordinance related to the Agreement; and/or
- 4.41.3.1.5 Otherwise breached any provision or condition of the Agreement.

4.41.3.2 The Contracts Administrator must give the Contractor at least ten (10) business days' notice of HCA's intent to terminate the Agreement, along with a summary of the facts supporting such termination.

- 4.41.3.2.1 The Contractor must have at least ten (10) business days in which to cure the default provided that it will reasonably take longer than ten (10) business days to cure the default, the cure period will be a reasonable period agreed by the parties.
- 4.41.3.2.2 In the event of a continuing pattern of default, the Contracts Administrator will not be required to provide a cure period.
- 4.41.3.2.3 The Contract Administrator is not required to offer a cure period if a client's health or safety is at risk. This provision does not apply if the alleged default is an activity related to Contractor law, custom, or practice.

4.41.3.3 The Contractor may terminate this Agreement for default, in whole or in part, by written notice to HCA if the Contractor has a reasonable basis to believe that HCA has:

- 4.41.3.3.1 Failed to meet or maintain any requirement for contracting with the Contractor;
- 4.41.3.3.2 Failed to perform under any provision of the Agreement;
- 4.41.3.3.3 Violated any law, regulation, rule, or ordinance applicable to work performed under the Agreement; and/or
- 4.41.3.3.4 Otherwise breached any provision or condition of the

Agreement.

4.41.3.4 Before the Contractor may terminate the Agreement for default, the Contract must provide HCA at least ten (10) business days written notice of the Contractor's intent to terminate the Agreement, along with a summary of the facts supporting such termination. HCA must have at least ten (10) business days in which to cure the default provided that it will reasonably take longer than ten (10) business days to cure the default, the cure period must be a reasonable period agreed by the parties.

4.41.4 TERMINATION FOR WITHDRAWAL OF AUTHORITY

In the event that the authority of HCA to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Agreement and prior to normal completion, HCA may immediately terminate this Agreement in whole or in part, by providing written notice to the Contractor. The termination will be effective on the date specified in the termination notice. HCA will be liable only for payment in accordance with the terms of this Agreement for services rendered prior to the effective date of termination. HCA agrees to notify Contractor of such withdrawal of authority at the earliest possible time. No penalty will accrue to HCA in the event the termination option in this section is exercised. This section must not so as to permit HCA to terminate this Agreement in order to acquire similar services from a third party.

4.42 TERMINATION PROCEDURES

The following provisions must survive and be binding on the parties in the event the Agreement is terminated:

- 4.42.1 The Contract must cease to perform any services required by the Agreement as of the effective date of termination and must comply with all reasonable instructions contained in the notice of termination.
- 4.42.2 If requested by HCA within ten (10) business days of termination, the Contractor must, within a period not to exceed thirty (30) business days, deliver to HCA all HCA assets or property in its possession. If the Contractor does not return HCA property within thirty (30) business days of the Agreement termination, the Contractor will be charged with all reasonable costs of recovery, including transportation and attorney's fees. The Contractor must protect and preserve any property of HCA that is in the possession of the Contractor pending return to HCA.
- 4.42.3 HCA will be liable for and will pay for those services authorized and provided through the date of termination. HCA may pay an amount agreed to by the parties for partially completed work and services, if work products are useful to

or useable by HCA.

- 4.42.4 If the Contracts Administrator terminates the Agreement for default, HCA may withhold a sum from the final payment to the Contractor that is reasonable and necessary to protect HCA against reasonably anticipated loss or liability. HCA must provide the Contractor with written notice of the amount withheld and the nature of the reasonable anticipated loss or liability. If it is later determined that the Contractor was in default, HCA must pay the amount withheld to the Contractor within ten (10) business days of determines that the Contractor was not in default.

4.43 WAIVER

Waiver of any breach of any term or condition of this Agreement will not be deemed a waiver of any prior or subsequent breach or default. No term or condition of this Agreement will be held to be waived, modified, or deleted except by a written instrument signed by the parties. Only the HCA Authorized Representative has the authority to waive any term or condition of this Agreement on behalf of HCA.

4.44 WARRANTIES

- 4.44.1 Contractor represents and warrants that it will perform all services pursuant to this Agreement in a professional manner and with high quality and will immediately re- perform any services that are not in compliance with this representation and warranty at no cost to HCA.
- 4.44.2 Contractor represents and warrants that it shall comply with all applicable local, State, and federal licensing, accreditation and registration requirements and standards necessary in the performance of the Services.
- 4.44.3 Any written commitment by Contractor within the scope of this Agreement will be binding upon Contractor. Failure of Contractor to fulfill such a commitment may constitute breach and will render Contractor liable for damages under the terms of this Agreement. For purposes of this section, a commitment by Contractor includes: (i) Prices, discounts, and options committed to remain in force over a specified period of time; and (ii) any warranty or representation made by Contractor to HCA or contained in any Contractor publications, or descriptions of services in written or other communication medium, used to influence HCA to enter into this Agreement.

Attachment 1

Confidential Information Security Requirements

1. Definitions

In addition to the definitions set out in Section 2 of this Agreement K3950 for CPWI Prevention Services, the definitions below apply to this Attachment.

- a. "Hardened Password" means a string of characters containing at least three of the following character classes: upper case letters; lower case letters; numerals; and special characters, such as an asterisk, ampersand or exclamation point.
 - i. Passwords for external authentication must be a minimum of 10 characters long.
 - ii. Passwords for internal authentication must be a minimum of 8 characters long.
 - iii. Passwords used for system service or service accounts must be a minimum of 20 characters long.
- b. "Portable/Removable Media" means any Data storage device that can be detached or removed from a computer and transported, including but not limited to: optical media (e.g. CDs, DVDs); USB drives; or flash media (e.g. CompactFlash, SD, MMC).
- c. "Portable/Removable Devices" means any small computing device that can be transported, including but not limited to: handhelds/PDAs/Smartphones; Ultramobile PC's, flash memory devices (e.g. USB flash drives, personal media players); and laptops/notebook/tablet computers. If used to store Confidential Information, devices should be Federal Information Processing Standards (FIPS) Level 2 compliant.
- d. "Secured Area" means an area to which only Authorized Users have access. Secured Areas may include buildings, rooms, or locked storage containers (such as a filing cabinet) within a room, as long as access to the Confidential Information is not available to unauthorized personnel.
- e. "Transmitting" means the transferring of data electronically, such as via email, SFTP, webservices, AWS Snowball, etc.
- f. "Trusted System(s)" means the following methods of physical delivery: (1) hand-delivery by a person authorized to have access to the Confidential Information with written acknowledgement of receipt; (2) United States Postal Service ("USPS") first class mail, or USPS delivery services that include Tracking, such as Certified Mail, Express Mail or Registered Mail; (3) commercial delivery services (e.g. FedEx, UPS,

DHL) which offer tracking and receipt confirmation; and (4) the Washington State Campus mail system. For electronic transmission, the Washington State Governmental Network (SGN) is a Trusted System for communications within that Network.

- g. "Unique User ID" means a string of characters that identifies a specific user and which, in conjunction with a password, passphrase, or other mechanism, authenticates a user to an information system.

2. Confidential Information Transmitting

- a. When transmitting HCA's Confidential Information electronically, including via email, the Data must be encrypted using NIST 800-series approved algorithms (<http://csrc.nist.gov/publications/PubsSPs.html>). This includes transmission over the public internet.
- b. When transmitting HCA's Confidential Information via paper documents, the Receiving Party must use a Trusted System.

3. Protection of Confidential Information

The Contractor agrees to store Confidential Information as described:

- a. Data at Rest:
 - i. Data will be encrypted with NIST 800-series approved algorithms. Encryption keys will be stored and protected independently of the data. Access to the Data will be restricted to Authorized Users through the use of access control lists, a Unique User ID, and a Hardened Password, or other authentication mechanisms which provide equal or greater security, such as biometrics or smart cards. Systems which contain or provide access to Confidential Information must be located in an area that is accessible only to authorized personnel, with access controlled through use of a key, card key, combination lock, or comparable mechanism.
 - ii. Data stored on Portable/Removable Media or Devices:
 - Confidential Information provided by HCA on Removable Media will be encrypted with NIST 800-series approved algorithms. Encryption keys will be stored and protected independently of the Data.
 - HCA's data must not be stored by the Receiving Party on Portable Devices or Media unless specifically authorized within the Data Share Agreement. If so authorized, the Receiving Party must protect the Data by:

1. Encrypting with NIST 800-series approved algorithms. Encryption keys will be stored and protected independently of the data;
 2. Control access to the devices with a Unique User ID and Hardened Password or stronger authentication method such as a physical token or biometrics;
 3. Keeping devices in locked storage when not in use;
 4. Using check-in/check-out procedures when devices are shared;
 5. Maintain an inventory of devices; and
 6. Ensure that when being transported outside of a Secured Area, all devices with Data are under the physical control of an Authorized User.
- b. Paper documents. Any paper records containing Confidential Information must be protected by storing the records in a Secured Area that is accessible only to authorized personnel. When not in use, such records must be stored in a locked container, such as a file cabinet, locking drawer, or safe, to which only authorized persons have access.

4. Confidential Information Segregation

HCA Confidential Information received under this Contract must be segregated or otherwise distinguishable from non-HCA data. This is to ensure that when no longer needed by the Contractor, all HCA Confidential Information can be identified for return or destruction. It also aids in determining whether HCA Confidential Information has or may have been compromised in the event of a security Breach.

- a. The HCA Confidential Information must be kept in one of the following ways:
- i. on media (e.g. hard disk, optical disc, tape, etc.) which will contain only HCA Data; or
 - ii. in a logical container on electronic media, such as a partition or folder dedicated to HCA's Data; or
 - iii. in a database that will contain only HCA Data; or
 - iv. within a database and will be distinguishable from non-HCA Data by the value of a specific field or fields within database records; or
 - v. when stored as physical paper documents, physically segregated from non-HCA Data in a drawer, folder, or other container.

- b. When it is not feasible or practical to segregate HCA Confidential Information from non-HCA data, then both the HCA Confidential Information and the non-HCA data with which it is commingled must be protected as described in this Attachment.

5. Confidential Information Shared with Subcontractors

If HCA Confidential Information provided under this Contract is to be shared with a Subcontractor, the contract with the Subcontractor must include all of the Confidential Information Security Requirements.

6. Confidential Information Disposition

When the Confidential Information is no longer needed, except as noted below, the Confidential Information must be returned to HCA or destroyed. Media are to be destroyed using a method documented within NIST 800-88 (<http://csrc.nist.gov/publications/PubsSPs.html>).

- a. For HCA's Confidential Information stored on network disks, deleting unneeded Confidential Information is sufficient as long as the disks remain in a Secured Area and otherwise meet the requirements listed in Section 3, above. Destruction of the Confidential Information as outlined in this section of this Attachment may be deferred until the disks are retired, replaced, or otherwise taken out of the Secured Area.

ATTACHMENT 2

FEDERAL COMPLIANCE, CERTIFICATIONS, AND ASSURANCES

In the event federal funds are included in this agreement, the following sections apply: I. Federal Compliance and II. Standard Federal Assurances and Certifications. In the instance of inclusion of federal funds, the Contractor may be designated as a sub-recipient and the effective date of the amendment shall also be the date at which these requirements go into effect.

- I. **FEDERAL COMPLIANCE** - The use of federal funds requires additional compliance and control mechanisms to be in place. The following represents the majority of compliance elements that may apply to any federal funds provided under this contract. For clarification regarding any of these elements or details specific to the federal funds in this contract, contact: Alicia Hughes for SOR, or Sarah Mariani for PFS.

- a. *Source of Funds:* This agreement is being funded partially or in full through Cooperative Agreement number **1H79TI081705-01 (SOR)**, the full and complete terms and provisions of which are hereby incorporated into this agreement can be found by reference in Attachment 4. Federal funds to support this agreement are identified by the Catalog of Federal Domestic Assistance (CFDA) number **93.778** an amount to **\$77,129**. The sub-awardee is responsible for tracking and reporting the cumulative amount expended under HCA Contract No. **K3950**.

Source of Funds: This agreement is being funded partially or in full through Cooperative Agreement number **1H79SP080980-01 (PFS 2018)**, the full and complete terms and provisions of which are hereby incorporated into this agreement can be found by reference in Attachment 5. Federal funds to support this agreement are identified by the Catalog of Federal Domestic Assistance (CFDA) number **93.243** and amount to **\$41,850**. The sub-awardee is responsible for tracking and reporting the cumulative amount expended under HCA Contract No. **K3950**.

Source of Funds: This agreement is being funded partially or in full through Cooperative Agreement number **TI010057 (SABG)**, the full and complete terms and provisions of which are hereby incorporated into this agreement can be found by reference in Attachment 5. Federal funds to support this agreement are identified by the Catalog of Federal Domestic Assistance (CFDA) number **94.959** and amount to **\$321,220**. The sub-awardee is responsible for tracking and reporting the cumulative amount expended under HCA Contract No. **K3950**.

Source of Funds: This agreement is being funded partially or in full through Cooperative Agreement number **6H79TI026803-02M001 (STR NCE)**, the full and complete terms and provisions of which are hereby incorporated into this agreement can be found by reference in Attachment 5. Federal funds to support this agreement are identified by the Catalog of Federal Domestic Assistance (CFDA) number **93.788** and amount to **\$18,571**. The sub-awardee is responsible for tracking and reporting the cumulative amount expended under HCA Contract No. **K3950**.

Source of Funds: This agreement is being funded partially or in full through Cooperative Agreement number **7U79SP023011-01 (PFS 2013 NCE)**, the full and complete terms and provisions of which are hereby incorporated into this agreement can be found by reference in Attachment 5. Federal funds to

support this agreement are identified by the Catalog of Federal Domestic Assistance (CFDA) number **93.243** and amount to **\$0**. The sub-awardee is responsible for tracking and reporting the cumulative amount expended under HCA Contract No. **K3950**.

- b. *Period of Availability of Funds:* Pursuant to 45 CFR 92.23, Sub-awardee may charge to the award only costs resulting from obligations of the funding period specified in **1H79TI081705-01**, **1H79SP080980-01**, **TIO10057**, **6H79TI026803-02M001**, and/or **7U79SP023011-01** unless carryover of unobligated balances is permitted, in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period. All obligations incurred under the award must be liquidated no later than 90 days after the end of the funding period.
- c. *Single Audit Act:* A sub-awardee (including private, for-profit hospitals and non-profit institutions) shall adhere to the federal Office of Management and Budget (OMB) Super Circular 2 CFR 200.501 and 45 CFR 75.501. A sub-awardee who expends \$750,000 or more in federal awards during a given fiscal year shall have a single or program-specific audit for that year in accordance with the provisions of OMB Super Circular 2 CFR 200.501 and 45 CFR 75.501.
- d. *Modifications:* This agreement may not be modified or amended, nor may any term or provision be waived or discharged, including this particular Paragraph, except in writing, signed upon by both parties.
 - 1. Examples of items requiring Health Care Authority prior written approval include, but are not limited to, the following:
 - i. Deviations from the budget and Project plan.
 - ii. Change in scope or objective of the agreement.
 - iii. Change in a key person specified in the agreement.
 - iv. The absence for more than three months or a 25% reduction in time by the Project Manager/Director.
 - v. Need for additional funding.
 - vi. Inclusion of costs that require prior approvals as outlined in the appropriate cost principles.
 - vii. Any changes in budget line item(s) of greater than twenty percent (20%) of the total budget in this agreement.
 - 2. No changes are to be implemented by the Sub-awardee until a written notice of approval is received from the Health Care Authority.
- e. *Sub-Contracting:* The sub-awardee shall not enter into a sub-contract for any of the work performed under this agreement without obtaining the prior written approval of the Health Care Authority. If sub-contractors are approved by the Health Care Authority, the subcontract, shall contain, at a minimum, sections of the agreement pertaining to Debarred and Suspended Vendors, Lobbying certification, Audit requirements, and/or any other project Federal, state, and local requirements.
- f. *Condition for Receipt of Health Care Authority Funds:* Funds provided by Health Care Authority to the sub-awardee under this agreement may not be used by the sub-awardee as a match or cost-sharing provision to secure other federal monies without prior written approval by the Health Care Authority.
- g. *Unallowable Costs:* The sub-awardees' expenditures shall be subject to reduction for amounts included in any invoice or prior payment made which determined by HCA not to constitute allowable costs on the basis of audits, reviews, or monitoring of this agreement.
- h. *Citizenship/Alien Verification/Determination:* The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 (PL 104-193) states that federal public benefits should be made available only to U.S. citizens and qualified aliens. Entities that offer a service defined as a "federal public benefit" must make a citizenship/qualified alien determination/ verification of applicants at the time of application as part of the eligibility criteria. Non-US citizens and unqualified aliens are not eligible to receive the services. PL 104-193 also includes specific reporting requirements.

- i. **Federal Compliance:** The sub-awardee shall comply with all applicable State and Federal statutes, laws, rules, and regulations in the performance of this agreement, whether included specifically in this agreement or not.
- j. **Civil Rights and Non-Discrimination Obligations** During the performance of this agreement, the Contractor shall comply with all current and future federal statutes relating to nondiscrimination. These include but are not limited to: Title VI of the Civil Rights Act of 1964 (PL 88-352), Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681-1683 and 1685-1686), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101 - 6107), the Drug Abuse Office and Treatment Act of 1972 (PL 92-255), the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290dd-3 and 290ee-3), Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), and the Americans with Disability Act (42 U.S.C., Section 12101 et seq.) <http://www.hhs.gov/ocr/civilrights>

HCA Federal Compliance Contact Information

Federal Grants and Budget Specialist Health
Care Policy
Washington State Health Care Authority
Post Office Box 42710
Olympia, Washington 98504-2710

- II. **CIRCULARS 'COMPLIANCE MATRIX'** - The following compliance matrix identifies the OMB Circulars that contain the requirements which govern expenditure of federal funds. These requirements apply to the Washington State Health Care Authority (HCA), as the primary recipient of federal funds and then follow the funds to the sub-awardee, **Longview School District 122**. The federal Circulars which provide the applicable administrative requirements, cost principles and audit requirements are identified by sub-awardee organization type.

III.

ENTITY TYPE	OMB CIRCULAR		
	ADMINISTRATIVE REQUIREMENTS	COST PRINCIPLES	AUDIT REQUIREMENTS
State, Local and Indian Tribal Governments and Governmental Hospitals	OMB Super Circular 2 CFR 200.501 and 45 CFR 75.501		
Non-Profit Organizations and Non-Profit Hospitals			
Colleges or Universities and Affiliated Hospitals			
For-Profit Organizations			

Definitions:

"Sub-recipient"; means the legal entity to which a sub-award is made and which is accountable to the State for the use of the funds provided in carrying out a portion of the State's programmatic effort under a sponsored project. The term may include institutions of higher education, for-profit corporations or non-U.S. Based entities.

"Sub-award and Sub-grant" are used interchangeably and mean a lower tier award of financial support from a prime awardee (e.g., Washington State Health Care Authority) to a Sub-recipient for the performance of a substantive portion of the program. These requirements do not apply to the procurement of goods and services for the benefit of the Washington State Health Care Authority.

IV. STANDARD FEDERAL CERTIFICATIONS AND ASSURANCES - Following are the Assurances, Certifications, and Special Conditions that apply to all federally funded (in whole or in part) agreements administered by the Washington State Health Care Authority.

CERTIFICATIONS

1. CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

b) have not within a 3-year period preceding this contract been convicted of or had a

The undersigned (authorized official signing for the contracting organization) certifies to the best of his or her knowledge and belief, that the contractor, defined as the primary participant in accordance with 45 CFR Part 76, and its principals:

a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving

stolen property;

- c) are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
- d) have not within a 3-year period preceding this contract had one or more public

transactions (Federal, State, or local) terminated for cause or default.

Should the contractor not be able to provide this certification, an explanation as to why should be placed after the assurances page in the contract.

The contractor agrees by signing this contract that it will include, without modification, the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions" in all lower tier covered transactions (i.e., transactions with sub-grantees and/or contractors) and in all solicitations for lower tier covered transactions in accordance with 45 CFR Part 76.

2. CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

The undersigned (authorized official signing for the contracting organization) certifies that the contractor will, or will continue to, provide a drug-free workplace in accordance with 45 CFR Part 76 by:

- a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that

will be taken against employees for violation of such prohibition;

- b) Establishing an ongoing drug-free awareness program to inform employees about
 - (1) The dangers of drug abuse in the workplace;
 - (2) The contractor's policy of maintaining a drug-free workplace;
 - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- c) Making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by paragraph (a) above;
- d) Notifying the employee in the statement required by paragraph (a), above, that, as a condition of employment under the contract, the employee will—
 - (1) Abide by the terms of the statement; and
 - (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
- e) Notifying the agency in writing within ten calendar days after receiving notice under paragraph (d)(2) from an

employee or otherwise receiving
actual

notice of such conviction. Employers of convicted employees must provide notice, including position title, to every contract officer or other designee on whose contract activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

PO Box 42700

- f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d) (2), with respect to any employee who is so convicted—
 - (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
 - (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
- g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

For purposes of paragraph (e) regarding agency notification of criminal drug convictions, Authority has designated the following central point for receipt of such notices:

Legal Services Manager

WA State Health Care Authority

Olympia, WA 98504-2700

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection

**3. CERTIFICATION
REGARDING
LOBBYING**

Title 31, United States Code, Section 1352, entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," generally prohibits recipients of Federal grants and cooperative agreements from using Federal (appropriated) funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a SPECIFIC grant or cooperative agreement. Section 1352 also requires that each person who requests or receives a Federal grant or cooperative agreement must disclose lobbying undertaken with non-Federal (nonappropriated) funds. These requirements apply to grants and cooperative agreements EXCEEDING \$100,000 in total costs (45 CFR Part 93).

The undersigned (authorized official signing for the contracting organization) certifies, to the best of his or her knowledge and belief, that:

with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

\$100,000 for each such failure.

- (2) If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions. (If needed, Standard Form-LLL, "Disclosure of Lobbying Activities," its instructions, and continuation sheet are included at the end of this application form.)

- (3) The undersigned shall require that the language of this certification be included in the award documents for all subcontracts at all tiers (including subcontracts, subcontracts, and contracts under grants, loans and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than

**4. CERTIFICATION
REGARDING PROGRAM
FRAUD CIVIL REMEDIES ACT
(PFCRA)**

The undersigned (authorized official signing for the contracting organization) certifies that the statements herein are true, complete, and accurate to the best of his or her knowledge, and that he or she is aware that any false, fictitious, or fraudulent statements or claims may subject him or her to criminal, civil, or administrative penalties. The undersigned agrees that the contracting organization will comply with the Public Health Service terms and conditions of award if a contract is awarded.

**5. CERTIFICATION REGARDING
ENVIRONMENTAL TOBACCO SMOKE**

Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such Federal funds. The law does not apply to children's services provided in private residence, portions of facilities used for inpatient drug or alcohol treatment, service providers whose sole source of applicable Federal funds is Medicare or

Medicaid, or facilities where WIC coupons are redeemed.

certification required below will not necessarily result in denial of participation in

Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity.

By signing the certification, the undersigned certifies that the contracting organization will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act.

The contracting organization agrees that it will require that the language of this certification be included in any subcontracts which contain provisions for children's services and that all sub-recipients shall certify accordingly.

The Public Health Services strongly encourages all recipients to provide a smoke-free workplace and promote the non-use of tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

**6. CERTIFICATION REGARDING
DEBARMENT, SUSPENSION, AND
OTHER RESPONSIBILITY MATTERS
INSTRUCTIONS FOR CERTIFICATION**

- 1) By signing and submitting this proposal, the prospective contractor is providing the certification set out below.
- 2) The inability of a person to provide the

this covered transaction. The prospective contractor shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective contractor to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

- 3) The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.
- 4) The prospective contractor shall provide immediate written notice to the department or agency to whom this contract is submitted if at any time the prospective contractor

learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

- 5) The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the person to whom this contract is submitted for assistance in obtaining a copy of those regulations.
- 6) The prospective contractor agrees by submitting this contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by Authority.
- 7) The prospective contractor further agrees by submitting this contract that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transaction," provided by HHS, without modification, in all lower tier covered

transactions and in all solicitations for lower tier covered transactions.

- 8) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List (of excluded parties).
- 9) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- 10) Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, Authority may terminate this transaction for cause or default.

**7. CERTIFICATION REGARDING
DEBARMENT, SUSPENSION, AND
OTHER RESPONSIBILITY MATTERS -
- PRIMARY COVERED
TRANSACTIONS**

- 1) The prospective contractor certifies to the best of its knowledge and belief, that it and its principals:
 - a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - b) Have not within a three-year period preceding this contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense

in connection with obtaining, attempting to


obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

- c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local)

with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

- d) Have not within a three-year period preceding this contract had one or more public transactions (Federal, State or local) terminated for cause or default.
- 2) Where the prospective contractor is unable to certify to any of the statements in this certification, such prospective contractor shall attach an explanation to this proposal.

CONTRACTOR SIGNATURE REQUIRED

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL 	TITLE Director
Please also print or type name: Regina A. Delahunt	
ORGANIZATION NAME: (if applicable) Whatcom County Health Department	DATE 9/12/19

Attachment 3

Federal Funding Accountability and Transparency Act (FFATA) Data Collection Form

This Contract is supported by federal funds that require compliance with the Federal Funding Accountability and Transparency Act (FFATA or the Transparency Act). The purpose of the Transparency Act is to make information available online so the public can see how federal funds are spent.

To comply with the act and be eligible to enter into this contract, your organization must have a Data Universal Numbering System (DUNS®) number. A DUNS® number provides a method to verify data about your organization. If you do not already have one, you may receive a DUNS® number free of charge by contacting Dun and Bradstreet at www.dnb.com.

Required Information about your organization and this contract will be made available on USASpending.gov by the Washington State Health Care Authority (HCA) as required by P.L. 109-282. As a tool to provide the information, HCA encourages registration with the Central Contractor Registry (CCR) because less data entry and re-entry is required by both HCA and your organization. You may register with CCR on-line at <https://www.uscontractorregistration.com/>.

Contractor must complete this form and return it to the Health Care Authority (HCA).

CONTRACTOR

1. Legal Name Whatcom County	2. DUNS Number 060044641						
3. Principle Place of Performance 509 Girard Street	3a. Congressional District 2nd						
3b. City Bellingham	3c. State WA						
3d. Zip+4 98225 - 4005	3e. Country USA						
4. Are you registered in CCR (https://www.uscontractorregistration.com/)? <input checked="" type="checkbox"/> YES (skip to page 2. Sign, date and return) <input type="checkbox"/> NO							
5. In the preceding fiscal year did your organization: <ul style="list-style-type: none"> a. Receive 80% or more of annual gross revenue from federal contracts, subcontracts, grants, loans, subgrants, and/or cooperative agreements; and b. \$25,000,000 or more in annual gross revenues from federal contracts, subcontracts, grants, loans, subgrants, and/or cooperative agreements; and c. The public does not have access to information about the compensation of the executives through periodic reports filled with the IRS or the Security and Exchange Commission per 2 CFR Part 170.330 <input type="checkbox"/> NO (skip the remainder of this section - Sign, date and return) <input type="checkbox"/> YES (You must report the names and total compensation of the top 5 highly compensated officials of your organization).							
<table border="1"> <thead> <tr> <th>Name Of Official</th> <th>Total Compensation</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td></td> </tr> <tr> <td>2.</td> <td></td> </tr> </tbody> </table>		Name Of Official	Total Compensation	1.		2.	
Name Of Official	Total Compensation						
1.							
2.							

3.	
4.	

5.

Note: "Total compensation" means the cash and noncash dollar value earned by the executive during the sub-recipient's past fiscal year of the following (for more information see 17 CFR 229.402 (c)(2)).

By signing this document, the Contractor Authorized Representative attests to the information.

Signature of Contractor Authorized Representative



Date

9/12/19

HCA will not endorse the Contractor's subaward until this form is completed and returned.

FOR HEALTH CARE AUTHORITY USE ONLY

HCA Contract Number: K3950

Sub-award Project Description (see instructions and examples below)

Instructions for Sub-award Project Description:

In the first line of the description provide a title for the sub-award that captures the main purpose of the subrecipients work. Then, indicate the name of the subrecipient and provide a brief description that captures the overall purpose of the sub-award, how the funds will be used, and what will be accomplished.

Example of a Sub-award Project Description:

Increase Healthy Behaviors: Educational Services District XYZ will provide training and technical assistance to chemical dependency centers to assist the centers to integrate

tobacco use into their existing addiction treatment programs. Funds will also be used to assist centers in creating tobacco free treatment environments.

ATTACHMENT 4

HIPAA Compliance

Preamble: This section of the Contract is the Business Associate Agreement as required by HIPAA.

1. Definitions.

- a. "Business Associate," as used in this Contract, means the "Contractor" and generally has the same meaning as the term "business associate" at 45 CFR 160.103. Any reference to Business Associate in this Contract includes Business Associate's employees, agents, officers, Subcontractors, third party contractors, volunteers, or directors.
- b. "Business Associate Agreement" means this HIPAA Compliance section of the Contract and includes the Business Associate provisions required by the U.S. Department of Health and Human Services, Office for Civil Rights.
- c. "Breach" means the acquisition, access, use, or disclosure of Protected Health Information in a manner not permitted under the HIPAA Privacy Rule which compromises the security or privacy of the Protected Health Information, with the exclusions and exceptions listed in 45 CFR 164.402.
- d. "Covered Entity" means DSHS, a Covered Entity as defined at 45 CFR 160.103, in its conduct of covered functions by its health care components.
- e. "Designated Record Set" means a group of records maintained by or for a Covered Entity, that is: the medical and billing records about Individuals maintained by or for a covered health care provider; the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or Used in whole or part by or for the Covered Entity to make decisions about Individuals.
- f. "Electronic Protected Health Information (EPHI)" means Protected Health Information that is transmitted by electronic media or maintained in any medium described in the definition of electronic media at 45 CFR 160.103.
- g. "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, as modified by the American Recovery and Reinvestment Act of 2009 ("ARRA"), Sec. 13400 – 13424, H.R. 1 (2009) (HITECH Act).
- h. "HIPAA Rules" means the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Parts 160 and Part 164.
- i. "Individual(s)" means the person(s) who is the subject of PHI and includes a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- j. "Minimum Necessary" means the least amount of PHI necessary to accomplish the purpose for which the PHI is needed.

- k. "Protected Health Information (PHI)" means individually identifiable health information created, received, maintained or transmitted by Business Associate on behalf of a health care component of the Covered Entity that relates to the provision of health care to an Individual; the past, present, or future physical or mental health or condition of an Individual; or the past, present, or future payment for provision of health care to an Individual. 45 CFR 160.103. PHI includes demographic information that identifies the Individual or about which there is reasonable basis to believe can be used to identify the Individual. 45 CFR 160.103. PHI is information transmitted or held in any form or medium and includes EPHI. 45 CFR 160.103. PHI does not include education records covered by the Family Educational Rights and Privacy Act, as amended, 20 USCA 1232g(a)(4)(B)(iv) or employment records held by a Covered Entity in its role as employer.
 - l. "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification or destruction of information or interference with system operations in an information system.
 - m. "Subcontractor" as used in this HIPAA Compliance section of the Contract (in addition to its definition in the General Terms and Conditions) means a Business Associate that creates, receives, maintains, or transmits Protected Health Information on behalf of another Business Associate.
 - n. "Use" includes the sharing, employment, application, utilization, examination, or analysis, of PHI within an entity that maintains such information.
2. **Compliance.** Business Associate shall perform all Contract duties, activities and tasks in compliance with HIPAA, the HIPAA Rules, and all attendant regulations as promulgated by the U.S. Department of Health and Human Services, Office of Civil Rights.
 3. **Use and Disclosure of PHI.** Business Associate is limited to the following permitted and required uses or disclosures of PHI:
 - a. **Duty to Protect PHI.** Business Associate shall protect PHI from, and shall use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 (Security Standards for the Protection of Electronic Protected Health Information) with respect to EPHI, to prevent the unauthorized Use or disclosure of PHI other than as provided for in this Contract or as required by law, for as long as the PHI is within its possession and control, even after the termination or expiration of this Contract.
 - b. **Minimum Necessary Standard.** Business Associate shall apply the HIPAA Minimum Necessary standard to any Use or disclosure of PHI necessary to achieve the purposes of this Contract. See 45 CFR 164.514 (d)(2) through (d)(5).
 - c. **Disclosure as Part of the Provision of Services.** Business Associate shall only Use or disclose PHI as necessary to perform the services specified in this Contract or as required by law, and shall not Use or disclose such PHI in any manner that would violate Subpart E of 45 CFR Part 164 (Privacy of Individually Identifiable Health Information) if done by Covered Entity, except for the specific uses and disclosures set forth below.

- d. Use for Proper Management and Administration. Business Associate may Use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- e. Disclosure for Proper Management and Administration. Business Associate may disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of the Business Associate, provided the disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been Breached.
- f. Impermissible Use or Disclosure of PHI. Business Associate shall report to DSHS in writing all Uses or disclosures of PHI not provided for by this Contract within one (1) business day of becoming aware of the unauthorized Use or disclosure of PHI, including Breaches of unsecured PHI as required at 45 CFR 164.410 (Notification by a Business Associate), as well as any Security Incident of which it becomes aware. Upon request by DSHS, Business Associate shall mitigate, to the extent practicable, any harmful effect resulting from the impermissible Use or disclosure.
- g. Failure to Cure. If DSHS learns of a pattern or practice of the Business Associate that constitutes a violation of the Business Associate's obligations under the terms of this Contract and reasonable steps by DSHS do not end the violation, DSHS shall terminate this Contract, if feasible. In addition, If Business Associate learns of a pattern or practice of its Subcontractors that constitutes a violation of the Business Associate's obligations under the terms of their contract and reasonable steps by the Business Associate do not end the violation, Business Associate shall terminate the Subcontract, if feasible.
- h. Termination for Cause. Business Associate authorizes immediate termination of this Contract by DSHS, if DSHS determines that Business Associate has violated a material term of this Business Associate Agreement. DSHS may, at its sole option, offer Business Associate an opportunity to cure a violation of this Business Associate Agreement before exercising a termination for cause.
- i. Consent to Audit. Business Associate shall give reasonable access to PHI, its internal practices, records, books, documents, electronic data and/or all other business information received from, or created or received by Business Associate on behalf of DSHS, to the Secretary of DHHS and/or to DSHS for use in determining compliance with HIPAA privacy requirements.
- j. Obligations of Business Associate Upon Expiration or Termination. Upon expiration or termination of this Contract for any reason, with respect to PHI received from DSHS, or created, maintained, or received by Business Associate, or any Subcontractors, on behalf of DSHS, Business Associate shall:
 - (1) Retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;

- (2) Return to DSHS or destroy the remaining PHI that the Business Associate or any Subcontractors still maintain in any form;
 - (3) Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 (Security Standards for the Protection of Electronic Protected Health Information) with respect to Electronic Protected Health Information to prevent Use or disclosure of the PHI, other than as provided for in this Section, for as long as Business Associate or any Subcontractors retain the PHI;
 - (4) Not Use or disclose the PHI retained by Business Associate or any Subcontractors other than for the purposes for which such PHI was retained and subject to the same conditions set out in the "Use and Disclosure of PHI" section of this Contract which applied prior to termination; and
 - (5) Return to DSHS or destroy the PHI retained by Business Associate, or any Subcontractors, when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.
- k. Survival. The obligations of the Business Associate under this section shall survive the termination or expiration of this Contract.

4. Individual Rights.

a. Accounting of Disclosures.

- (1) Business Associate shall document all disclosures, except those disclosures that are exempt under 45 CFR 164.528, of PHI and information related to such disclosures.
- (2) Within ten (10) business days of a request from DSHS, Business Associate shall make available to DSHS the information in Business Associate's possession that is necessary for DSHS to respond in a timely manner to a request for an accounting of disclosures of PHI by the Business Associate. See 45 CFR 164.504(e)(2)(ii)(G) and 164.528(b)(1).
- (3) At the request of DSHS or in response to a request made directly to the Business Associate by an Individual, Business Associate shall respond, in a timely manner and in accordance with HIPAA and the HIPAA Rules, to requests by Individuals for an accounting of disclosures of PHI.
- (4) Business Associate record keeping procedures shall be sufficient to respond to a request for an accounting under this section for the six (6) years prior to the date on which the accounting was requested.

b. Access

- (1) Business Associate shall make available PHI that it holds that is part of a Designated Record Set when requested by DSHS or the Individual as necessary to satisfy DSHS's obligations under 45 CFR 164.524 (Access of Individuals to Protected Health Information).

- (2) When the request is made by the Individual to the Business Associate or if DSHS asks the Business Associate to respond to a request, the Business Associate shall comply with requirements in 45 CFR 164.524 (Access of Individuals to Protected Health Information) on form, time and manner of access. When the request is made by DSHS, the Business Associate shall provide the records to DSHS within ten (10) business days.

c. Amendment.

- (1) If DSHS amends, in whole or in part, a record or PHI contained in an Individual's Designated Record Set and DSHS has previously provided the PHI or record that is the subject of the amendment to Business Associate, then DSHS will inform Business Associate of the amendment pursuant to 45 CFR 164.526(c)(3) (Amendment of Protected Health Information).
- (2) Business Associate shall make any amendments to PHI in a Designated Record Set as directed by DSHS or as necessary to satisfy DSHS's obligations under 45 CFR 164.526 (Amendment of Protected Health Information).

5. **Subcontracts and other Third Party Agreements.** In accordance with 45 CFR 164.502(e)(1)(ii), 164.504(e)(1)(i), and 164.308(b)(2), Business Associate shall ensure that any agents, Subcontractors, independent contractors or other third parties that create, receive, maintain, or transmit PHI on Business Associate's behalf, enter into a written contract that contains the same terms, restrictions, requirements, and conditions as the HIPAA compliance provisions in this Contract with respect to such PHI. The same provisions must also be included in any contracts by a Business Associate's Subcontractor with its own business associates as required by 45 CFR 164.314(a)(2)(b) and 164.504(e)(5).
6. **Obligations.** To the extent the Business Associate is to carry out one or more of DSHS's obligation(s) under Subpart E of 45 CFR Part 164 (Privacy of Individually Identifiable Health Information), Business Associate shall comply with all requirements that would apply to DSHS in the performance of such obligation(s).
7. **Liability.** Within ten (10) business days, Business Associate must notify DSHS of any complaint, enforcement or compliance action initiated by the Office for Civil Rights based on an allegation of violation of the HIPAA Rules and must inform DSHS of the outcome of that action. Business Associate bears all responsibility for any penalties, fines or sanctions imposed against the Business Associate for violations of the HIPAA Rules and for any imposed against its Subcontractors or agents for which it is found liable.
8. **Breach Notification.**
 - a. In the event of a Breach of unsecured PHI or disclosure that compromises the privacy or security of PHI obtained from DSHS or involving DSHS clients, Business Associate will take all measures required by state or federal law.
 - b. Business Associate will notify DSHS within one (1) business day by telephone and in writing of any acquisition, access, Use or disclosure of PHI not allowed by the provisions of this Contract or not authorized by HIPAA Rules or required by law of

which it becomes aware which potentially compromises the security or privacy of the Protected Health Information as defined in 45 CFR 164.402 (Definitions).

- c. Business Associate will notify the DSHS Contact shown on the cover page of this Contract within one (1) business day by telephone or e-mail of any potential Breach of security or privacy of PHI by the Business Associate or its Subcontractors or agents. Business Associate will follow telephone or e-mail notification with a faxed or other written explanation of the Breach, to include the following: date and time of the Breach, date Breach was discovered, location and nature of the PHI, type of Breach, origination and destination of PHI, Business Associate unit and personnel associated with the Breach, detailed description of the Breach, anticipated mitigation steps, and the name, address, telephone number, fax number, and e-mail of the individual who is responsible as the primary point of contact. Business Associate will address communications to the DSHS Contact. Business Associate will coordinate and cooperate with DSHS to provide a copy of its investigation and other information requested by DSHS, including advance copies of any notifications required for DSHS review before disseminating and verification of the dates notifications were sent.
- d. If DSHS determines that Business Associate or its Subcontractor(s) or agent(s) is responsible for a Breach of unsecured PHI:
 - (1) requiring notification of Individuals under 45 CFR § 164.404 (Notification to Individuals), Business Associate bears the responsibility and costs for notifying the affected Individuals and receiving and responding to those Individuals' questions or requests for additional information;
 - (2) requiring notification of the media under 45 CFR § 164.406 (Notification to the media), Business Associate bears the responsibility and costs for notifying the media and receiving and responding to media questions or requests for additional information;
 - (3) requiring notification of the U.S. Department of Health and Human Services Secretary under 45 CFR § 164.408 (Notification to the Secretary), Business Associate bears the responsibility and costs for notifying the Secretary and receiving and responding to the Secretary's questions or requests for additional information; and
 - (4) DSHS will take appropriate remedial measures up to termination of this Contract.

9. Miscellaneous Provisions.

- a. Regulatory References. A reference in this Contract to a section in the HIPAA Rules means the section as in effect or amended.
- b. Interpretation. Any ambiguity in this Contract shall be interpreted to permit compliance with the HIPAA Rules.

ATTACHMENT 5

1. SAMHSA Award Terms.

- a. This grant is subject to the terms and conditions, included directly, or incorporated by reference on the Notice of Award (NoA).
- b. Grant funds cannot be used to supplant current funding of existing activities.
- c. By law, none of the funds awarded can be used to pay the salary of an individual at a rate in excess of the Executive Level 1, which is \$199,700 annually.
- d. Awardees and sub-recipients must maintain records which adequately identify the source and application of funds provided for financially assisted activities. These records must contain information pertaining to grant or sub-grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income. SAMHSA or its designee may conduct a financial compliance audit and on-site program review of grants with significant amounts of Federal funding.
- e. Per 45 CFR 74.36 and 45 CFR 92.34 and the HHS Grants Policy Statement, any copyrighted or copyrightable works developed under this cooperative agreement/grant shall be subject to royalty-free, nonexclusive and irrevocable license to the government to reproduce, publish, or otherwise use them and to authorize others to do so for General Government purposes. Income earned from any copyrightable work developed under this grant must be used as program income.
- f. Program income accrued under this award must be used in accordance with the additional costs alternative described in 45 CFR 74.24(b)(1) or 45 CFR 92.25(g)(2) as applicable. Program income must be used to further the grant objectives and shall only be used for allowable costs as set forth in the applicable OMB circulars A-102 and A-110.
- g. No part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress, except in presentation to the Congress itself or any State legislature.
- h. No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient, or agency acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature.

- i. Where a conference is funded by a grant or cooperative agreement the recipient must include the following statement on all conference materials (including promotional materials, agenda, and internet sites): "Funding for this conference was made possible (in part) by Grant SP20155, TM010056 and TI080249 from SAMHSA. The views expressed in written conference materials or publications and by speakers and moderators do not necessarily reflect the official policies of the Department of Health and Human Services; nor does mention of trade names, commercial practices, or organizations imply endorsement by the U.S. Government."
- j. If federal funds are used by the Contractor to attend a meeting, conference, etc. and meal(s) are provided as part of the program, then the per diem applied to the Federal travel costs (M&IE allowance) must be reduced by the allotted meal cost(s)

Statement of Work

The Contractor shall ensure services, and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below. Prevention programs and services include, but are not limited to:

1. Coordination of Prevention Services.

The Contractor shall ensure:

- a. The provision of CPWI services in accordance with the CPWI Community Coalition Guide located on the Athena Forum website_ <https://www.theathenaforum.org/cpwi-community-coalition-guide> which outlines the minimal standards to participate in the CPWI. Contractor shall plan to reach the ideal benchmarks related to the community coalition's efforts and staffing to include:
 - (1) Hire or identify a minimum of one part-time (0.5 FTE) staff member to serve as the qualified Community Coalition Coordinator upon contract execution. Full-time employment (1.0 FTE) for the Community Coalition Coordinator is allowable and strongly recommended in order to meet the scope of the project.
 - (a) Ensure Community Coalition Coordinator(s) meet required position qualifications and workstation requirements found in the CPWI Community Coalition Guide.
 - (b) Confirm an office space in the designated community for the Community Coalition Coordinator.
 - (c) Contractor shall submit a completed Community Coalition Coordinator Qualification Checklist to Agreement Manager or designee for review. HCA shall review and respond within five business days.
 - (2) Ensure Community Coalition Coordinators are Certified Prevention Professionals (CPP).
 - (a) Ensure currently certified Community Coalition Coordinator(s) maintain CPP credential status, and
 - (b) Ensure Certified Prevention Professional (CPP) certification within eighteen (18) months of new Community Coalition Coordinator start date.
 - (c) HCA reserves the right to require Contractor to develop a Community Coalition Coordinator training plan if candidate does not meet required qualifications.

- b. Contractor contact on page one of this Contract and primary fiscal staff or their designee(s) shall attend annual contractor training that will be scheduled for four (4) hours in duration. Date and location will be announced by DBHR at least 30 days prior to the training.
- c. Contractor shall ensure that a regular annual schedule of direct prevention services for public dissemination is established.
 - (1) Regular annual schedule shall take into account items including, but not limited to: implementation times that maximize participation and service outcomes; local needs and gaps; leveraged resources; and, other locally identified factors that influence service delivery throughout the year.
 - (2) Regular annual schedule and community dissemination plan shall be identified as part of the CPWI Action Plan and Budget Update and submitted to Agreement Manager or designee for HCA review annually in accordance with the timeline in the CPWI Community Coalition Guide.
 - (a) Submit an annual Action Plan and Budget with projected expenditures, including salary and benefits for HCA funded prevention staff, program costs, training and travel to the Contract Manager or designee, by June 15, 2020 and June 15, 2021 according to the CPWI Community Coalition Guide, or within thirty (30) days upon request. For cohort 6, an updated Action Plan and Budget are due August 1, 2020. A template will be provided at least 30 days prior to due date.
- k. Budget adjustments that are ten percent (10%) or more of the total of the approved Contractor and/or CPWI coalition budget shall submit a budget revision for approval to Agreement Manager or designee at least fifteen (15) days prior to expending adjusted budget items. Approval must be granted prior to expending funds.
- l. Enter approved programs, based on the priorities, goals and objectives described in the approved Strategic Plan, into the Minerva within thirty (30) days of Action Plan approval or as directed by PSM.
- m. Ensure sixty percent (60%) of programs supported by HCA funds will be replications or adaptations of "Evidence-based Practice" substance abuse prevention programs as identified in the list provided by DBHR. Ensure that all of the programs supported by HCA meet the Center for Substance Abuse Prevention's (CSAP) Principles of Substance Abuse Prevention, found on the Athena Forum Website: www.TheAthenaForum.org/CSAPprinciples.
- n. Food costs are generally unallowable during program implementation except within the following parameters:
 - (1) Light refreshment costs for training events and meetings lasting longer than two (2) hours in duration are allowable.
 - (2) Ensure that light refreshment costs do not exceed \$3.00 per person.

- (3) Meals may be provided for participants using SABG and DMA funds only if:
 - (a) The training is four (4) hours or more in duration; or
 - (b) The program is a recurring, direct service in the family domain, lasting two (2) hours or more in duration and must be approved in the strategic plan.
- (4) Meals are not allowable costs with either the PFS, STR, or SOR funds.
- (5) Contractor shall adhere to current state per-diem rates for meals accessible at www.ofm.wa.gov/policy/10.90.htm.
- (6) No more than a total of \$1,000 may be spent on food or light refreshments per CPWI Coalition per year.
- o. Dedicated Marijuana Account Funds (DMA) shall be used for program and strategy training and implementation.
 - (1) All programs planned and implemented with DMA shall be programs selected from the current DBHR provided youth marijuana use prevention and reduction program list.
www.TheAthenaForum.org/I502PreventionPlanImplementation
 - (a) No less than eighty-five percent (85%) of DMA funds shall be expended on evidence-based or research-based programs on the identified program list.
 - (b) Up to fifteen percent (15%) of DMA funds may expended on Promising programs on the identified program list.
- p. Contractor is encouraged to collaborate and partner with community-based organizations that operate within or serve the CPWI community.
- q. If funding permits the Contractor to provide Community Based Coordination services in addition to meeting CPWI requirements, (i.e., Counties with communities that each have at least \$110,000 per community of DBHR funding budgeted for CPWI implementation, annually) services may be provided at the County level. Services shall reflect work of the Contractor staff coordinating, organizing, building capacity, and providing education and information related to prevention initiatives at the County level with a goal to expand CPWI communities.
 - (1) If applicable to Contractor, develop plan for services listed above and submit to Contract Manager or designee for review and approval within sixty (60) days of contract execution.

2. Prevention Training.

- a. The Contractor shall participate in all required training events identified by HCA

and listed in the CPWI Community Coalition Guide.

b. Non-Required Training in CPWI

- (1) In the absence of trainings identified in the approved strategic plan, all additional (non-required) training paid for by HCA shall be approved by Agreement Manager or designee prior to training and meet the approved goals and objectives in approved Strategic Plan.
- (2) The Contractor shall ensure any requests for training in addition to the approved training in the Strategic plan are requested in writing and sent directly to the Agreement Manager or designee, a minimum of ten (10) working days before the date of the proposed training. Trainings shall relate to one (1) of the following four (4) categories:
 - (a) Coalition building and community organization.
 - (b) Capacity building regarding prevention theory and practice.
 - (c) Capacity building for Evidence-based Practice and environmental strategy implementation, related to the goals and objectives of the coalition's approved strategic plan.
 - (d) Capacity building in non-CPWI communities to expand CPWI efforts and meets overall goals and objectives of CPWI may be approved by Agreement Manager or designee upon request.
- (3) The Contractor shall ensure training paid for by HCA that requires travel follows state travel reimbursement guidelines and rates accessible at www.ofm.wa.gov/policy/10.90.htm.
- (4) The Contractor shall bill for training events on an A-19 per billing code according to the Program/Fiscal Requirements and record training events in the HCA Substance Use Disorder Prevention and Mental Health Promotion Online Reporting Systems or Minerva in accordance with the monthly reporting requirements described in Section 3 c., Prevention Report Schedule/Due Dates.

3. Media Materials.

- a. HCA must be cited as the funding source in news releases, publications, and advertising messages created with or about HCA funding. The funding source shall be cited as: Washington State Health Care Authority. The HCA logo may also be used in place of the above citation.
- b. Media materials and publications developed with HCA funds, including messaging specifically directed to youth, shall be submitted to the Agreement Manager or designee for approval prior to publication (HCA will respond within five (5) working days).
 - (1) Exceptions: The Contractor does not need to submit the following items to

Agreement Manager or designee:

- (a) Newsletters and fact sheets.
- (b) News coverage resulting from interviews with reporters. This includes online news coverage.
- (c) Newspaper editorials or letters to the editor.
- (d) Posts on Facebook, YouTube, Tumblr, Twitter, Instagram, Snapchat and other social media sites.
- (e) When a statewide media message is developed by HCA, is localized, and if the only change is the local coalition information and funding source acknowledgment from coalition or public health entities.
- (f) When a national prevention media campaign is developed by SAMHSA, is localized, and if the only change is the local coalition information and funding source acknowledgement from coalition or public health entities.

4. Secure Prescription Take-Back and Lock Box project.

Contractors who implement a Secure Prescription Take-Back and/or Lock Box project must ensure the following additional requirements:

- a. The Secure Prescription Take-Back and/or Lock Box project must align with the community needs assessment and will increase local capacity to address prescription drug misuse and abuse by reducing social availability of prescriptions in the community.
- b. The Contractor shall provide the services and staff, and otherwise do all things necessary for or incidental to the Secure Prescription Take-Back and/or Lock Box project as set forth below:
 - (1) Enhance community capacity to practice safe disposal of medications by promoting permanent secure drop box in the location where community readiness has been established. (Installation and disposal must follow all DEA rules and all federal and state laws and regulations).
 - (2) Collaborate with community partners to maintain and/or enhance policies and procedures necessary to maintain a permanent secure medicine take-back drop box.
 - (3) Overtime wages for law enforcement officers and staff as outlined in strategic plan and outside of normal duties and other real costs (including mileage reimbursement) associated with transporting and properly disposing of collected medicines at EPA approved locations may be permitted depending upon source of funds and must be approved by the Contract Manager in advance.

- (4) Create, utilize and disseminate public education information materials to increase awareness of the secure medicine take-back project, local treatment resources, naloxone information and medical response (Good Samaritan law) cards.
- (5) Disseminate public information including information on local treatment resources, naloxone information and medical response cards and posters. (Print ready materials are available online at www.stopoverdose.org).
- (6) Utilize publications already available through HCA/DBHR and other websites. (i.e., SAMHSA Opioid Overdose Toolkit, and downloadable/printable materials on www.stopoverdose.org and www.takebackyourmeds.org).
- (7) Submit locally-developed educational and informational materials to HCA/DBHR for approval at least ten (10) business days prior to publication.
- (8) Prior to purchasing home medication lock boxes or bags the Contractor will submit to HCA/DBHR in writing a plan for the purchase and distribution of home medication storage device including the cost and source of the home storage devices, the number of devices to be purchased, a clear plan for distribution, and method for tracking the use of the devices. The Contractor must also demonstrate how the distributed home medication devices will be altered (by engraving, indelible ink, or other means) to have no cash value.
- (9) Create and submit Secure Medicine Tack-back and/or Lock Box project in the Minerva reporting system within 30 days of approval of this project.
- (10) Track and report in Minerva:
 - (a) The number of new policies developed and adopted to support a sustained drop box.
 - (b) The number of educational and/or informational materials developed.
 - (c) The number of outreach materials developed and distributed including news publications.
 - (d) The number of pharmacies involved in information dissemination efforts.
 - (e) The number of health care providers involved in information dissemination efforts.
 - (f) Pounds of medicine collected monthly once a secure medicine take-back box is in place.
 - (g) The number of home medication storage devices purchased and

distributed including a pre/post survey for those that received the home storage devices to be approved by HCA/DBHR.

- (h) Coalition coordinator time spent on the project in the “direct” and “indirect” staff time related to the project.

5. Reporting Requirements.

a. Prevention Reporting Requirements

The Contractor shall report on all requirements as identified in the HCA Substance Use Disorder Prevention and Mental Health Promotion Online Reporting System or Minerva. HCA reserves the right to add reporting requirements based on requirements of grants.

b. Prevention Activity Data Reports

The Contractor shall:

- (1) Ensure that monthly prevention activities are reported in the HCA Minerva in accordance with the requirements and timelines set forth.
- (2) Ensure accurate and unduplicated reporting.
- (3) Ensure proper training of staff and designated staff for back-up Minerva data entry to meet report due dates.
- (4) If special circumstances arise and Contractor is unable to enter the data by the reporting deadline(s), the Contractor shall ensure any requests for extensions to reporting deadlines are requested in writing and sent directly to the PSM via email five (5) working days before the report due date.
- (5) The maximum extension request permitted is ten (10) working days.
- (6) Monthly invoices submitted with active data entry extensions will be denied and may be re-submitted by Contractor once data for the month(s) in question is complete.
- (7) Contractors with three (3) or more consecutive months of data entry extensions or late reporting or four (4) or more program data entry extensions or late reporting within a six (6) month period shall be required to submit a Corrective Action Plan to HCA.
 - (a) Extensions granted due to Minerva technical issues will be excluded from this count.
- (8) Ensure all required demographic information is provided for individual participant; population reach; aggregate; environmental and mentoring or 1-to-1 services in Minerva.
- (9) Report Community Coalition Coordination Staff Hours in Minerva for each

month of the calendar year.

- (10) Complete prevention reporting, according to the Schedule/Due Dates below:

Reporting Period	Report(s)	Report Due Dates	Reporting System
Annually	Enter programs listed on approved Strategic Action Plan by HCA into Minerva.	Within 30 days of Strategic Action Plan approval	Minerva
As requested	GPRA Measures.	As requested	Minerva
Monthly	Prevention activity data input for all active services including community coalition coordination staff hours and efforts, services, participant information, training, evaluation tools and assessments.	15 th of each month for activities from the previous month	Minerva
Quarterly	CPWI Quarterly Reporting.	October 15, January 15, April 15, July 15	Minerva
As requested	As required by SAMHSA.	As requested	Minerva or as required

c. Outcome Measures

- (1) The Contractor shall report on all required evaluation tools (i.e., pre/post-tests) identified in Minerva that measure primary program objective.
- (2) Special situations and exceptions regarding evaluation tools identified in the Minerva include, but are not limited to, the following:
 - (a) The Contractor may negotiate with the Agreement Manager or designee to reduce multiple administrations of surveys to individual participants.
 - (b) Participants in recurring program groups in which the majority of participants are younger than ten (10) years old on the date of that group's first service.

d. Performance Work Statement/Evaluation.

- (1) The Contractor shall ensure program results show positive outcomes for

at least half of the participants in each program group as determined by Activity Log with individual participant sessions.

- (a) "Positive outcomes" means that at least half of the participants in a group report positive improvement or maintenance as determined by the program measurable objective between pre and post-tests.
 - (b) Positive outcomes will be determined using the pre-test and post-test data reported in Minerva.
 - (c) Evaluation of Minerva data will occur on the 15th of the month following the final date of service for each group.
- (2) HCA shall use the following protocol for evaluation:
- (a) Matched pre-test and post-test pairs will be used in the analysis.
 - (b) To allow for normal attendance drop-off, a 20% leeway will be given for missing post-tests.
 - (c) If there are missing post-tests for entered pre-tests in excess of 20% of pre-tests, missing post-test will be counted as a negative outcome.

Example: there are ten (10) pre-tests and seven (7) post-tests. The denominator would be eight (8) and the maximum numerator would be seven (7).
- (3) Different groups, as determined by Activity Logs, receiving the same program will be clustered by school district.
- (a) In cases where multiple providers are serving the same school district, groups will be clustered by school district and provider.
 - (b) The results of one (1) provider in a given school district will not impact another provider in the same district.
 - i. In cases where the survey instrument selected for a given program includes more than one scale, the scale that is most closely aligned with the measurable objective linked to the program in Minerva will be used.
 - ii. Results for groups, as determined by Activity Logs, with services that span two (2) contracting periods will be analyzed in the contracting period that the post-test was administered.
 - (c) If fewer than half of the participants in a group, as determined by Activity Log, within a given school district, report positive change in the intended outcome:
 - i. The Contractor shall submit a Performance Improvement Plan (PIP) for the non-compliant program to the Agreement Manager or

designee or designee within forty-five (45) days of notice by HCA.

- ii. Reimbursement for the CSAP Category row on the A-19 for that program will be held until the PIP is approved by the Agreement Manager or designee or their designee.
- iii. If a second group, as determined by Activity Log, within that same school district has fewer than half of the participants report positive change in the intended outcome, then the following steps will be taken:
 - (A) In cases where there is no active non-compliant program, the Contractor shall discontinue implementation of that program within the specified geography.
 - (B) In cases where the same programs as the non-compliant program are active and continuing in the same school district, those groups, as determined by Activity Logs, will be allowed to complete the expected number of sessions. No new groups, as determined by Activity Logs, will be started.
 - (C) Following the conclusion of all groups, as determined by Activity Logs, completing the program, results will be reviewed for those groups.
 - (D) If the results do not show positive change for each groups, as determined by Activity Logs, the Contractor shall take the following action:
 - I. In cases where the program is being delivered by a single provider in the specified geography, the Contractor shall discontinue implementation of that program in the specified geography.
 - II. In cases where the program is being delivered by multiple providers in the specified geography, the Contractor shall discontinue implementation of that program by the underperforming provider in the specified geography.
- (d) A program that resulted in the need for a Performance Improvement Plan and Plan during this contract period will not carry that record forward into the July 1, 2021 - June 30, 2023 contract period.
- (e) Implement and monitor prevention programs and reporting to assure compliance with these guidelines.

6. Requirements.

a. Background Checks.

- (1) The Contactor shall ensure a criminal background check is conducted for

all staff members, case managers, outreach staff members, etc. or volunteers who have unsupervised access to children, adolescents, vulnerable adults, and persons who have developmental disabilities.

- (2) When providing services to youth, the Contractor shall ensure that requirements of WAC 388-06-0170 are met.

b. Services and Activities to Ethnic Minorities and Diverse Populations.

The Contractor shall:

- (1) Ensure all services and activities provided by the Contractor or subcontractor under this Contract shall be designed and delivered in a manner sensitive to the needs of all diverse populations.
- (2) Initiate actions to ensure or improve access, retention, and cultural relevance of prevention or other appropriate services, for ethnic minorities and other diverse populations in need of prevention services as identified in their needs assessment.
- (3) Take the initiative to strengthen working relationships with other agencies serving these populations. The Contractor shall require its subcontractors to adhere to these requirements.

c. Continuing Education.

Ensure that continuing education is provided for employees of any entity providing prevention activities in accordance with 42 USC 300x-28(b) and 45 CFR 96.132(b).

d. Single Source Funding.

- (1) The Contractor shall ensure all subcontractors that Single Source Funding means that a subcontractor can use only one source of funds at any given time.
- (2) Each cost reimbursement Prevention service provided must be billed only one (1) time through the source selected for funding this expense. At no time may the same expense be billed through more than one (1) funding source.

EXHIBIT A - DBHR-SUD FISCAL POLICIES STANDARDS FOR REIMBURSABLE COSTS

The following Standards for Reimbursable Costs represents a compilation of definitions and principles from the State of Washington Office of Financial Management's State Administrative and Accounting Manual (SAAM), the federal Office of Management and Budget's Circular A-122 Cost Principles for Non-Profit Organizations, and Circular A-87 Cost Principles for State, Local, and Indian Tribal Governments. These standards are provided solely as technical assistance and are not intended to circumvent the Contractor's need to follow the referenced rules.

DEFINITIONS

The following terms and phrases shall have the meanings indicated when used in this exhibit, except where the context clearly requires otherwise.

- (1) "Acquisition cost" shall mean the net cost of equipment, including the costs for modifications, attachments, accessories, or auxiliary apparatus necessary to make the equipment useable for the purpose for which it was acquired.
- (2) "Arm's length transaction" shall mean a transaction resulting from good faith bargaining between a buyer and a seller, where the parties have adverse positions in the marketplace.
- (3) "Contractor or subcontractor property" shall mean property used in performance of a contract which is not departmental property.
- (4) "Cost" shall mean the historical amount of money involved in a transaction which decreases an asset or increases a liability, whether recognized on a cash or accrual basis. Cost shall not include repayments of borrowing, expenditures to acquire assets, distributions to owners, and corrections to prior periods. Corrections to prior periods are included as costs in that prior period.
- (5) "Cost related or cost reimbursement" shall mean a contract or subcontract where the amount of payment being made is related to the actual costs of the subcontractor or a class of subcontractors to perform the contract, subject to ceilings, allowances, limitations and conditions adopted by the Department, but without regard to the method of payment.
- (6) "Cost related subcontractor" shall mean a subcontractor that has a cost related subcontract.
- (7) "Customary charge" shall mean the average charge for a similar service, activity or procedure for non-departmental clients or purchasers by providers whose training and experience is similar to the contractor or subcontractor and are located in the same area. The area considered in determining customary charge shall be as large as necessary to provide a reasonable measure of the market for such services, activities or procedures.
- (8) "Department" shall mean the Department of Social and Health Services.
- (9) "Departmental clients" shall mean individuals who receive or benefit from services or activities for which the contractor was reimbursed in part or entirely by the Department.

- (10) "Departmental funds" shall mean any funds paid by the Department to a contractor, including funds passed through to subcontractors without regards to the source of those funds. Departmental funds include federal funds which pass through the Department.
- (11) "Departmental property" shall mean property owned by the Department, and property for which title is vested in the Department.
- (12) "Equipment" means an article of non-expendable tangible personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. Items not meeting this definition shall not be classified as equipment. Purchase of equipment must be approved in advance by the contract manager.
- (13) "Fee for Service" shall mean a contract or subcontract where the amount of reimbursement is a negotiated fixed rate of pay based on performance of defined unit of service such as per treatment, per hour or per session.
- (14) "Personal property" shall mean property of any kind except real property, either tangible or intangible.
- (15) "Price related " shall mean a contract or subcontract where the amount of reimbursement is related to market prices for services, and without consideration of the contractor's or subcontractor's actual or anticipated costs.
- (16) "Real property" shall mean land, land improvements, structures, and appurtenances thereto, but excluding movable machinery and equipment.
- (17) "Subcontract" shall mean any agreement for compensation between the contractor and a subcontractor, or between a subcontractor and another subcontractor, to provide property, services or construction needed in performance of the contract.
- (18) "Subcontractor" shall mean any person, partnership, corporation, association or organization, not in the employment of the contractor, who has a subcontract agreement directly with the contractor or a subsequent tier subcontract agreement with an intermediate subcontractor.
- (19) "Supplies" shall mean tangible personal property other than equipment.
- (20) "Third party" shall mean an individual or organization other than the Department, the contractor, any subcontractor or any departmental client.
- (21) "Usual charge" shall mean the charge which the contractor or subcontractor most frequently charges non-departmental clients or purchasers for a similar service, activity or procedure.
- (22) "Working capital" shall mean a fund balance accumulated and maintained for a period of more than twelve months, or remaining at the termination or expiration of a contract, which is not segregated in a reserve account and is used primarily to maintain the entity's cash flow.

REIMBURSABLE COSTS

- (1) Reimbursable costs shall include costs which are necessary for the proper and efficient performance of the contract, are reasonable and allocable to the contract and are allowable under the provisions of this exhibit.
- (2) Reimbursable costs include costs incurred in paying subcontractors for fulfilling or assisting the contractor to fulfill the contractor's obligations to the Department.

- (a) If the subcontract is price related, the reimbursable cost of the subcontract shall be the share of payments to the subcontractor which equals the usual charge or the customary charge, whichever is less. If the subcontractor has only departmental clients, the reimbursable cost shall be the share of payments to the subcontractor which equal the customary charge.
- (b) If the subcontract is cost related, the reimbursable cost of the subcontract shall be the share of payments to the subcontractor for subcontractor costs which are necessary for the proper and efficient performance of the contract, are reasonable and allocable to the subcontract and are allowable under the provisions of this exhibit. If the cost-related subcontractor is a for-profit entity, reimbursable costs may also include payments for ordinary profit, provided such profit is computed on a basis other than a percentage of contract costs. Costs used to determine subcontract payments may be either actual costs during the contract period or estimated costs for the contract period based on actual costs in a prior period, and may be either costs of the subcontractor or costs of a class or subclass of facilities providing similar services, activities or procedures.
- (c) If the subcontract is fee for service, the reimbursable cost of the subcontract shall be the share of the payments based on an established rate structure set by laws, regulation or policy, or may be based on cost information provided by the contractor during a competitive solicitation or contract negotiations.

REASONABLENESS

- (1) A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent and reasonable person under circumstances prevailing at the time the decision was made to incur the cost.
- (2) In determining the reasonableness of a given cost, the following shall be given careful consideration:
 - (a) Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the contractor or the performance of the contract.
Whether the cost was incurred after the contractor complied with sound business practices, including arm's length bargaining.
 - (b) Whether the contractor acted with prudence in the circumstances considering its responsibilities to the organization, its members, employees, clients, the public at large, and the Department.
 - (c) Whether the contractor deviated from established practices of the contractor, which may unjustifiably increase the cost.

ALLOCABLE COSTS

- (1) A cost is allocable to the contract if all of the following conditions are met:
 - (a) It is assignable or chargeable to the contract in accordance with the relative benefit received because either:
 - (i) It was incurred specifically and solely for the performance of the contract; or
 - (ii) It benefits both contract and non-contract objectives and can be distributed between them in reasonable proportion to the benefits received; or
 - (iii) It is necessary for the overall operation of the contractor even if a direct relationship to the contract cannot be shown.

(b) It is not allocable to or included as a cost of any other contract, grant, agreement or program in either the present or any prior period, or used as cost-sharing or matching for another contract or grant, except when the contract specifically authorizes such duplicate allocation.

(c) It is accorded consistent treatment with costs of a similar nature.

- (2) Contract-Specific Direct Costs: If a cost is allocable to the contract pursuant to subsection (1)(a)(i) of this section, the entire amount may be charged to the contract.
- (3) Shared Direct Costs: If a cost is allocable to the contract pursuant to subsection (1)(a)(ii) of this section, the charge shall be considered to be in reasonable proportion to the benefits received if the charge is based on time distribution records, random moment time samples, equivalent work units, or space utilization. Other equitable methods may be used with the prior approval of the Department. Allocation of charges based on revenue distribution is not an acceptable method.
- (4) Indirect Costs: If a cost is allocable to the contract pursuant to subsection (1)(a)(iii) of this section, the charge shall be considered to be in proportion to benefits received if it is based on the total distribution of costs allocated pursuant to subsections (2) and (3) of this section, or if it is based on staff time directly spent in contract and non-contract activities. Other equitable methods may be used with the prior, written approval of the Department.
- (5) Contractors and cost-related subcontractors shall maintain a current cost allocation plan describing how costs are allocated.
- (6) Department approvals required in subsections (3) and (4) of this section shall be obtained by submitting a cost allocation plan to the contract manager. The cost allocation plan shall identify the period of time covered by the plan, the cost items to be allocated, the allocation method, the program areas to which costs are allocated, and the resulting allocations using budgeted costs. Copies of indirect cost allocation plans submitted for federal grant purposes may be used to apply for Department approval under subsection (4) of this section.

ALLOWABLE COSTS

A cost is allowable if:

- (1) It is authorized or not prohibited by federal, state, or local laws and regulations.
- (2) It conforms to any limitations or exclusions set forth in the contract terms and approved budget, or in applicable state or federal law or regulation.
- (3) It is approved in advance and in writing by the Department, if it is a cost requiring approval.
- (4) It is not an unallowable cost.
- (5) It is consistent with policies, regulations, directives, and procedures of the contractor.
- (6) It is accorded consistent treatment through application of generally accepted accounting principles.
- (7) It is adequately documented in source records such as payroll registers and invoices.
- (8) It is the net of all applicable credits, such as purchase discounts, rebates, and allowances.

COSTS ALLOWABLE WITH PRIOR APPROVAL

Costs described in this section are allowable only if they are approved in advance by the Department. Approval shall be deemed given if the cost is specifically identified in the contract budget or other clause or attachment to the contract. Approval of costs not specifically identified in the contract shall be made by letter or other document which sets forth the nature and amount of the approved cost and the contract for which it is allowed.

- (1) Client cash payments: Any direct cash payments to departmental clients are allowable only with prior written approval of the Department.
- (2) Capital expenditures: Cost of acquiring by purchase or capitalized lease land, buildings, or equipment and cost of repair, remodeling, renovation, or improvements which would materially increase the value or useful life of buildings are allowable only with the prior written approval of the Department.
- (3) Training and education: Cost of training which requires staff to be relieved of regular duties for more than ten working days per training event is allowable only upon prior written approval of the Department.
- (4) Purchase of equipment must be approved in advance by the contract manager. Title to equipment shall vest in the Department of Social and Health Services unless otherwise determined by the contract manager at the time of purchase.

INTEREST EXPENSE

- (1) Interest on borrowed funds is treated differently depending on the source of funds reimbursing the cost.
 - (a) Costs incurred for interest on borrowed capital or temporary use of endowment funds, however represented, are unallowable as reimbursable costs against a federal grant.
 - (b) Interest on borrowed funds is allowable against state funding if the interest expense meets the applicable requirements of this section.
- (2) Interest on borrowed funds used to purchase equipment or real property is allowable against state funding with the prior written approval of the Department.
- (3) Interest on borrowed funds used to create, replenish, or maintain working capital is allowable against state funding, if the following conditions are met:
 - (a) Working capital is depleted due to unusual cash flow, such as abnormally high costs or delays in reimbursement; or working capital has been insufficient for an extended period of time, because the contractor or subcontractor has insufficient eligible income in excess of expenses to accumulate adequate working capital.
 - (b) The borrowed funds are not used to supplant funds which otherwise would be available to finance working capital. Borrowed funds shall be considered to supplant contractor working capital if a decision to deplete working capital is evident, whether the working capital is depleted before or after the arrangements to borrow funds are made.
 - (c) The working capital in aggregate does not exceed ninety days cash flow.
 - (d) The interest expense is approved in advance and in writing by the Department.

- (4) Approval shall be deemed given if the interest cost is specifically identified in the contract budget or other clause or attachment to the contract. Approval of interest cost not specifically identified in the contract shall be made by letter or other document which sets forth the nature and amount of the approved cost and the contract under which it is allowed.

UNALLOWABLE COSTS

The following costs are unallowable, whether incurred directly by the contractor or any cost related subcontractor:

- (1) Bad debts: Any losses arising from uncollectible accounts and other claims and related costs are unallowable. In double entry accounting systems, write-offs of client fees deemed uncollectible shall be treated as adjustments to revenue.
- (2) Chief executive: The salaries and expenses of the chief executive of a political subdivision are unallowable.
- (3) Contingencies: Contributions to a contingency reserve or any similar provision for unforeseen events.
- (4) Contributions and donations: Costs of a contractor or subcontractor in the form of contributions and donations to other organizations, including costs of donated services and property, are unallowable.
- (5) Depreciation of state financed property: Costs of depreciation of departmental property are unallowable.
- (6) Entertainment: Costs of amusements, social activities, and incidental costs relating thereto such as meals, beverages, lodging, rentals, transportation, and gratuities are unallowable, except for costs of entertainment specifically for departmental clients and necessary expenses of staff who supervise departmental clients on contractor or subcontractor sponsored activities.
- (7) Fines and penalties: Costs resulting from violations of or failure to comply with federal, state, and local laws and regulations are unallowable.
- (8) First class air accommodations: The difference in cost between first class air accommodations and less-than-first class air accommodations is unallowable, except when less-than-first class air accommodations are not reasonably available.
- (9) Fund raising: Costs of organized fund raising are unallowable.
- (10) Legal fees to bring suit against federal or state government: The cost of legal expenses for the prosecution or defense of claims by or against the federal or state government is unallowable.
- (11) Legislative expenses: The salaries and other expenses of county councilmen or councilwomen, supervisors, commissioners, etc., whether incurred for the purposes of the legislation or executive direction, are unallowable.
- (12) Lobbying expenses: The cost of attempting to influence legislation pending before any federal or state legislative body is unallowable except as provided for in RCW 42.17.190.
- (13) Losses: Costs of actual losses which could have been covered either by insurance or by contributions to a self-insurance reserve are unallowable, except for losses not covered under nominal deductible insurance coverage and minor losses not covered by insurance which occur in the ordinary course of operations, such as spoilage and breakage.

(14) Memberships: Costs of memberships for individuals in civic, business, technical or professional organizations are unallowable. Costs of contractor or subcontractor memberships in any organization whose predominate activity is influencing legislation are unallowable.

(15) Under-recovery of costs in other contract agreements: Any costs incurred in excess of the federal and state contribution under any other contract agreement is unallowable.

UNALLOWABLE COSTS; FEDERAL ALCOHOL, DRUG ABUSE, and MENTAL HEALTH SERVICES BLOCK GRANT

(1) Unless an explicit and specific federal waiver is obtained, the following costs are unallowable under any contract which includes federal alcohol, drug abuse and mental health services block grant funds:

(a) Costs of hospital inpatient services;

(b) Cash payments to departmental clients;

(c) Cost of purchase or permanent improvement of land or facilities, other than minor remodeling;

(d) Cost of purchase of major medical equipment, with an acquisition cost in excess of \$5,000;

(e) Costs used as cost-sharing or matching for other federal funds requiring nonfederal matching funds;

(f) Costs of financial assistance to any entity which is not either public or nonprofit; or

(g) Costs that in effect supplant or otherwise reduce the amount of state or local funds that would have been used for alcoholism, drug abuse or mental health programs in the absence of federal block grant funding. For the purposes of this section, supplantation shall be deemed to occur if the amount of state or local funds used is less than the amount expended during federal fiscal year ending September 30, 1981.

(h) Carry out any program of distributing sterile needles for the hypodermic injection of any illegal drug or distributing bleach for the purpose of cleansing needles for such hypodermic injection.

(i) Carry out any testing for the etiologic agent for acquired immune deficiency syndrome (AIDS), unless such testing is accompanied by appropriate pre-test counseling and appropriate post-test counseling.

(j) EXCESS SALARY: By law, none of the funds awarded can be used to pay salary of an individual at a rate in excess of the Executive Level I, which is \$181,100 annually.

(k) Youth tobacco enforcement.

(2) The use of federal funds to influence or attempt to influence the award of, or amendment to, any federal contract, grant, loan, or cooperative agreement is prohibited.

(a) The use of funds other than federal funds for such purposes shall require the contractor to submit all required federal and state forms disclosing such lobbying activity.

(b) The contractor must include this language in any contracts resulting from this agreement and that all subrecipients understand and agree to these terms.

- (3) Costs that are unallowable under subsection (1) of this section are allowable using state funds if all of the following conditions are met:
- (a) The contract includes state funds at least equal to the total amount of all items of cost under consideration;
 - (b) If the costs are incurred by a subcontractor, the subcontract document clearly indicates only state funds are included in the subcontract; and
 - (c) The cost is otherwise allowed.

Exhibit B**Federal Award Identification for Subrecipients (reference 2 CFR 200.331)
WA-PFS 2018**

(i) Subrecipient name (which must match the name associated with its unique entity identifier);	Whatcom County
(ii) Subrecipient's unique entity identifier; (DUNS)	060044641
(iii) Federal Award Identification Number (FAIN);	SP020155
(iv) Federal Award Date (see §200.39 Federal award date);	9/13/2018
(v) Subaward Period of Performance Start and End Date;	9/30/18-9/29/23
(vi) Amount of Federal Funds Obligated by this action;	\$41,850
(vii) Total Amount of Federal Funds Obligated to the subrecipient;	\$41,850
(viii) Total Amount of the Federal Award;	\$11,300,000 (9/30/18-9/29/23)
(ix) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);	State Incentive Grant -Strategic Prevention Framework – prevention services
(x) Name of Federal awarding agency, pass-through entity, and contact information for awarding official,	SAMHSA WA State Health Care Authority Keri Waterland, Assistant Director DBHR 626 8th Ave SE; Olympia, WA 98504-5330 keri.waterland@hca.wa.gov
(xi) CFDA Number and Name; the pass-through entity must identify the dollar amount made available under each Federal award and the CFDA number at time of disbursement;	93.243 <input type="checkbox"/>
(xii) Identification of whether the award is R&D; and	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
(xiii) Indirect cost rate for the Federal award (including if the de minimis rate is charged per §200.414 Indirect (F&A) costs).	de minimis (10%)

**Federal Award Identification for Subrecipients (reference 2 CFR 200.331)
State Targeted Response (STR)**

(i) Subrecipient name (which must match the name associated with its unique entity identifier);	Whatcom County
(ii) Subrecipient's unique entity identifier; (DUNS)	060044641
(iii) Federal Award Identification Number (FAIN);	H79T1026803
(iv) Federal Award Date (see §200.39 Federal award date);	4/14/2019
(v) Subaward Period of Performance Start and End Date;	7/1/19 to 4/30/2020
(vi) Amount of Federal Funds Obligated by this action;	\$18,571
(vii) Total Amount of Federal Funds Obligated to the subrecipient;	\$18,571
(xiii) Total Amount of the Federal Award;	\$11,790,256
(ix) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);	WA-STR addresses the Opiate Epidemic
(x) Name of Federal awarding agency, pass-through entity, and contact information for awarding official,	SAMHSA WA State Health Care Authority Keri Waterland, Assistant Director DBHR 626 8 th Ave SE; Olympia, WA 98504-5330
(xi) CFDA Number and Name; the pass-through entity must identify the dollar amount made available under each Federal award and the CFDA number at time of disbursement;	93.788
(xii) Identification of whether the award is R&D; and	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
(xiii) Indirect cost rate for the Federal award (including if the de minimis rate is charged per §200.414 Indirect (F&A) costs).	de minimis (10%)

**Federal Award Identification for Subrecipients (reference 2 CFR 200.331)
Substance Abuse Block Grant**

(i) Subrecipient name (which must match the name associated with its unique entity identifier);	Whatcom County
(ii) Subrecipient's unique entity identifier; (DUNS)	060044641
(iii) Federal Award Identification Number (FAIN);	TM010056
(iv) Federal Award Date (see §200.39 Federal award date);	09/27/2018
(v) Subaward Period of Performance Start and End Date;	7/1/19 to 6/30/21
(vi) Amount of Federal Funds Obligated by this action;	\$321,220
(vii) Total Amount of Federal Funds Obligated to the subrecipient;	\$321,220
(xiii) Total Amount of the Federal Award;	FY17 \$37,785,106 FY18 \$38,053,643
(ix) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);	Substance Abuse Prevention and Treatment Block Grant
(x) Name of Federal awarding agency, pass-through entity, and contact information for awarding official,	SAMHSA WA State Health Care Authority Keri Waterland, Assistant Director DBHR 626 8th Ave SE; Olympia, WA 98504-5330 Keri.waterland@hca.wa.gov
(xi) CFDA Number and Name; the pass-through entity must identify the dollar amount made available under each Federal award and the CFDA number at time of disbursement;	93.959
(xii) Identification of whether the award is R&D; and	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
(xiii) Indirect cost rate for the Federal award (including if the de minimis rate is charged per §200.414 Indirect (F&A) costs).	5%

**Federal Award Identification for Subrecipients (reference 2 CFR 200.331)
WA-SOR**

(i) Subrecipient name (which must match the name associated with its unique entity identifier);	Whatcom County
(ii) Subrecipient's unique entity identifier; (DUNS)	060044641
(iii) Federal Award Identification Number (FAIN);	TI081705
(iv) Federal Award Date (see §200.39 Federal award date);	9/19/18
(v) Subaward Period of Performance Start and End Date;	7/1/19-9/29/20
(vi) Amount of Federal Funds Obligated by this action;	\$77,129
(vii) Total Amount of Federal Funds Obligated to the subrecipient;	\$77,129
(viii) Total Amount of the Federal Award;	\$21,573,093
(ix) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);	WA-SOR addresses the Opiate Epidemic by increasing treatment and prevention activities
(x) Name of Federal awarding agency, pass-through entity, and contact information for awarding official,	SAMHSA WA State Health Care Authority Keri Waterland, Assistant Director DBHR 626 8th Ave SE; Olympia, WA 98504-5330 keri.waterland@hca.wa.gov
(xi) CFDA Number and Name; the pass-through entity must identify the dollar amount made available under each Federal award and the CFDA number at time of disbursement;	93.788
(xii) Identification of whether the award is R&D; and	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
(xiii) Indirect cost rate for the Federal award (including if the de minimis rate is charged per §200.414 Indirect (F&A) costs).	de minimis (10%)

Federal Award Identification for Subrecipients (reference 2 CFR 200.331) – PFS 2013

(i) Subrecipient name (which must match the name associated with its unique entity identifier);	Whatcom County
(ii) Subrecipient's unique entity identifier; (DUNS)	060044641
(iii) Federal Award Identification Number (FAIN);	SP020155
(iv) Federal Award Date (see §200.39 Federal award date);	06/12/2015
(v) Subaward Period of Performance Start and End Date;	7/1/19 – 9/29/29
(vi) Amount of Federal Funds Obligated by this action;	\$0
(vii) Total Amount of Federal Funds Obligated to the subrecipient;	\$0
(viii) Total Amount of the Federal Award;	\$2,103,524 FY 17 (07/01/18 – 09/29/19)
(ix) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);	Washington State Strategic Prevention Framework Partnerships for Success Project
(x) Name of Federal awarding agency, pass-through entity, and contact information for awarding official,	SAMSHA Washington State DSHS Chris Imhoff, Director PO Box 45330 Olympia, WA 98504-5330 IMHOFC@dshs.wa.gov
(xi) CFDA Number and Name; the pass-through entity must identify the dollar amount made available under each Federal award and the CFDA number at time of disbursement;	93.243
(xii) Identification of whether the award is R&D; and	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
(xiii) Indirect cost rate for the Federal award (including if the de minimis rate is charged per §200.414 Indirect (F&A) costs).	de minimis (10%)

Data Security Requirements

1. **Definitions.** The words and phrases listed below, as used in this Exhibit, shall each have the following definitions:
 - a. "Authorized User(s)" means an individual or individuals with an authorized business requirement to access HCA Confidential Information.
 - b. "Hardened Password" means a string of at least eight characters containing at least one alphabetic character, at least one number and at least one special character such as an asterisk, ampersand or exclamation point.
 - c. "Unique User ID" means a string of characters that identifies a specific user and which, in conjunction with a password, passphrase or other mechanism, authenticates a user to an information system.
2. **Data Transport.** When transporting HCA Confidential Information electronically, including via email, the Data will be protected by:
 - a. Transporting the Data within the (State Governmental Network) SGN or OPSI's internal network, or;
 - b. Encrypting any Data that will be in transit outside the SGN or Contractor's internal network. This includes transit over the public Internet.
3. **Protection of Data.** Contractor agrees to store Data on one or more of the following media and protect the Data as described:
 - a. Hard disk drives. Data stored on local workstation hard disks. Access to the Data will be restricted to Authorized User(s) by requiring logon to the local workstation using a Unique User ID and Hardened Password or other authentication mechanisms which provide equal or greater security, such as biometrics or smart cards.
 - b. Network server disks. Data stored on hard disks mounted on network servers and made available through shared folders. Access to the Data will be restricted to Authorized Users through the use of access control lists which will grant access only after the Authorized User has authenticated to the network using a Unique User ID and Hardened Password or other authentication mechanisms which provide equal or greater security, such as biometrics or smart cards. Data on disks mounted to such servers must be located in an area which is accessible only to authorized personnel, with access controlled through use of a key, card key, combination lock, or comparable mechanism.

For HCA Confidential Information stored on these disks, deleting unneeded Data is sufficient as long as the disks remain in a Secured Area and otherwise meet the requirements listed in the above paragraph. Destruction of the Data as outlined in Section 5. Data Disposition may be deferred until the disks are retired, replaced, or otherwise taken out of the Secured Area.

- c. Optical discs (CDs or DVDs) in local workstation optical disc drives. Data provided by HCA on optical discs which will be used in local workstation optical disc drives and which will not be transported out of a Secured Area. When not in use for the contracted purpose, such discs must be locked in a drawer, cabinet or other container to which only Authorized Users have the key, combination or mechanism required to access the contents of the container. Workstations which access HCA Data on optical discs must be located in an area which is accessible only to authorized personnel, with access controlled through use of a key, card key, combination lock, or comparable mechanism.
- d. Optical discs (CDs or DVDs) in drives or jukeboxes attached to servers. Data provided by HCA on optical discs which will be attached to network servers and which will not be transported out of a Secured Area. Access to Data on these discs will be restricted to Authorized Users through the use of access control lists which will grant access only after the Authorized User has authenticated to the network using a Unique User ID and Hardened Password or other authentication mechanisms which provide equal or greater security, such as biometrics or smart cards. Data on discs attached to such servers must be located in an area which is accessible only to authorized personnel, with access controlled through use of a key, card key, combination lock, or comparable mechanism.
- e. Paper documents. Any paper records must be protected by storing the records in a Secured Area which is only accessible to authorized personnel. When not in use, such records must be stored in a locked container, such as a file cabinet, locking drawer, or safe, to which only authorized persons have access.
- f. Remote Access. Access to and use of the Data over the State Governmental Network (SGN) or Secure Access Washington (SAW) will be controlled by HCA staff who will issue authentication credentials (e.g. a Unique User ID and Hardened Password) to Authorized Users on Contractor staff. Contractor will notify HCA staff immediately whenever an Authorized User in possession of such credentials is terminated or otherwise leaves the employ of Contractor, and whenever an Authorized User's duties change such that the Authorized User no longer requires access to perform work for this Contract.
- g. Data storage on portable devices or media.
 - (1) Except where otherwise specified herein, HCA Data shall not be stored by Contractor on portable devices or media unless specifically authorized within the terms and conditions of the Contract. If so authorized, the Data shall be given the following protections:
 - (a) Encrypt the Data with a key length of at least 128 bits
 - (b) Control access to devices with a Unique User ID and Hardened Password or stronger authentication method such as a physical token or biometrics.
 - (c) Manually lock devices whenever they are left unattended and set devices to lock automatically after a period of inactivity, if this feature is available. Maximum period of inactivity is 20 minutes.

Physically Secure the portable device(s) and/or media by

- (d) Keeping them in locked storage when not in use
 - (e) Using check-in/check-out procedures when they are shared, and
 - (f) Taking frequent inventories
- (2) When being transported outside of a Secured Area, portable devices and media with HCA Confidential Information must be under the physical control of Contractor staff with authorization to access the Data.
 - (3) Portable devices include, but are not limited to; smart phones, tablets, flash memory devices (e.g. USB flash drives, personal media players), portable hard disks, and laptop/notebook/netbook computers if those computers may be transported outside of a Secured Area.
 - (4) Portable media includes, but is not limited to; optical media (e.g. CDs, DVDs), magnetic media (e.g. floppy disks, tape), or flash media (e.g. CompactFlash, SD, MMC).
- h. Data stored for backup purposes.
- (1) HCA data may be stored on portable media as part of Contractor's existing, documented backup process for business continuity or disaster recovery purposes. Such storage is authorized until such time as that media would be reused during the course of normal backup operations. If backup media is retired while HCA Confidential Information still exists upon it, such media will be destroyed at that time in accordance with the disposition requirements in Section 5. Data Disposition
 - (2) HCA Data may be stored on non-portable media (e.g. Storage Area Network drives, virtual media, etc.) as part of Contractor's existing, documented backup process for business continuity or disaster recovery purposes. If so, such media will be protected as otherwise described in this exhibit. If this media is retired while HCA Confidential Information still exists upon it, the data will be destroyed at that time in accordance with the disposition requirements in Section 5. Data Disposition.

4. Data Segregation.

- a. HCA Data must be segregated or otherwise distinguishable from non-HCA data. This is to ensure that when no longer needed by Contractor, all HCA Data can be identified for return or destruction. It also aids in determining whether HCA Data has or may have been compromised in the event of a security breach. As such, one or more of the following methods will be used for data segregation.
- b. HCA Data will be kept on media (e.g. hard disk, optical disc, tape, etc.) which will contain no non-HCA data. And/or,

- c. HCA Data will be stored in a logical container on electronic media, such as a partition or folder dedicated to HCA Data. And/or,
- d. HCA Data will be stored in a database which will contain no non-HCA data. And/or,
- e. HCA Data will be stored within a database and will be distinguishable from non-HCA data by the value of a specific field or fields within database records.
- f. When stored as physical paper documents, HCA Data will be physically segregated from non-HCA data in a drawer, folder, or other container.
- g. When it is not feasible or practical to segregate HCA Data from non-HCA data, then both the HCA Data and the non-HCA data with which it is commingled must be protected as described in this exhibit.

5. **Data Disposition.** When the contracted work has been completed or when no longer needed, except as noted in Section 3. Protection of Data b. Network Server Disks above, Data shall be returned to HCA or destroyed. Media on which Data may be stored and associated acceptable methods of destruction are as follows:

Data stored on:	Will be destroyed by:
Server or workstation hard disks, or Removable media (e.g. floppies, USB flash drives, portable hard disks) excluding optical discs	Using a "wipe" utility which will overwrite the Data at least three (3) times using either random or single character data, or Degaussing sufficiently to ensure that the Data cannot be reconstructed, or Physically destroying the disk
Paper documents with sensitive or Confidential Information	Recycling through a contracted firm provided the contract with the recycler assures that the confidentiality of Data will be protected.
Paper documents containing Confidential Information requiring special handling (e.g. protected health information)	On-site shredding, pulping, or incineration
Optical discs (e.g. CDs or DVDs)	Incineration, shredding, or completely defacing the readable surface with a coarse abrasive
Magnetic tape	Degaussing, incinerating or crosscut shredding

6. **Notification of Compromise or Potential Compromise.** The compromise or potential compromise of HCA shared Data must be reported to the HCA Contact designated in the Contract within one (1) business day of discovery. If no HCA Contact is designated in the Contract, then the notification must be reported to the HCA Privacy Officer at HCAprivacyofficer@HCA.wa.gov. Contactor must also take actions to mitigate the risk of loss and comply with any notification or other requirements imposed by law or HCA.

7. **Data shared with Subcontractors.** If HCA Data provided under this Contract is to be shared with a subcontractor, the Contract with the subcontractor must include all of the data security provisions within this Contract and within any amendments, attachments, or exhibits within this Contract. If Contactor cannot protect the Data as articulated within this Contract, then the contract with the sub-Contractor must be submitted to the HCA Contact specified for this contract for review and approval.

Exhibit D

AWARD AND REVENUES
2019-2021 Biennium
CONTRACTOR NAME: Whatcom County
CONTRACT NUMBER: K3950
COUNTY: Whatcom

COMMUNITY/COALITION: Ferndale

The above named Contractor is hereby awarded the following amounts for the purposes listed.

REVENUE SOURCE CODE:	TYPE OF SERVICE	AWARD AMOUNTS		
		SFY20	SFY21	Total 19-21 Biennium
333.99.59	SABG Prevention (7.1.19-6.30.21)	\$80,305	\$80,305	\$160,610
334.04.6X	GF-State- Admin (for SABG Prevention)	\$6,983	\$6,983	\$13,966
334.04.6X	Dedicated Marijuana Account-Fund 315-State	\$22,712	\$22,712	\$45,424
333.92.43	2018 PFS-Total	\$	\$	\$
	Year 1 FFY19 (7.1.19-9.29.19)	\$		
	Year 2 FFY20 (9.30.19-9.29.20)	\$	\$	
333.92.43	2013 PFS No Cost Extension (7.1.19-9.29.19)	\$	\$	\$
333.37.88	SOR-Total	\$	\$	\$
	Year 1 FFY19 (7.1.19-9.29.19)	\$		
	Year 2 FFY20 (9.30.19-9.29.20)	\$	\$	
333.37.88	SOR Supplemental-Total	\$	\$	\$
	Year 1 FFY19 (7.1.19-9.29.19)	\$		
	Year 2 FFY20 (9.30.19-9.29.20)	\$	\$	
333.37.88	STR No Cost Extension-Total (8.15.19-4.30.20)	\$	\$	\$
Total Federal Funds		\$80,305	\$80,305	\$160,610
Total State Funds		\$29,695	\$29,695	\$59,390
TOTAL ALL AWARDS		\$110,000	\$110,000	\$220,000

Federal CFDA:

Substance Abuse Block Grant (SABG), CFDA 93.959, Substance Abuse and Mental Health Services Administration (SAMHSA)

Funding period(s): 7.1.19-6.30.21; Funds may be used in SFY 20 or 21 up to the total biennium award as indicated above.

General Fund State (GF-S), Admin (for SABG Prevention)

Funding period(s): 7.1.19-6.30.20 (SFY 20) and 7.1.20-6.30.21 (SFY 21); Funds must be used only in the SFY in which they are awarded as indicated above.

Dedicated Marijuana Account (DMA) Fund 315 State.

Funding period(s): 7.1.19-6.30.20 (SFY20) and 7.1.20-6.30.21 (SFY 21); Funds must be used only in the SFY in which they are awarded as indicated above.

2018 Partnerships for Success (PFS), CFDA 93.243, Substance Abuse and Mental Health Services Administration (SAMHSA)

Year 1 funding period: 7.1.19-9.29.19; Year 2 funding period: 9.30.19-9.29.20; Funds must be used only in the FFY in which they are awarded as indicated above. Beginning 9.30.19, funds in year 1 may be used in SFY 20 or SFY 21, until 9.29.20.

2013 PFS, Partnerships for Success (PFS) No Cost Extension

Funding period 7.1.19-9.29.19; Funds must be used in this time period

State Opioid Response (SOR), CFDA 93.788, Substance Abuse and Mental Health Services Administration (SAMHSA)

Year 1 funding period: 7.1.19-9.29.19; Year 2 funding period: 9.30.19-9.29.20; Funds must be used in the FFY in which they are awarded, as indicated above. Beginning 9.30.19, funds in year 1 may be used in SFY 20 or SFY 21, until 9.29.20.

State Opioid Response (SOR) Supplemental, CFDA 93.788, Substance Abuse and Mental Health Services Administration (SAMHSA)

Year 1 funding period: 7.1.19-9.29.19; Year 2 funding period: 9.30.19-9.29.20; Funds must be used in the FFY in which they are awarded, as indicated above. Beginning 9.30.19, funds in year 1 may be used in SFY 20 or SFY 21, until 9.29.20.

State Targeted Response (STR) to the Opioid Crisis No Cost Extension, CFDA 93.788, Substance Abuse and Mental Health Services Administration (SAMHSA)

Funding period 8.15.19-4.30.20; Funds must be used in this time period.

**AWARD AND REVENUES
2019-2021 Biennium**

CONTRACTOR NAME: Whatcom County

CONTRACT NUMBER: K3950

COUNTY: Whatcom

COMMUNITY/COALITION: Mt Baker

The above named Contractor is hereby awarded the following amounts for the purposes listed.

REVENUE SOURCE CODE:	TYPE OF SERVICE	AWARD AMOUNTS		
		SFY20	SFY21	Total 19-21 Biennium
333.99.59	SABG Prevention (7.1.19-6.30.21)	\$	\$	\$
334.04.6X	GF-State- Admin (for SABG Prevention)	\$	\$	\$
334.04.6X	Dedicated Marijuana Account-Fund 315-State	\$	\$	\$
333.92.43	2018 PFS-Total	\$31,350	\$10,500	\$41,850
	Year 1 FFY19 (7.1.19-9.29.19)	\$0		
	Year 2 FFY20 (9.30.19-9.29.20)	\$31,350	\$10,500	
333.92.43	2013 PFS No Cost Extension (7.1.19-9.29.19)	\$	\$	\$
333.37.88	SOR-Total	\$60,079	\$17,050	\$77,129
	Year 1 FFY19 (7.1.19-9.29.19)	\$8,929		
	Year 2 FFY20 (9.30.19-9.29.20)	\$51,150	\$17,050	
333.37.88	SOR Supplemental-Total	\$	\$	\$
	Year 1 FFY19 (7.1.19-9.29.19)	\$		
	Year 2 FFY20 (9.30.19-9.29.20)	\$	\$	
333.37.88	STR No Cost Extension-Total (8.15.19-4.30.20)	\$18,571	\$	\$18,571
Total Federal Funds		\$110,000	\$27,550	\$137,550
Total State Funds		\$0	\$0	\$0
TOTAL ALL AWARDS		\$110,000	\$27,550	\$ 137,550

Federal CFDA:

Substance Abuse Block Grant (SABG), CFDA 93.959, Substance Abuse and Mental Health Services Administration (SAMHSA)

Funding period(s): 7.1.19-6.30.21; Funds may be used in SFY 20 or 21 up to the total biennium award as indicated above.

General Fund State (GF-S), Admin (for SABG Prevention)

Funding period(s): 7.1.19-6.30.20 (SFY 20) and 7.1.20-6.30.21 (SFY 21); Funds must be used only in the SFY in which they are awarded as indicated above.

Dedicated Marijuana Account (DMA) Fund 315 State.

Funding period(s): 7.1.19-6.30.20 (SFY20) and 7.1.20-6.30.21 (SFY 21); Funds must be used only in the SFY in which they are awarded as indicated above.

2018 Partnerships for Success (PFS), CFDA 93.243, Substance Abuse and Mental Health Services Administration (SAMHSA)

Year 1 funding period: 7.1.19-9.29.19; Year 2 funding period: 9.30.19-9.29.20; Funds must be used only in the FFY in which they are awarded as indicated above. Beginning 9.30.19, funds in year 1 may be used in SFY 20 or SFY 21, until 9.29.20.

2013 PFS, Partnerships for Success (PFS) No Cost Extension

Funding period 7.1.19-9.29.19; Funds must be used in this time period

State Opioid Response (SOR), CFDA 93.788, Substance Abuse and Mental Health Services Administration (SAMHSA)

Year 1 funding period: 7.1.19-9.29.19; Year 2 funding period: 9.30.19-9.29.20; Funds must be used in the FFY in which they are awarded, as indicated above. Beginning 9.30.19, funds in year 1 may be used in SFY 20 or SFY 21, until 9.29.20.

State Opioid Response (SOR) Supplemental, CFDA 93.788, Substance Abuse and Mental Health Services Administration (SAMHSA)

Year 1 funding period: 7.1.19-9.29.19; Year 2 funding period: 9.30.19-9.29.20; Funds must be used in the FFY in which they are awarded, as indicated above. Beginning 9.30.19, funds in year 1 may be used in SFY 20 or SFY 21, until 9.29.20.

State Targeted Response (STR) to the Opioid Crisis No Cost Extension, CFDA 93.788, Substance Abuse and Mental Health Services Administration (SAMHSA)

Funding period 8.15.19-4.30.20; Funds must be used in this time period.

AWARD AND REVENUES 2019-2021 Biennium

CONTRACTOR NAME: Whatcom County

CONTRACT NUMBER: K3950

COUNTY: Whatcom

COMMUNITY/COALITION: Shuksan - Bellingham

The above named Contractor is hereby awarded the following amounts for the purposes listed.

REVENUE SOURCE CODE:	TYPE OF SERVICE	AWARD AMOUNTS		
		<u>SFY20</u>	<u>SFY21</u>	<u>Total 19-21 Biennium</u>
333.99.59	SABG Prevention (7.1.19-6.30.21)	\$80,305	\$80,305	\$160,610
334.04.6X	GF-State- Admin (for SABG Prevention)	\$6,983	\$6,983	\$13,966
334.04.6X	Dedicated Marijuana Account-Fund 315-State	\$22,712	\$22,712	\$45,424
333.92.43	2018 PFS-Total	\$	\$	\$
	Year 1 FFY19 (7.1.19-9.29.19)	\$		
	Year 2 FFY20 (9.30.19-9.29.20)	\$	\$	
333.92.43	2013 PFS No Cost Extension (7.1.19-9.29.19)	\$	\$	\$
333.37.88	SOR-Total	\$	\$	\$
	Year 1 FFY19 (7.1.19-9.29.19)	\$		
	Year 2 FFY20 (9.30.19-9.29.20)	\$	\$	
333.37.88	SOR Supplemental-Total	\$	\$	\$
	Year 1 FFY19 (7.1.19-9.29.19)	\$		
	Year 2 FFY20 (9.30.19-9.29.20)	\$	\$	
333.37.88	STR No Cost Extension-Total (8.15.19-4.30.20)	\$	\$	\$
Total Federal Funds		\$ 80,305	\$80,305	\$160,610
Total State Funds		\$29,695	\$29,695	\$59,390
TOTAL ALL AWARDS		\$110,000	\$110,000	\$220,000

Federal CFDA:

Substance Abuse Block Grant (SABG), CFDA 93.959, Substance Abuse and Mental Health Services Administration (SAMHSA)

Funding period(s): 7.1.19-6.30.21; Funds may be used in SFY 20 or 21 up to the total biennium award as indicated above.

General Fund State (GF-S), Admin (for SABG Prevention)

Funding period(s): 7.1.19-6.30.20 (SFY 20) and 7.1.20-6.30.21 (SFY 21); Funds must be used only in the SFY in which they are awarded as indicated above.

Dedicated Marijuana Account (DMA) Fund 315 State.

Funding period(s): 7.1.19-6.30.20 (SFY20) and 7.1.20-6.30.21 (SFY 21); Funds must be used only in the SFY in which they are awarded as indicated above.

2018 Partnerships for Success (PFS), CFDA 93.243, Substance Abuse and Mental Health Services Administration (SAMHSA)

Year 1 funding period: 7.1.19-9.29.19; Year 2 funding period: 9.30.19-9.29.20; Funds must be used only in the FFY in which they are awarded as indicated above. Beginning 9.30.19, funds in year 1 may be used in SFY 20 or SFY 21, until 9.29.20.

2013 PFS, Partnerships for Success (PFS) No Cost Extension

Funding period 7.1.19-9.29.19; Funds must be used in this time period

State Opioid Response (SOR), CFDA 93.788, Substance Abuse and Mental Health Services Administration (SAMHSA)

Year 1 funding period: 7.1.19-9.29.19; Year 2 funding period: 9.30.19-9.29.20; Funds must be used in the FFY in which they are awarded, as indicated above. Beginning 9.30.19, funds in year 1 may be used in SFY 20 or SFY 21, until 9.29.20.

State Opioid Response (SOR) Supplemental, CFDA 93.788, Substance Abuse and Mental Health Services Administration (SAMHSA)

Year 1 funding period: 7.1.19-9.29.19; Year 2 funding period: 9.30.19-9.29.20; Funds must be used in the FFY in which they are awarded, as indicated above. Beginning 9.30.19, funds in year 1 may be used in SFY 20 or SFY 21, until 9.29.20.

State Targeted Response (STR) to the Opioid Crisis No Cost Extension, CFDA 93.788, Substance Abuse and Mental Health Services Administration (SAMHSA)

Funding period 8.15.19-4.30.20; Funds must be used in this time period.



Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2019-486

File ID:	AB2019-486	Version:	1	Status:	Agenda Ready
File Created:	09/19/2019	Entered by:	JThomson@co.whatcom.wa.us		
Department:	Health Department	File Type:	Interlocal		
Assigned to:	Council Finance and Administrative Services Committee	Final Action:			
Agenda Date:	10/08/2019	Enactment #:			

Primary Contact Email: JMitchel@co.whatcom.wa.us <<mailto:JMitchel@co.whatcom.wa.us>>

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Washington State Health Care Authority for treatment and recovery support services to individuals involved in the criminal justice system, in the amount of \$174,881

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attachments.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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MEMORANDUM

TO: Jack Louws, County Executive

FROM: ^{RAD} Regina A. Delahunt, Director

RE: Washington State Health Care Authority – CJTA Funded Treatment and Recovery Support Services Contract

DATE: September 11, 2019

Enclosed is one (1) original of a contract between Whatcom County and Washington State Health Care Authority for your review and signature.

▪ **Background and Purpose**

This revenue contract provides funding and defines requirements for providing treatment and recovery support services to those involved in the criminal justice system in accordance with RCW 71.24.580.

▪ **Funding Amount and Source**

Funding, in the amount of \$174,881, is provided by the Criminal Justice Treatment Account (CJTA) through the Washington State Health Care Authority. County Council approval is required per RCW 39.34.030(2) for agreements between public agencies.

Please contact Kathleen Roy at extension #6007 if you have any questions regarding this agreement.

Encl.



WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No. _____

Originating Department:	85 Health
Division/Program: (i.e. Dept. Division and Program)	8550 Human Services / 855060 Substance Abuse Program
Contract or Grant Administrator:	Kathleen Roy
Contractor's / Agency Name:	WA State HCA

Is this a New Contract? Yes ☒ No ☐ If not, is this an Amendment or Renewal to an Existing Contract? 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): K3974 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? Yes ☐ No ☒ If yes, RFP and Bid number(s): _____ Contract Cost Center: 675600

Is this agreement excluded from E-Verify? No ☐ Yes ☒ 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 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). | |

Contract Amount:(sum of original contract amount and any prior amendments):

\$ 174,881

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:**

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: This contract provides funding treatment and recovery support services to those involved in the criminal justice system.

Term of Contract: 1 Year	Expiration Date: 06/30/2020
--------------------------	-----------------------------

Contract Routing:	1. Prepared by: JT	Date: 9/10/2019
	2. Attorney signoff: _____	Date: 8-13-19
	3. AS Finance reviewed: _____	Date: 9/17/19
	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: _____

	PROFESSIONAL SERVICES CONTRACT for CJTA Funded Treatment and Recovery Support Services	HCA Contract Number: K3974 Resulting from Solicitation Number (If applicable: NA Contractor/Vendor Contract Number:
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THIS CONTRACT is made by and between Washington State Health Care Authority, (HCA) and Whatcom County, (Contractor).

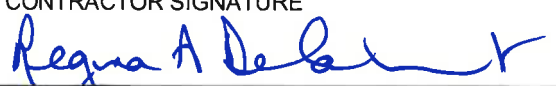
CONTRACTOR NAME Whatcom County		CONTRACTOR DOING BUSINESS AS (DBA)	
CONTRACTOR ADDRESS Street 509 Girard Street	City Bellingham	State WA	Zip Code 98225-4005
CONTRACTOR CONTACT Jackie Mitchell	CONTRACTOR TELEPHONE (360) 778-6048	CONTRACTOR E-MAIL ADDRESS jmitchel@whatcomcounty.us	
Is Contractor a Subrecipient under this Contract? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		CFDA NUMBER(S):	FFATA Form Required <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO

HCA PROGRAM Criminal Justice Treatment Account- State Appropriations	HCA DIVISION/SECTION DBHR / SUD
HCA CONTACT NAME AND TITLE Tony Walton, Criminal Justice Behavioral Health Administrator	HCA CONTACT ADDRESS Health Care Authority 626 8th Avenue SE PO Box 42730 Olympia, WA 98504-2730
HCA CONTACT TELEPHONE (360) 725-9992	HCA CONTACT E-MAIL ADDRESS tony.walton@hca.wa.gov

CONTRACT START DATE July 1, 2019	CONTRACT END DATE June 30, 2020	TOTAL MAXIMUM CONTRACT AMOUNT \$174,881.00
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PURPOSE OF CONTRACT:
Contractor to provide Criminal Justice Treatment Account funds to provide treatment and recovery support services to individuals involved in the criminal justice system in accordance with RCW 71.24.580.

The parties signing below warrant that they have read and understand this Contract, and have authority to execute this Contract. This Contract will be binding on HCA only upon signature by HCA.

CONTRACTOR SIGNATURE 	PRINTED NAME AND TITLE	DATE SIGNED 9/12/19
HCA SIGNATURE	PRINTED NAME AND TITLE	DATE SIGNED

DEPARTMENT APPROVAL

Anne Deacon 9/10/19

Anne Deacon, Human Services Manager

Date

WHATCOM COUNTY

JACK LOUWS
County Executive

STATE OF WASHINGTON)

COUNTY OF WHATCOM)

On this _____ day of _____, 2019, before me personally
appeared Jack Louws, 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.

NOTARY PUBLIC in and for the State of Washington, residing at
Bellingham.

My Commission expires: _____

APPROVED AS TO FORM

Royce Buckingham
Royce Buckingham, Deputy Prosecuting Attorney

9-13-19

Date

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Attachments

Attachment 1: Confidential Information Security Requirements

Attachment 2: Quarterly Progress Report Template

Attachment 3: Quarterly Revenue and Expenditure Report Template

Schedules

Schedule A: Statement of Work (SOW) CTJA Funded Treatment and Recovery Support Services

Contract K3974 for CTJA Funded Treatment and Recovery Services

IN CONSIDERATION of the mutual promises as set forth in this Contract, the parties agree as follows:

1. STATEMENT OF WORK (SOW)

The Contractor will provide the services and staff as described in Schedule A: *Statement of Work*.

2. DEFINITIONS

“Authorized Representative” means a person to whom signature authority has been delegated in writing acting within the limits of his/her authority.

“Breach” means the unauthorized acquisition, access, use, or disclosure of Confidential Information that compromises the security, confidentiality, or integrity of the Confidential Information.

“Business Associate” means a Business Associate as defined in 45 CFR 160.103, who performs or assists in the performance of an activity for or on behalf of HCA, a Covered Entity, that involves the use or disclosure of protected health information (PHI). Any reference to Business Associate in this Contract includes Business Associate’s employees, agents, officers, Subcontractors, third party contractors, volunteers, or directors.

“Business Days and Hours” means Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, except for holidays observed by the state of Washington.

“CFR” means the Code of Federal Regulations. All references in this Contract to CFR chapters or sections include any successor, amended, or replacement regulation. The CFR may be accessed at <http://www.ecfr.gov/cgi-bin/ECFR?page=browse>.

“Confidential Information” means information that may be exempt from disclosure to the public or other unauthorized persons under chapter 42.56 RCW or chapter 70.02 RCW or other state or federal statutes or regulations. Confidential Information includes, but is not limited to, any information identifiable to an individual that relates to a natural person’s health, (see also Protected Health Information); finances, education, business, use or receipt of governmental services, names, addresses, telephone numbers, social security numbers, driver license numbers, financial profiles, credit card numbers, financial identifiers and any other identifying numbers, law enforcement records, HCA source code or object code, or HCA or State security information.

“Contract” means this Contract document and all schedules, exhibits, attachments, incorporated documents and amendments.

“Contractor” means Whatcom County, its employees and agents. Contractor includes any firm, provider, organization, individual or other entity performing services under this Contract. It

also includes any Subcontractor retained by Contractor as permitted under the terms of this Contract.

“Covered entity” means a health plan, a health care clearinghouse or a health care provider who transmits any health information in electronic form to carry out financial or administrative activities related to health care, as defined in 45 CFR 160.103.

“Data” means information produced, furnished, acquired, or used by Contractor in meeting requirements under this Contract.

“Effective Date” means the first date this Contract is in full force and effect. It may be a specific date agreed to by the parties; or, if not so specified, the date of the last signature of a party to this Contract.

“HCA Contract Manager” means the individual identified on the cover page of this Contract who will provide oversight of the Contractor’s activities conducted under this Contract.

“Health Care Authority” or **“HCA”** means the Washington State Health Care Authority, any division, section, office, unit or other entity of HCA, or any of the officers or other officials lawfully representing HCA.

“Overpayment” means any payment or benefit to the Contractor in excess of that to which the Contractor is entitled by law, rule, or this Contract, including amounts in dispute.

“Proprietary Information” means information owned by Contractor to which Contractor claims a protectable interest under law. Proprietary Information includes, but is not limited to, information protected by copyright, patent, trademark, or trade secret laws.

“Protected Health Information” or **“PHI”** means individually identifiable information that relates to the provision of health care to an individual; the past, present, or future physical or mental health or condition of an individual; or past, present, or future payment for provision of health care to an individual, as defined in 45 CFR 160.103. Individually identifiable information is information that identifies the individual or about which there is a reasonable basis to believe it can be used to identify the individual, and includes demographic information. PHI is information transmitted, maintained, or stored in any form or medium. 45 CFR 164.501. PHI does not include education records covered by the Family Educational Rights and Privacy Act, as amended, 20 USC 1232g(a)(4)(b)(iv).

“RCW” means the Revised Code of Washington. All references in this Contract to RCW chapters or sections include any successor, amended, or replacement statute. Pertinent RCW chapters can be accessed at: <http://apps.leg.wa.gov/rcw/>.

“State Fiscal Quarter” means quarterly periods of January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31.

“Statement of Work” or **“SOW”** means a detailed description of the work activities the Contractor is required to perform under the terms and conditions of this Contract, including the deliverables and timeline, and is Schedule A hereto.

“Subcontractor” means a person or entity that is not in the employment of the Contractor, who is performing all or part of the business activities under this Contract under a separate contract with Contractor. The term “Subcontractor” means subcontractor(s) of any tier.

“USC” means the United States Code. All references in this Contract to USC chapters or sections will include any successor, amended, or replacement statute. The USC may be accessed at <http://uscode.house.gov/>

“WAC” means the Washington Administrative Code. All references to WAC chapters or sections will include any successor, amended, or replacement regulation. Pertinent WACs may be accessed at: <http://app.leg.wa.gov/wac/>.

3. SPECIAL TERMS AND CONDITIONS

3.1 PERFORMANCE EXPECTATIONS

Expected performance under this Contract includes, but is not limited to, the following:

- 3.1.1 Knowledge of applicable state and federal laws and regulations pertaining to subject of contract;
- 3.1.2 Use of professional judgment;
- 3.1.3 Collaboration with HCA staff in Contractor’s conduct of the services;
- 3.1.4 Conformance with HCA directions regarding the delivery of the services;
- 3.1.5 Timely, accurate and informed communications;
- 3.1.6 Regular completion and updating of project plans, reports, documentation and communications; and
- 3.1.7 Provision of high quality services.

Prior to payment of Revenue and Expenditure Reports, HCA will review and evaluate the performance of Contractor in accordance with Contract and these performance expectations and may withhold payment if expectations are not met or Contractor’s performance is unsatisfactory.

3.2 TERM

- 3.2.1 The initial term of the Contract will commence on July 1, 2019 and continue through June 30, 2020, unless terminated sooner as provided herein.
- 3.2.2 This Contract may be extended by mutual written agreement of the parties. No change in terms and conditions will be permitted during these extensions unless specifically agreed to in writing.

- 3.2.3 Work performed without a contract or amendment signed by the authorized representatives of both parties will be at the sole risk of the Contractor. HCA will not pay any costs incurred before the effective date of a fully executed contract or any subsequent amendment(s).

3.3 COMPENSATION

- 3.3.1 The Maximum Compensation payable to Contractor for the performance of all things necessary for or incidental to the performance of work as set forth in Schedule A: *Statement of Work* is \$174,881.00, and includes any allowable expenses. The Maximum Compensation includes \$174,881 CJTA funding, and \$0.00 State Drug Court funding.
- 3.3.2 Contractor's compensation for services rendered will be based on the following rates or in accordance with deliverables table below. Payment will be contingent upon HCA Contract Manager acceptance of the deliverable, and approval of a correct and complete invoice from Contractor.

Deliverables Table July 1, 2019 through June 30, 2020				
#	Deliverable	Due Date	Quarterly Amount(s)	Annual Maximum Amount
1	Submit a county Criminal Justice Treatment Account (CJTA) Plan that was approved by the local CJTA panel and signed by County	October 15, 2019		\$43,721.00
2	Submit quarterly progress reports	45 days of end of State Fiscal Quarter	\$10,930.00	\$43,720.00
3	Submit quarterly CJTA Revenue and Expenditure Reports	45 days of end of State Fiscal Quarter	\$10,930.00	\$43,720.00
4	Submit quarterly Programmatic Treatment Reports through Secure File Transfer (SFT) process	45 days of end of State Fiscal Quarter	\$10,930.00	\$43,720.00
State Fiscal Year 2020 Maximum Total Compensation			\$174,881.00	

- 3.3.3 The Contractor is required to limit Administration costs to no more than ten percent (10%) of the annual revenue supporting the public behavioral health system operated by Contractor. Administration costs will be measured on a fiscal year basis and based on the information reporting in the Revenue and Expenditure reports and reviewed by the HCA Behavioral Health Administration.

- 3.3.4 Payment **may be** withheld if the deliverables are not met by the date indicated in the table above.
- 3.3.5 Day-to-day expenses related to performance under the Contract, including but not limited to travel, lodging, meals, and incidentals, will not be reimbursed to Contractor.
- 3.3.6 Source of Funds. The above Maximum Compensation payable under this Contract is based on the funding from the following sources:
- 3.3.6.1 100% is allocated under this Contract from Washington state CJTA appropriations.
- 3.3.6.2 Funding Stipulations:
- a) No Federal Match. The Contractor shall not use funds payable under this Contract as match toward federal funds.
 - b) Supplanting. The Contractor must use these funds to supplement, not supplant the amount of federal, state and local funds otherwise expended or services provided under this Contract.
 - c) Prohibition of Use of Funds for Lobbying Activities. The Contractor must not use funds payable under this Contract for lobbying activities of any nature. The Contractor certifies that no state or federal funds payable under this Contract shall be paid to any person or organization to influence, or attempt to influence, either directly or indirectly, an officer or employee of an state or federal agency, or an officer or member of any state or federal legislative body or committee, regarding the award, amendment, modification, extension, or renewal of a state or federal contract or grant.
 - d) Per RCW 71.24.582, the HCA is required to reclaim any unspent allocations each state fiscal year.

3.4 INVOICE AND PAYMENT

- 3.4.1 Contractor must submit accurate Revenue and Expenditure Reports to the following address for all amounts to be paid by HCA via e-mail to the HCA Contract Manager, identified in Section 3.5. Include the HCA Contract number in the subject line of the email.
- 3.4.2 Revenue and Expenditure Reports must describe and document to HCA's satisfaction a description of the work performed, the progress of the project, and fees. If expenses are invoiced, invoices must provide a detailed breakdown of each type. Any single expense in the amount of \$50.00 or more must be accompanied by a receipt in order to receive reimbursement. All Revenue and Expenditure Reports will be reviewed and must be approved by the HCA Contract Manager or his/her designee prior to payment.
- 3.4.3 Contractor must submit properly itemized Revenue and Expenditure Reports to include the following information, as applicable:

- 3.4.3.1 HCA Contract number K3974;
- 3.4.3.2 Contractor name, address, phone number;
- 3.4.3.3 Description of Services;
- 3.4.3.4 Date(s) of delivery;
- 3.4.3.5 Net invoice price for each item;
- 3.4.3.6 Applicable taxes;
- 3.4.3.7 Total invoice price; and
- 3.4.3.8 Payment terms and any available prompt payment discount.
- 3.4.4 HCA will return incorrect or incomplete Revenue and Expenditure Reports to the Contractor for correction and reissue. The Contract Number must appear on all Revenue and Expenditure Reports, bills of lading, packages, and correspondence relating to this Contract.
- 3.4.5 In order to receive payment for services or products provided to a state agency, Contractor must register with the Statewide Payee Desk at <https://ofm.wa.gov/it-systems/statewide-vendorpayee-services/receiving-payment-state>. Payment will be considered timely if made by HCA within thirty (30) calendar days of receipt of properly completed Revenue and Expenditure Reports. Payment will be directly deposited in the bank account or sent to the address Contractor designated in its registration.
- 3.4.6 Upon expiration of the Contract, any claims for payment for costs due and payable under this Contract that are incurred prior to the expiration date must be submitted by the Contractor to HCA within sixty (60) calendar days after the Contract expiration date. HCA is under no obligation to pay any claims that are submitted sixty-one (61) or more calendar days after the Contract expiration date ("Belated Claims"). HCA will pay Belated Claims at its sole discretion, and any such potential payment is contingent upon the availability of funds.

3.5 CONTRACTOR AND HCA CONTRACT MANAGERS

- 3.5.1 Contractor's Contract Manager will have prime responsibility and final authority for the services provided under this Contract and be the principal point of contact for the HCA Contract Manager for all business matters, performance matters, and administrative activities.
- 3.5.2 HCA's Contract Manager is responsible for monitoring the Contractor's performance and will be the contact person for all communications regarding contract performance and deliverables. The HCA Contract Manager has the authority to accept or reject the services provided and must approve Contractor's Revenue and Expenditure Reports prior to payment.
- 3.5.3 The contact information provided below may be changed by written notice of the change (email acceptable) to the other party.

CONTRACTOR Contract Manager Information		Health Care Authority Contract Manager Information	
Name:	Jackie Mitchell	Name:	Tony Walton
Title:	Behavioral Health Program Specialist	Title:	Medical Assistance Program Specialist 3
Address:	509 Girard Street Bellingham, WA 98225-4005	Address:	626 8th Avenue SE PO Box 42730 Olympia, WA 98504-2730
Phone:	(360) 778-6048	Phone:	(360) 725-9992
Email:	jmitchel@whatcomcounty.us	Email:	tony.walton@hca.wa.gov

3.6 LEGAL NOTICES

Any notice or demand or other communication required or permitted to be given under this Contract or applicable law is effective only if it is in writing and signed by the applicable party, properly addressed, and delivered in person, via email, or by a recognized courier service, or deposited with the United States Postal Service as first-class mail, postage prepaid certified mail, return receipt requested, to the parties at the addresses provided in this section.

3.6.1 In the case of notice to the Contractor:

Whatcom County
509 Girard Street
Bellingham, WA 98225-4005

3.6.2 In the case of notice to HCA:

Attention: Contracts Administrator
Health Care Authority
Division of Legal Services
Post Office Box 42702
Olympia, WA 98504-2702

3.6.3 Notices are effective upon receipt or four (4) Business Days after mailing, whichever is earlier.

3.6.4 The notice address and information provided above may be changed by written notice of the change given as provided above.

3.7 INCORPORATION OF DOCUMENTS AND ORDER OF PRECEDENCE

Each of the documents listed below is by this reference incorporated into this Contract. In the event of an inconsistency, the inconsistency will be resolved in the following order of precedence:

- 3.7.1 Applicable Federal and State of Washington statutes and regulations;
- 3.7.2 Recitals
- 3.7.3 Special Terms and Conditions;
- 3.7.4 General Terms and Conditions;
- 3.7.5 Attachment 1: Confidential Information Security Requirements;
- 3.7.6 Schedule A: Statement(s) of Work;
- 3.7.7 Attachment 2: Quarterly Progress Report Template;
- 3.7.8 Attachment 3: Quarterly Revenue and Expenditure Report Template; and
- 3.7.9 Any other provision, term or material incorporated herein by reference or otherwise incorporated.

3.8 INSURANCE

The intent of the required insurance is to protect the State should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of Contractor or Subcontractor, or agents of either, while performing under the terms of this Contract. Contractor certifies that it is self-insured, is a member of a risk pool, or maintains the types and amounts of insurance identified below:

- 3.8.1 Commercial General Liability Insurance Policy - Provide a Commercial General Liability Insurance Policy, including contractual liability, in adequate quantity to protect against legal liability arising out of contract activity but no less than \$1 million per occurrence/\$2 million general aggregate. Additionally, Contractor is responsible for ensuring that any Subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.
- 3.8.2 Business Automobile Liability. In the event that services delivered pursuant to this Contract involve the use of vehicles, either owned, hired, or non-owned by the Contractor, automobile liability insurance is required covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability. The minimum limit for automobile liability is \$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.

- 3.8.3 Professional Liability Errors and Omissions – Provide a policy with coverage of not less than \$1 million per claim/\$2 million general aggregate.
- 3.8.4 The insurance required must be issued by an insurance company/ies authorized to do business within the state of Washington, and must name HCA and the state of Washington, its agents and employees as additional insured's under any Commercial General and/or Business Automobile Liability policy/ies. All policies must be primary to any other valid and collectable insurance. In the event of cancellation, non-renewal, revocation or other termination of any insurance coverage required by this Contract, Contractor must provide written notice of such to HCA within one (1) Business Day of Contractor's receipt of such notice. Failure to buy and maintain the required insurance may, at HCA's sole option, result in this Contract's termination.
- 3.8.5 Privacy Breach Response Coverage. For the term of this Contract and 3 years following its termination or expiration, Contractor must maintain insurance to cover costs incurred in connection with a security incident, privacy Breach, or potential compromise of Data, including:
- 3.8.5.1 Computer forensics assistance to assess the impact of the Breach or potential Breach, determine root cause, and help determine whether and the extent to which notification must be provided to comply with Breach notification laws.
 - 3.8.5.2 Notification and call center services for individuals affected by a Breach.
 - 3.8.5.3 Breach resolution and mitigation services for individuals affected by a Breach, including fraud prevention, credit monitoring and identity theft assistance.
 - 3.8.5.4 Regulatory defense, fines and penalties from any claim in the form of a regulatory proceeding resulting from a violation of any applicable privacy or security law(s) or regulation(s).

Upon request, Contractor must submit to HCA a certificate of insurance that outlines the coverage and limits defined in the Insurance section. If a certificate of insurance is requested, Contractor must submit renewal certificates as appropriate during the term of the contract.

4. GENERAL TERMS AND CONDITIONS

4.1 ACCESS TO DATA

In compliance with RCW 39.26.180 (2) and federal rules, the Contractor must provide access to any data generated under this Contract to HCA, the Joint Legislative Audit and Review Committee, the State Auditor, and any other state or federal officials so authorized by law, rule, regulation, or agreement at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the Contractor's reports, including computer models and methodology for those models.

4.2 ADVANCE PAYMENT PROHIBITED

No advance payment will be made for services furnished by the Contractor pursuant to this Contract.

4.3 AMENDMENTS

This Contract may be amended by mutual agreement of the parties. Such amendments will not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

4.4 ASSIGNMENT

4.4.1 Contractor may not assign or transfer all or any portion of this Contract or any of its rights hereunder, or delegate any of its duties hereunder, except delegations as set forth in Section 4.36, *Subcontracting*, without the prior written consent of HCA. Any permitted assignment will not operate to relieve Contractor of any of its duties and obligations hereunder, nor will such assignment affect any remedies available to HCA that may arise from any breach of the provisions of this Contract or warranties made herein, including but not limited to, rights of setoff. Any attempted assignment, transfer or delegation in contravention of this Subsection 4.4.1 of the Contract will be null and void.

4.4.2 HCA may assign this Contract to any public agency, commission, board, or the like, within the political boundaries of the State of Washington, with written notice of thirty (30) calendar days to Contractor.

4.4.3 This Contract will inure to the benefit of and be binding on the parties hereto and their permitted successors and assigns.

4.5 ATTORNEYS' FEES

In the event of litigation or other action brought to enforce the terms of this Contract, each party agrees to bear its own attorneys' fees and costs.

4.6 CHANGE IN STATUS

In the event of any substantive change in its legal status, organizational structure, or fiscal reporting responsibility, Contractor will notify HCA of the change. Contractor must provide notice as soon as practicable, but no later than thirty (30) calendar days after such a change takes effect.

4.7 CONFIDENTIAL INFORMATION PROTECTION

4.7.1 Contractor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Contract or its performance may consist of Confidential Information. Contractor agrees to hold Confidential Information in strictest confidence and not to make use of

Confidential Information for any purpose other than the performance of this Contract, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this Contract, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without HCA's express written consent or as provided by law. Contractor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information (See Attachment 1: *Confidential Information Security Requirements*).

- 4.7.2 Contractors that come into contact with Protected Health Information may be required to enter into a Business Associate Agreement with HCA in compliance with the requirements of the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, as modified by the American Recovery and Reinvestment Act of 2009 ("ARRA"), Sec. 13400 – 13424, H.R. 1 (2009) (HITECH Act) (HIPAA).
- 4.7.3 HCA reserves the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by Contractor through this Contract. Violation of this section by Contractor or its Subcontractors may result in termination of this Contract and demand for return of all Confidential Information, monetary damages, or penalties.
- 4.7.4 The obligations set forth in this Section will survive completion, cancellation, expiration, or termination of this Contract.

4.8 CONFIDENTIAL INFORMATION SECURITY

The federal government, including the Centers for Medicare and Medicaid Services (CMS), and the State of Washington all maintain security requirements regarding privacy, data access, and other areas. Contractor is required to comply with the Confidential Information Security Requirements set out in Attachment 1 to this Contract and appropriate portions of the Washington OCIO Security Standard, 141.10 (<https://ocio.wa.gov/policies/141-securing-information-technology-assets/14110-securing-information-technology-assets>).

4.9 CONFIDENTIAL INFORMATION BREACH – REQUIRED NOTIFICATION

- 4.9.1 Contractor must notify the HCA Privacy Officer (HCAPrivacyOfficer@hca.wa.gov) within five Business Days of discovery of any Breach or suspected Breach of Confidential Information.
- 4.9.2 Contractor will take steps necessary to mitigate any known harmful effects of such unauthorized access including, but not limited to, sanctioning employees and taking steps necessary to stop further unauthorized access. Contractor agrees to indemnify and hold HCA harmless for any damages related to unauthorized use or disclosure of Confidential Information by Contractor, its officers, directors, employees, Subcontractors or agents.

- 4.9.3 If notification of the Breach or possible Breach must (in the judgment of HCA) be made under the HIPAA Breach Notification Rule, or RCW 42.56.590 or RCW 19.255.010, or other law or rule, then:
- 4.9.3.1 HCA may choose to make any required notifications to the individuals, to the U.S. Department of Health and Human Services Secretary (DHHS) Secretary, and to the media, or direct Contractor to make them or any of them.
 - 4.9.3.2 In any case, Contractor will pay the reasonable costs of notification to individuals, media, and governmental agencies and of other actions HCA reasonably considers appropriate to protect HCA clients (such as paying for regular credit watches in some cases).
 - 4.9.3.3 Contractor will compensate HCA clients for harms caused to them by any Breach or possible Breach.
- 4.9.4 Any breach of this clause may result in termination of the Contract and the demand for return or disposition (Attachment 1, Section 6) of all Confidential Information.
- 4.9.5 Contractor's obligations regarding Breach notification survive the termination of this Contract and continue for as long as Contractor maintains the Confidential Information and for any breach or possible breach at any time.

4.10 CONTRACTOR'S PROPRIETARY INFORMATION

Contractor acknowledges that HCA is subject to chapter 42.56 RCW, the Public Records Act, and that this Contract will be a public record as defined in chapter 42.56 RCW. Any specific information that is claimed by Contractor to be Proprietary Information must be clearly identified as such by Contractor. To the extent consistent with chapter 42.56 RCW, HCA will maintain the confidentiality of Contractor's information in its possession that is marked Proprietary. If a public disclosure request is made to view Contractor's Proprietary Information, HCA will notify Contractor of the request and of the date that such records will be released to the requester unless Contractor obtains a court order from a court of competent jurisdiction enjoining that disclosure. If Contractor fails to obtain the court order enjoining disclosure, HCA will release the requested information on the date specified.

4.11 COVENANT AGAINST CONTINGENT FEES

Contractor warrants that no person or selling agent has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the Contractor for the purpose of securing business. HCA will have the right, in the event of breach of this clause by the Contractor, to annul this Contract without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

4.12 DEBARMENT

By signing this Contract, Contractor certifies that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded in any Washington State or Federal department or agency from participating in transactions (debarred). Contractor agrees to include the above requirement in any and all subcontracts into which it enters, and also agrees that it will not employ debarred individuals. Contractor must immediately notify HCA if, during the term of this Contract, Contractor becomes debarred. HCA may immediately terminate this Contract by providing Contractor written notice, if Contractor becomes debarred during the term hereof.

4.13 DISPUTES

The parties will use their best, good faith efforts to cooperatively resolve disputes and problems that arise in connection with this Contract. Both parties will continue without delay to carry out their respective responsibilities under this Contract while attempting to resolve any dispute. When a genuine dispute arises between HCA and the Contractor regarding the terms of this Contract or the responsibilities imposed herein and it cannot be resolved between the parties' Contract Managers, either party may initiate the following dispute resolution process.

- 4.13.1 The initiating party will reduce its description of the dispute to writing and deliver it to the responding party (email acceptable). The responding party will respond in writing within five (5) Business Days (email acceptable). If the initiating party is not satisfied with the response of the responding party, then the initiating party may request that the HCA Director review the dispute. Any such request from the initiating party must be submitted in writing to the HCA Director within five (5) Business Days after receiving the response of the responding party. The HCA Director will have sole discretion in determining the procedural manner in which he or she will review the dispute. The HCA Director will inform the parties in writing within five (5) Business Days of the procedural manner in which he or she will review the dispute, including a timeframe in which he or she will issue a written decision.
- 4.13.2 A party's request for a dispute resolution must:
 - 4.13.2.1 Be in writing;
 - 4.13.2.2 Include a written description of the dispute;
 - 4.13.2.3 State the relative positions of the parties and the remedy sought;
 - 4.13.2.4 State the Contract Number and the names and contact information for the parties;
- 4.13.3 This dispute resolution process constitutes the sole administrative remedy available under this Contract. The parties agree that this resolution process will precede any action in a judicial or quasi-judicial tribunal.

4.14 ENTIRE AGREEMENT

HCA and Contractor agree that the Contract is the complete and exclusive statement of the agreement between the parties relating to the subject matter of the Contract and supersedes all letters of intent or prior contracts, oral or written, between the parties relating to the subject matter of the Contract, except as provided in Section 4.42 *Warranties*.

4.15 FORCE MAJEURE

A party will not be liable for any failure of or delay in the performance of this Contract for the period that such failure or delay is due to causes beyond its reasonable control, including but not limited to acts of God, war, strikes or labor disputes, embargoes, government orders or any other force majeure event.

4.16 FUNDING WITHDRAWN, REDUCED OR LIMITED

If HCA determines in its sole discretion that the funds it relied upon to establish this Contract have been withdrawn, reduced or limited, or if additional or modified conditions are placed on such funding after the effective date of this contract but prior to the normal completion of this Contract, then HCA, at its sole discretion, may:

- 4.16.1 Terminate this Contract pursuant to Section 4.39.3, *Termination for Non-Allocation of Funds*;
- 4.16.2 Renegotiate the Contract under the revised funding conditions; or
- 4.16.3 Suspend Contractor's performance under the Contract upon five (5) Business Days' advance written notice to Contractor. HCA will use this option only when HCA determines that there is reasonable likelihood that the funding insufficiency may be resolved in a timeframe that would allow Contractor's performance to be resumed prior to the normal completion date of this Contract.
 - 4.16.3.1 During the period of suspension of performance, each party will inform the other of any conditions that may reasonably affect the potential for resumption of performance.
 - 4.16.3.2 When HCA determines in its sole discretion that the funding insufficiency is resolved, it will give Contractor written notice to resume performance. Upon the receipt of this notice, Contractor will provide written notice to HCA informing HCA whether it can resume performance and, if so, the date of resumption. For purposes of this subsection, "written notice" may include email.
 - 4.16.3.3 If the Contractor's proposed resumption date is not acceptable to HCA and an acceptable date cannot be negotiated, HCA may terminate the contract by giving written notice to Contractor. The parties agree that the Contract will be terminated retroactive to the date of the notice of suspension. HCA will be liable only for payment in accordance with the

terms of this Contract for services rendered prior to the retroactive date of termination.

4.17 GOVERNING LAW

This Contract is governed in all respects by the laws of the state of Washington, without reference to conflict of law principles. The jurisdiction for any action hereunder is exclusively in the Superior Court for the state of Washington, and the venue of any action hereunder is in the Superior Court for Thurston County, Washington. Nothing in this Contract will be construed as a waiver by HCA of the State's immunity under the 11th Amendment to the United States Constitution.

4.18 HCA NETWORK SECURITY

Contractor agrees not to attach any Contractor-supplied computers, peripherals or software to the HCA Network without prior written authorization from HCA's Chief Information Officer. Unauthorized access to HCA networks and systems is a violation of HCA Policy and constitutes computer trespass in the first degree pursuant to RCW 9A.52.110. Violation of any of these laws or policies could result in termination of the contract and other penalties.

Contractor will have access to the HCA visitor Wi-Fi Internet connection while on site.

4.19 INDEMNIFICATION

Contractor must defend, indemnify, and save HCA harmless from and against all claims, including reasonable attorneys' fees resulting from such claims, for any or all injuries to persons or damage to property, or Breach of its confidentiality and notification obligations under Section 4.7 *Confidential Information Protection* and Section 4.8 *Confidentiality Breach-Required Notification*, arising from intentional or negligent acts or omissions of Contractor, its officers, employees, or agents, or Subcontractors, their officers, employees, or agents, in the performance of this Contract.

4.20 INDEPENDENT CAPACITY OF THE CONTRACTOR

The parties intend that an independent contractor relationship will be created by this Contract. Contractor and its employees or agents performing under this Contract are not employees or agents of HCA. Contractor will not hold itself out as or claim to be an officer or employee of HCA or of the State of Washington by reason hereof, nor will Contractor make any claim of right, privilege or benefit that would accrue to such employee under law. Conduct and control of the work will be solely with Contractor.

4.21 INDUSTRIAL INSURANCE COVERAGE

Prior to performing work under this Contract, Contractor must provide or purchase industrial insurance coverage for the Contractor's employees, as may be required of an "employer" as defined in Title 51 RCW, and must maintain full compliance with Title 51 RCW during the course of this Contract.

4.22 LEGAL AND REGULATORY COMPLIANCE

- 4.22.1 During the term of this Contract, Contractor must comply with all local, state, and federal licensing, accreditation and registration requirements/standards, necessary for the performance of this Contract and all other applicable federal, state and local laws, rules, and regulations.
- 4.22.2 While on the HCA premises, Contractor must comply with HCA operations and process standards and policies (e.g., ethics, Internet / email usage, data, network and building security, harassment, as applicable). HCA will make an electronic copy of all such policies available to Contractor.
- 4.22.3 Failure to comply with any provisions of this section may result in Contract termination.

4.23 LIMITATION OF AUTHORITY

Only the HCA Authorized Representative has the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this Contract is not effective or binding unless made in writing and signed by the HCA Authorized Representative.

4.24 NO THIRD-PARTY BENEFICIARIES

HCA and Contractor are the only parties to this contract. Nothing in this Contract gives or is intended to give any benefit of this Contract to any third parties.

4.25 NONDISCRIMINATION

During the performance of this Contract, the Contractor must comply with all federal and state nondiscrimination laws, regulations and policies, including but not limited to: Title VII of the Civil Rights Act, 42 U.S.C. §12101 et seq.; the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §12101 et seq., 28 CFR Part 35; and Title 49.60 RCW, Washington Law Against Discrimination. In the event of Contractor's noncompliance or refusal to comply with any nondiscrimination law, regulation or policy, this Contract may be rescinded, canceled, or terminated in whole or in part under the Termination for Default sections, and Contractor may be declared ineligible for further contracts with HCA.

4.26 OVERPAYMENTS TO CONTRACTOR

In the event that overpayments or erroneous payments have been made to the Contractor under this Contract, HCA will provide written notice to Contractor and Contractor will refund the full amount to HCA within thirty (30) calendar days of the notice. If Contractor fails to make timely refund, HCA may withhold up to 5% of the monthly amount Contractor reports on the Revenue and Expenditure Report(s) per month until the overpaid amount is recouped in full. If the Contractor disagrees with HCA's actions under this section, then it may invoke the dispute resolution provisions of Section 4.13 *Disputes*.

4.27 PAY EQUITY

- 4.27.1 Contractor represents and warrants that, as required by Washington state law (Laws of 2017, Chap. 1, § 213), during the term of this Contract, it agrees to equality among its workers by ensuring similarly employed individuals are compensated as equals. For purposes of this provision, employees are similarly employed if (i) the individuals work for Contractor, (ii) the performance of the job requires comparable skill, effort, and responsibility, and (iii) the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed.
- 4.27.2 Contractor may allow differentials in compensation for its workers based in good faith on any of the following: (i) a seniority system; (ii) a merit system; (iii) a system that measures earnings by quantity or quality of production; (iv) bona fide job-related factor(s); or (v) a bona fide regional difference in compensation levels.
- 4.27.3 Bona fide job-related factor(s)" may include, but not be limited to, education, training, or experience, that is: (i) consistent with business necessity; (ii) not based on or derived from a gender-based differential; and (iii) accounts for the entire differential.
- 4.27.4 A "bona fide regional difference in compensation level" must be (i) consistent with business necessity; (ii) not based on or derived from a gender-based differential; and (iii) account for the entire differential.
- 4.27.5 Notwithstanding any provision to the contrary, upon breach of warranty and Contractor's failure to provide satisfactory evidence of compliance within thirty (30) Days of HCA's request for such evidence, HCA may suspend or terminate this Contract.

4.28 PUBLICITY

- 4.28.1 The award of this Contract to Contractor is not in any way an endorsement of Contractor or Contractor's Services by HCA and must not be so construed by Contractor in any advertising or other publicity materials.
- 4.28.2 Contractor agrees not to publish or use such advertising, marketing, sales promotion materials, publicity or the like through print, voice, the Web, and other communication media in existence or hereinafter developed without the express written consent of HCA prior to such use.

4.29 RECORDS AND DOCUMENTS REVIEW

- 4.29.1 The Contractor must maintain books, records, documents, magnetic media, receipts, invoices or other evidence relating to this Contract and the performance of the services rendered, along with accounting procedures and practices, all of which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. At no additional cost, these

records, including materials generated under this Contract, are subject at all reasonable times to inspection, review, or audit by HCA, the Office of the State Auditor, and state and federal officials so authorized by law, rule, regulation, or agreement [See 42 USC 1396a(a)(27)(B); 42 USC 1396a(a)(37)(B); 42 USC 1396a(a)(42)(A); 42 CFR 431, Subpart Q; and 42 CFR 447.202].

- 4.29.2 The Contractor must retain such records for a period of six (6) years after the date of final payment under this Contract.
- 4.29.3 If any litigation, claim or audit is started before the expiration of the six (6) year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved.

4.30 REMEDIES NON-EXCLUSIVE

The remedies provided in this Contract are not exclusive, but are in addition to all other remedies available under law.

4.31 RIGHT OF INSPECTION

The Contractor must provide right of access to its facilities to HCA, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Contract.

4.32 INTELLECTUAL PROPERTY

- 4.32.1 Definitions. For the purposes of this Section, the following definitions will apply:
 - 4.32.1.1 "Intellectual Property" and "IP" mean intellectual property rights in ideas, inventions, discoveries, know-how, useful designs and articles, works of authorship, computer programs, and non-patentable materials (including biological and living materials), including but not limited to patent, copyright, trade secret, and trademark rights recognized under any applicable state, federal, or common law of the United States, foreign countries, and international conventions.
 - 4.32.1.2 "Project Personnel" means a party's faculty, employees, students, agents and subcontractors participating in the Project.
 - 4.32.1.3 "Project IP" means Intellectual Property developed by or on behalf of a party's Project Personnel in the course of and as a direct result of the Project. Project IP does not include Intellectual Property (i) that has been developed outside the term of this Contract, (ii) that has been developed by persons other than Project Personnel, or (iii) that has been developed independently of the Project or has been developed by the party's affiliates, employees, agents, or subcontractors, including Project Personnel, independently of the Project. Sole Project IP" means Project IP developed solely by the Project Personnel of only one party.

“Joint Project IP” means Project IP developed by the Project Personnel of both parties.

4.32.2 Intellectual Property Ownership and Rights

The parties agree that ownership of and other rights in Intellectual Property, including Project IP, will be determined in accordance with the laws of the United States, the laws of the state in which the Project IP was created. Except as otherwise expressly provided herein, neither party shall by reason of this Contract or its performance under this contract obtain any right, title, license or other interest, either express or implied, to the other party's Intellectual Property.

4.32.3 License to Reports and Data.

Providing that the party receiving a license under this Section has otherwise performed its material obligations under this Contract, each party hereby grants to the other party a fully-paid, non-exclusive, royalty-free, license for the other party's internal use and that of its affiliates' internal use, without right to sublicense or otherwise redistribute commercially, to any reports or data created pursuant to the performance of this Contract. The parties understand and agree that excepting only the rights granted under the foregoing license, each party retains full ownership of its reports and data.

4.33 SEVERABILITY

If any provision of this Contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity will not affect the other provisions or applications of this Contract that can be given effect without the invalid provision, and to this end the provisions or application of this Contract are declared severable.

4.34 SITE SECURITY

While on HCA premises, Contractor, its agents, employees, or Subcontractors must conform in all respects with physical, fire or other security policies or regulations. Failure to comply with these regulations may be grounds for revoking or suspending security access to these facilities. HCA reserves the right and authority to immediately revoke security access to Contractor staff for any real or threatened breach of this provision. Upon reassignment or termination of any Contractor staff, Contractor agrees to promptly notify HCA.

4.35 SUBCONTRACTING

4.35.1 In no event will the existence of the subcontract operate to release or reduce the liability of Contractor to HCA for any breach in the performance of Contractor's duties.

4.35.2 Contractor is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this Contract are included in any subcontracts.

- 4.35.3 If at any time during the progress of the work HCA determines in its sole judgment that any Subcontractor is incompetent or undesirable, HCA will notify Contractor, and Contractor must take immediate steps to terminate the Subcontractor's involvement in the work.
- 4.35.4 HCA has no contractual obligations to any Subcontractor or vendor under contract to the Contractor. Contractor is fully responsible for all contractual obligations, financial or otherwise, to its Subcontractors.

4.36 SURVIVAL

The terms and conditions contained in this Contract that, by their sense and context, are intended to survive the completion, cancellation, termination, or expiration of the Contract will survive. In addition, the terms of the sections titled *Confidential Information Protection, Confidential Information Breach – Required Notification, Contractor's Proprietary Information, Disputes, Overpayments to Contractor, Publicity, Records and Documents Review, Rights in Data/Ownership, and Rights of State and Federal Governments* will survive the termination of this Contract. The right of HCA to recover any overpayments will also survive the termination of this Contract.

4.37 TAXES

HCA will pay sales or use taxes, if any, imposed on the services acquired hereunder. Contractor must pay all other taxes including, but not limited to, Washington Business and Occupation Tax, other taxes based on Contractor's income or gross receipts, or personal property taxes levied or assessed on Contractor's personal property. HCA, as an agency of Washington State government, is exempt from property tax.

Contractor must complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this Contract.

4.38 TERMINATION

4.38.1 TERMINATION FOR DEFAULT

In the event HCA determines that Contractor has failed to comply with the terms and conditions of this Contract, HCA has the right to suspend or terminate this Contract. HCA will notify Contractor in writing of the need to take corrective action. If corrective action is not taken within the timeframe identified in the notification, or other time period agreed to in writing by both parties, the Contract may be terminated. HCA reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by Contractor or a decision by HCA to terminate the Contract.

In the event of termination for default, Contractor will be liable for damages as authorized by law including, but not limited to, any cost difference between the original Contract and the replacement or cover Contract and all administrative

costs directly related to the replacement Contract, e.g., cost of the competitive bidding, mailing, advertising, and staff time.

If it is determined that Contractor: (i) was not in default, or (ii) its failure to perform was outside of its control, fault or negligence, the termination will be deemed a "Termination for Convenience."

4.38.2 TERMINATION FOR CONVENIENCE

When, at HCA's sole discretion, it is in the best interest of the State, HCA may terminate this Contract in whole or in part by providing thirty (30) calendar days' written notice. If this Contract is so terminated, HCA will be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination. No penalty will accrue to HCA in the event the termination option in this section is exercised.

4.38.3 TERMINATION FOR NONALLOCATION OF FUNDS

If funds are not allocated to continue this Contract in any future period, HCA may immediately terminate this Contract by providing written notice to the Contractor. The termination will be effective on the date specified in the termination notice. HCA will be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination. HCA agrees to notify Contractor of such nonallocation at the earliest possible time. No penalty will accrue to HCA in the event the termination option in this section is exercised.

4.38.4 TERMINATION FOR WITHDRAWAL OF AUTHORITY

In the event that the authority of HCA to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Contract and prior to normal completion, HCA may immediately terminate this Contract by providing written notice to the Contractor. The termination will be effective on the date specified in the termination notice. HCA will be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination. HCA agrees to notify Contractor of such withdrawal of authority at the earliest possible time. No penalty will accrue to HCA in the event the termination option in this section is exercised.

4.38.5 TERMINATION FOR CONFLICT OF INTEREST

HCA may terminate this Contract by written notice to the Contractor if HCA determines, after due notice and examination, that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW, or any other laws regarding ethics in public acquisitions and procurement and performance of contracts. In the event this Contract is so terminated, HCA will be entitled to pursue the same remedies against the Contractor as it could pursue in the event Contractor breaches the contract.

4.39 TERMINATION PROCEDURES

- 4.39.1 Upon termination of this Contract, HCA, in addition to any other rights provided in this Contract, may require Contractor to deliver to HCA any property specifically produced or acquired for the performance of such part of this Contract as has been terminated.
- 4.39.2 HCA will pay Contractor the agreed-upon price, if separately stated, for completed work and services accepted by HCA and the amount agreed upon by the Contractor and HCA for (i) completed work and services for which no separate price is stated; (ii) partially completed work and services; (iii) other property or services that are accepted by HCA; and (iv) the protection and preservation of property, unless the termination is for default, in which case HCA will determine the extent of the liability. Failure to agree with such determination will be a dispute within the meaning of Section 4.13 *Disputes*. HCA may withhold from any amounts due the Contractor such sum as HCA determines to be necessary to protect HCA against potential loss or liability.
- 4.39.3 After receipt of notice of termination, and except as otherwise directed by HCA, Contractor must:
 - 4.39.3.1 Stop work under the Contract on the date of, and to the extent specified in, the notice;
 - 4.39.3.2 Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the Contract that is not terminated;
 - 4.39.3.3 Assign to HCA, in the manner, at the times, and to the extent directed by HCA, all the rights, title, and interest of the Contractor under the orders and subcontracts so terminated; in which case HCA has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
 - 4.39.3.4 Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of HCA to the extent HCA may require, which approval or ratification will be final for all the purposes of this clause;
 - 4.39.3.5 Transfer title to and deliver as directed by HCA any property required to be furnished to HCA;
 - 4.39.3.6 Complete performance of any part of the work that was not terminated by HCA; and
 - 4.39.3.7 Take such action as may be necessary, or as HCA may direct, for the protection and preservation of the records related to this Contract that are in the possession of the Contractor and in which HCA has or may acquire an interest.

4.40 WAIVER

Waiver of any breach of any term or condition of this Contract will not be deemed a waiver of any prior or subsequent breach or default. No term or condition of this Contract will be held to be waived, modified, or deleted except by a written instrument signed by the parties. Only the HCA Authorized Representative has the authority to waive any term or condition of this Contract on behalf of HCA.

4.41 WARRANTIES

- 4.41.1 Contractor represents and warrants that it will perform all services pursuant to this Contract in a professional manner and with high quality and will immediately re-perform any services that are not in compliance with this representation and warranty at no cost to HCA.
- 4.41.2 Contractor represents and warrants that it will comply with all applicable local, State, and federal licensing, accreditation and registration requirements and standards necessary in the performance of the Services.
- 4.41.3 Any written commitment by Contractor within the scope of this Contract will be binding upon Contractor. Failure of Contractor to fulfill such a commitment may constitute breach and will render Contractor liable for damages under the terms of this Contract. For purposes of this section, a commitment by Contractor includes: (i) Prices, discounts, and options committed to remain in force over a specified period of time; and (ii) any warranty or representation made by Contractor to HCA or contained in any Contractor publications, or descriptions of services in written or other communication medium, used to influence HCA to enter into this Contract.

Schedule A

Statement of Work

Contractor will provide the services and staff, and otherwise do all things necessary for, or incidental to, the performance of work as set forth below.

1. Definitions

"American Society of Addiction Medicine" or "ASAM" means the six dimensions to identify the intensity of treatment services that best fits the individual's needs and provides a common language of holistic, biopsychosocial assessment, and treatment across addiction treatment, physical health, and mental health services, which also addresses the spiritual issues relevant in recovery.

"Case Management" or "Case Management Services" means services provided by a Substance Use Disorder Professional (SUDP) or Substance Use Disorder Professional Trainee (SUDPT) licensed by the Washington Department of Health, or a person under the direct clinical supervision of a SUDP, to individuals assessed as needing treatment and admitted into treatment. Services are provided to assist clients in gaining access to needed medical, social, educational, and other services. Services include case planning, case consultation and referral, and other support services for the purpose of engaging and retaining or maintaining clients in treatment.

"Continuity of Care" means the provision of continuous care for chronic or acute medical and behavioral health conditions to maintain care that has started or been authorized to start as the Individual transitions between: facility to home; facility to another facility; providers or service areas; managed care contractors; and Medicaid fee-for-service and managed care arrangements. Continuity of Care occurs in a manner that prevents secondary illness, health care complications, or re-hospitalization; and promotes optimum health recovery.

"County Match" means that jurisdictions must match, on a dollar-for-dollar basis, state moneys allocated for therapeutic courts with local cash or in-kind resources. Moneys allocated by the state may be used to supplement, not supplant other federal, state, and local funds for therapeutic courts (RCW 2.30.040).

"Criminal Justice Treatment Account" or "CJTA" means the account created by Washington State Legislature that may be expended solely for: substance use disorder treatment and treatment support services for individuals with a substance use disorder that, if not treated, would result in addiction, against whom charges are filed by a prosecuting attorney in Washington State (RCW 71.24.580).

"CJTA Plan" or "Plan" means the plan that is developed by the county human services or behavioral health services department, county prosecutor, county sheriff, county superior court, a substance use disorder treatment provider appointed by the county legislative authority, a member of the criminal defense bar appointed by the county legislative authority, and, in counties with a drug court, a representative of the drug court (RCW 71.24.580(6)). The plan shall be approved by the county legislative authority or authorities; and, submitted to the panel established in 71.24.580(5)(b) of this section, for disposition of all the funds provided from the CJTA within that county.

"Culturally and Linguistically Appropriate Services" or "CLAS" means the national standards in health and health care intended to advance health equity, improve quality, and eliminate health disparities by establishing a blueprint for health and health care organizations.

“Division of Behavioral Health and Recovery” or **“DBHR”** means the Health Care Authority’s Division of Behavioral Health and Recovery, and its employees and authorized agents.

“Drug Court” means a court utilizing a program structured to achieve both a reduction in criminal recidivism and an increase in the likelihood of rehabilitation through continuous and intense judicially supervised treatment and the appropriate use of services, sanctions, and incentives (RCW 2.30.020).

“Evidence-based Practice” or **“EBP”** means a prevention or treatment service or practice that has been validated by some form of documented research evidence and is appropriate for use with individuals with a substance use disorder that are involved in the criminal justice system. EBP also means a program or practice that has been tested where the weight of the evidence from review demonstrates sustained improvements in at least one outcome, and/or a program or practice that can be implemented with a set of procedures to allow successful replication in Washington and, when possible, is determined to be cost-beneficial.

“Individual” means any person in the criminal justice system who is in need of behavioral health services, regardless of income, ability to pay, insurance status or county of residence.

“Medications for Opioid Use Disorder” or **“MOUD”** or **“MAT”** means the use of FDA-approved opioid agonist medications (e.g., methadone, buprenorphine products including buprenorphine/naloxone combination formulations and buprenorphine mono-product formulations) for the treatment of opioid use disorder and the use of opioid antagonist medication (e.g. naltrexone products including extended-release and oral formulations) to prevent relapse to opioid use.

“Outreach” or **“Community Outreach”** means identification of hard-to-reach Individuals with a possible SUD and engagement of these individuals in assessment and ongoing treatment services as necessary.

“Research-based” means a program or practice that has been tested with a single randomized, or statistically controlled evaluation, or both, demonstrating sustained desirable outcomes; or where the weight of the evidence from a systemic review supports sustained outcomes as described in this subsection but does not meet the full criteria for evidence-based (RCW 2.30.020).

“Recovery Support Services” or **“RSS”** means services that are intended to promote an individual’s socialization, recovery, self-advocacy, development of natural support, and maintenance of community living skills. RSS include, but are not limited to, the following services: Supported employment services, supportive housing services, peer support services, wraparound facilitation services, and any other services that are conducive to an individual’s recovery in an Substance Use Disorder (SUD) Program (WAC 246-341-0718).

“Substance Use Disorder” or **“SUD”** means a problematic pattern of using alcohol or another substance that results in the impairment in daily life or noticeable distress; and, whereby the individual continues use despite leading to clinically significant impairment or distress as categorized in the DSM-5.

“Substance Use Disorder Professional” or **“SUDP”** means an individual who is certified according to RCW 18.205.020 and the certification requirements of WAC 246-811-030 to provide SUD services.

“Substance Use Disorder Professional Trainee” or **“SUDPT”** means an individual working toward the education and experience requirements for certification as a chemical dependency professional, and who has been credentialed as a CDPT

"Therapeutic Courts" means a court utilizing a program or programs structured to achieve both a reduction in recidivism and an increase in the likelihood of rehabilitation, or to reduce child abuse and neglect, out-of-home placements of children, termination of parental rights, and substance use and mental health symptoms among parents or guardians and their children through continuous and intense judicially supervised treatment and the appropriate use of services, sanctions, and incentives (RCW 2.30.020).

"Treatment" means services that are critical to a participant's successful completion of his or her substance use disorder treatment program, including but not limited to the recovery support and other programmatic elements outlined in Chapter 246-341 WAC.

"Treatment Support" means services such as transportation to or from inpatient or outpatient treatment services when no viable alternative exists, and child care services that are necessary to ensure a participant's ability to attend outpatient treatment sessions.

"Washington State Jail" or "Jail" means any city, county, regional, or tribal jail operating in the state of Washington.

2. Purpose

Contractor will provide treatment and recovery support services, funded by Criminal Justice Treatment Account funds, to individuals involved in the criminal justice system in accordance with RCW 71.24.580.

3. CTJA Account Services Specific Eligibility and Funding Requirements

In addition to state funding through the CJTA, several counties receive additional state funding for specific Drug Courts. State Drug Court funding is provided to the following counties: Clallam, Cowlitz, King, Kitsap, Pierce, Skagit, Spokane, and Thurston. The counties that receive supplemental state Drug Court funding must ensure the provision of substance use disorder treatment and support services detailed below, and in accordance with RCW 71.24.580 and RCW 2.30.030.

- a. In accordance with RCW 71.24.580, the Contractor will be responsible for treatment and recovery support services for criminally involved individuals.
- b. CJTA Statutory Funding Guidelines
 1. In accordance with RCW 2.30.040 counties that allocate CJTA and/or State Drug Court funds to a Therapeutic Court Program must match, on a dollar-for-dollar basis, an equal amount of local funding through cash or in-kind resources. Moneys appropriated under this provision may be used to supplement, not supplant other federal, state, and local funds for therapeutic courts.
 2. No more than ten percent (10%) of the total CJTA funds may be used for the following support services combined:
 - i. Transportation; and
 - ii. Child Care Services.
 3. At a minimum, thirty percent (30%) of the CJTA funds for special projects that meet any or all of the following conditions:

- i. An acknowledged best practice (or treatment strategy) that can be documented in published research;
- ii. An approach utilizing either traditional or best practice approaches to treat significant underserved population(s) and populations who are disproportionately affected by the criminal justice system;
- iii. A regional project conducted in partnership with at least one other entity serving the service area; and/or
- iv. CJTA Special Projects. A special project would HCA retains the right to request progress reports on CJTA special projects.

4. CJTA Funding – Allowable Services

- a. Brief Intervention (any level, assessment not required);
- b. Acute Withdrawal Management (ASAM Level 3.7WM);
- c. Sub-Acute Withdrawal Management (ASAM Level 3.2WM);
- d. Outpatient Treatment (ASAM Level 1);
- e. Intensive Outpatient Treatment (ASAM Level 2.1);
- f. Opioid Treatment Program (ASAM Level 1);
- g. Case Management (ASAM Level 1.2);
- h. Intensive Inpatient Residential Treatment (ASAM Level 3.5);
- i. Long-term Care Residential Treatment (ASAM Level 3.3);
- j. Recovery House Residential Treatment (ASAM Level 3.1);
- k. Assessment (to include Assessments done while in jail);
- l. Interim Services;
- m. Community Outreach;
- n. Involuntary Commitment Investigations and Treatment;
- o. Room and Board (Residential Treatment Only);
- p. Transportation;
- q. Childcare Services;
- r. Urinalysis;
- s. Recovery Support Services that may include:

1. Employment services and job training;
 2. Relapse prevention;
 3. Family/marriage education;
 4. Peer-to-peer services, mentoring and coaching;
 5. Self-help and spiritual, religious support groups;
 6. Housing support services (rent and/or deposits);
 7. Life skills;
 8. Education Training (e.g. GED Assistance); and
 9. Parent education and child development.
- t. Substance Use Disorder treatment in the Jail:
1. CJTA funds may not supplement or supplant any currently funded programs that previously existed in a Jail environment.
 2. The Contractor may not use more than 30% of their allocation for treatment in the Jail.
 3. If CJTA funds are utilized for these purposes, the Contractor must attempt to provide treatment with the following stipulations:
 - i. Identify and provide transition services to persons with substance use disorder, who meet the CJTA requirements as defined in RCW 71.24.580, to expedite and facilitate their return to the community;
 - ii. Continue treatment services with individuals who were engaged in community-based treatment prior to their incarceration, with the intent to complete the outpatient treatment episode; and
 - iii. Initiate outpatient treatment services with individuals who will be released and transition into community-based treatment.
 4. The following treatment modalities may be provided through CJTA funding:
 - i. Engaging individuals in SUD treatment;
 - ii. Screening, assessing, and inducting individuals on MOUD;
 - iii. Referral to SUD services;
 - iv. Providing continuity of care; and
 - v. Planning for an individual's transition from Jail.

5. MAT in Therapeutic Courts

Per RCW 71.24.580, "If a region or county uses criminal justice treatment account funds to support a therapeutic court, the therapeutic court must allow the use of all medications approved by the federal food and drug administration for the treatment of opioid use disorder as deemed medically appropriate for a participant by a medical professional. If appropriate medication-assisted treatment resources are not available or accessible within the jurisdiction, the health care authority's designee for assistance must assist the court with acquiring the resource."

- a. The Contractor, under the provisions of this Contract, will abide by the following guidelines related to CJTA and Therapeutic Courts:
 1. The Contractor will only subcontract with Therapeutic Courts that have policy and procedures allowing Participants at any point in their course of treatment to seek FDA-approved medication for any substance use disorder and ensuring the agency will provide or facilitate the induction of any prescribed FDA approved medications for any substance use disorder.
 2. The Contractor will only subcontract with Therapeutic Court programs that work with licensed SUD behavioral health treatment agencies that have policy and procedures in place ensuring they will not deny services to Enrollees who are prescribed any of the Federal Drug Administration (FDA) approved medications to treat all substance use disorders.
 3. The Contractor may not subcontract with a Therapeutic Court program that is known to have policies and procedures in place that mandate titration of any prescribed FDA approved medications to treat any substance use disorder, as a condition of participants being admitted into the program, continuing in the program, or graduating from the program, with the understanding that decisions concerning medication adjustment are made solely between the participant and their prescribing provider.
 4. The Contractor must notify the HCA if it discovers that a CJTA funded Therapeutic program is practicing any of the following:
 - i. Requiring discontinuation, titration, or alteration of their medication regimen as a precluding factor in admittance into a Therapeutic Court program;
 - ii. Requiring participants already in the program discontinue MOUD in order to be in compliance with program requirements;
 - iii. Requiring discontinuation, titration, or alteration of their MOUD medication regimen as a necessary component of meeting program requirements for graduation from a Therapeutic Court program.
 5. All decisions regarding an individual's amenability and appropriateness for MOUD will be made by the individual in concert with a medical professional.

6. CJTA Plan

- a. The Contractor must coordinate with the local CJTA panel for the county in order to facilitate the planning requirement as described in RCW 71.24.580(6). County level funding priorities are established by the local CJTA Panel. The plans should detail the coordination within the county, leverage the needed services for the community, and reach the intended population for the CJTA fund. Any CJTA funded efforts must be included in the CJTA Plan, including the following specific elements:
 1. Describe in detail how substance use disorder treatment and support services will be delivered within the region;
 2. Per section 3.b.1 of this Statement of Work, address the CJTA Account Match Requirement if funds provide treatment or recovery support services for therapeutic court participants;
 3. Include details on special projects such as best practices/treatment strategies, significant underserved population(s), or regional endeavors, including the following:
 - i. Describe the project and how it will be consistent with the strategic plan;
 - ii. Describe how the project will enhance treatment services for individuals in the criminal justice system;
 - iii. Indicate the number of individuals who will be served using innovative funds;
 - iv. If applicable, indicate plans for inclusion of MOUD within the county's Therapeutic Court programs; and
 - v. Address the Fiscal and programmatic Data Reporting requirements found in Section 7 of this Statement of Work.
 4. The Local CJTA Panel must approve the Contractor's CJTA Plan through a consensus. A majority vote is sufficient if a consensus is not reached.
 5. The final approved plan must be approved by the county's legislative authority.
 6. Completed and legislatively approved plans must be submitted to the HCA for Review and Approval. Plan will be forwarded to the State CJTA Panel once approved by the HCA. The Contractor must implement the plan as it is written and notify the HCA if any changes are made.
 7. CJTA Plans are due by October 15, 2019 and are updated every two years to coincide with the state fiscal biennium. Contractor may reasonably request an extension of up to 30 calendar days on the CJTA Plan due date, and HCA may approve the extension in its sole discretion.

7. Data Reporting Requirements

- a. The Contractor shall ensure that staffing is sufficient to support CJTA-related data analytics and related data systems to oversee all data interfaces and support the specific reporting requirements under Contract.

- b. The Contractor shall ensure that all Subcontractors required to report programmatic data have the capacity to submit all HCA required data to enable the Contractor to meet the requirements under the Contract.
- c. There are three quarterly reports that the Contractor will be responsible for submitting: The Quarterly Progress Report (QPR), the Revenue and Expenditure Report (R&E), and the Programmatic Treatment Report (PTR):
 - 1. The Contractor will be responsible for submitting the QPR. The HCA will provide the Contractor with a template form that will report on the following program elements:
 - i. Number of individuals served under CJTA funding for that time period;
 - ii. Barriers to providing services to the Criminal Justice Population;
 - iii. Strategies to overcome the identified barriers;
 - iv. Training and Technical assistance needs;
 - v. Success stories or narratives from individuals receiving CJTA services; and
 - vi. If a Therapeutic Court receives CJTA funded services, the number of admissions of individuals into the program who were either already on MOUD, referred to MOUD, or were provided information regarding MOUD.
 - 2. The Contractor will be responsible for submitting the R&E on a quarterly basis. The HCA will provide the Contractor with a template form that captures the fiscal expenditures for that quarter. The Contractor:
 - i. Will use the Excel document provided by the HCA;
 - ii. Will report the amount of CJTA expenditures in their Contractor for each state fiscal quarter (State Fiscal quarters end on March 31, June 30, September 30, and December 31);
 - iii. Complete the document in its entirety; and
 - iv. Submit the internally reviewed and complete R&E report within 45 days of the end of each State Fiscal Quarter.
 - 3. The Contractor is responsible for submitting the PTR each quarter through a Secure File Transfer (SFT). The HCA will provide the Contractor with an excel workbook template that will capture a variety of demographic and programmatic data. In addition, this process will include the following:
 - i. The Contractor will ensure that their subcontractor has the bandwidth to complete all data elements requested in the PTR.

- ii. The Contractor may allow the subcontractor to do all data entry but the PTR must be submitted into the Behavioral Health Data System (BHDS) by the Contractor through the established Secure File Transfer procedure.
- iii. The Contractor will review for completeness and accuracy each PTR that they receive from the subcontractor.
- iv. The Contractor will work with their subcontractors to ensure that any applicable Release of Information (ROI) forms are updated to account for the sharing of Personal Health Information (PHI) with the HCA.

Attachment 1

Confidential Information Security Requirements

1. Definitions

In addition to the definitions set out in this Contract for CJTA Funded Treatment and Recovery Support Services, the definitions below apply to this Attachment.

- a. "Hardened Password" means a string of characters containing at least three of the following character classes: upper case letters; lower case letters; numerals; and special characters, such as an asterisk, ampersand or exclamation point.
 - i. Passwords for external authentication must be a minimum of 10 characters long.
 - ii. Passwords for internal authentication must be a minimum of 8 characters long.
 - iii. Passwords used for system service or service accounts must be a minimum of 20 characters long.
- b. "Portable/Removable Media" means any Data storage device that can be detached or removed from a computer and transported, including but not limited to: optical media (e.g. CDs, DVDs); USB drives; or flash media (e.g. CompactFlash, SD, MMC).
- c. "Portable/Removable Devices" means any small computing device that can be transported, including but not limited to: handhelds/PDAs/Smartphones; Ultramobile PC's, flash memory devices (e.g. USB flash drives, personal media players); and laptops/notebook/tablet computers. If used to store Confidential Information, devices should be Federal Information Processing Standards (FIPS) Level 2 compliant.
- d. "Secured Area" means an area to which only Authorized Users have access. Secured Areas may include buildings, rooms, or locked storage containers (such as a filing cabinet) within a room, as long as access to the Confidential Information is not available to unauthorized personnel.
- e. "Transmitting" means the transferring of data electronically, such as via email, SFTP, webservices, AWS Snowball, etc.
- f. "Trusted System(s)" means the following methods of physical delivery: (1) hand-delivery by a person authorized to have access to the Confidential Information with written acknowledgement of receipt; (2) United States Postal Service ("USPS") first class mail, or USPS delivery services that include Tracking, such as Certified Mail, Express Mail or Registered Mail; (3) commercial delivery services (e.g. FedEx, UPS, DHL) which offer tracking and receipt confirmation; and (4) the Washington State Campus mail system. For electronic transmission, the Washington State Governmental Network (SGN) is a Trusted System for communications within that Network.

- g. "Unique User ID" means a string of characters that identifies a specific user and which, in conjunction with a password, passphrase, or other mechanism, authenticates a user to an information system.

2. Confidential Information Transmitting

- a. When transmitting HCA's Confidential Information electronically, including via email, the Data must be encrypted using NIST 800-series approved algorithms (<http://csrc.nist.gov/publications/PubsSPs.html>). This includes transmission over the public internet.
- b. When transmitting HCA's Confidential Information via paper documents, the Receiving Party must use a Trusted System.

3. Protection of Confidential Information

The Contractor agrees to store Confidential Information as described:

a. Data at Rest:

- i. Data will be encrypted with NIST 800-series approved algorithms. Encryption keys will be stored and protected independently of the data. Access to the Data will be restricted to Authorized Users through the use of access control lists, a Unique User ID, and a Hardened Password, or other authentication mechanisms which provide equal or greater security, such as biometrics or smart cards. Systems which contain or provide access to Confidential Information must be located in an area that is accessible only to authorized personnel, with access controlled through use of a key, card key, combination lock, or comparable mechanism.

ii. Data stored on Portable/Removable Media or Devices:

- Confidential Information provided by HCA on Removable Media will be encrypted with NIST 800-series approved algorithms. Encryption keys will be stored and protected independently of the Data.
- HCA's data must not be stored by the Receiving Party on Portable Devices or Media unless specifically authorized within the Contract. If so authorized, the Receiving Party must protect the Data by:
 - 1. Encrypting with NIST 800-series approved algorithms. Encryption keys will be stored and protected independently of the data;
 - 2. Control access to the devices with a Unique User ID and Hardened Password or stronger authentication method such as a physical token or biometrics;
 - 3. Keeping devices in locked storage when not in use;
 - 4. Using check-in/check-out procedures when devices are shared;

5. Maintain an inventory of devices; and
 6. Ensure that when being transported outside of a Secured Area, all devices with Data are under the physical control of an Authorized User.
- b. Paper documents. Any paper records containing Confidential Information must be protected by storing the records in a Secured Area that is accessible only to authorized personnel. When not in use, such records must be stored in a locked container, such as a file cabinet, locking drawer, or safe, to which only authorized persons have access.

4. Confidential Information Segregation

HCA Confidential Information received under this Contract must be segregated or otherwise distinguishable from non-HCA data. This is to ensure that when no longer needed by the Contractor, all HCA Confidential Information can be identified for return or destruction. It also aids in determining whether HCA Confidential Information has or may have been compromised in the event of a security Breach.

- a. The HCA Confidential Information must be kept in one of the following ways:
 - i. on media (e.g. hard disk, optical disc, tape, etc.) which will contain only HCA Data; or
 - ii. in a logical container on electronic media, such as a partition or folder dedicated to HCA's Data; or
 - iii. in a database that will contain only HCA Data; or
 - iv. within a database and will be distinguishable from non-HCA Data by the value of a specific field or fields within database records; or
 - v. when stored as physical paper documents, physically segregated from non-HCA Data in a drawer, folder, or other container.
- b. When it is not feasible or practical to segregate HCA Confidential Information from non-HCA data, then both the HCA Confidential Information and the non-HCA data with which it is commingled must be protected as described in this Attachment.

5. Confidential Information Shared with Subcontractors

If HCA Confidential Information provided under this Contract is to be shared with a Subcontractor, the contract with the Subcontractor must include all of the Confidential Information Security Requirements.

6. Confidential Information Disposition

When the Confidential Information is no longer needed, except as noted below, the Confidential Information must be returned to HCA or destroyed. Media are to be destroyed using a method documented within NIST 800-88 (<http://csrc.nist.gov/publications/PubsSPs.html>).

- a. For HCA's Confidential Information stored on network disks, deleting unneeded Confidential Information is sufficient as long as the disks remain in a Secured Area and otherwise meet the requirements listed in Section 3, above. Destruction of the Confidential Information as outlined in this section of this Attachment may be deferred until the disks are retired, replaced, or otherwise taken out of the Secured Area.

CRIMINAL JUSTICE TREATMENT ACCOUNT

QUARTERLY PROGRESS REPORT

Please respond to each question and submit as a separate attachment with your quarterly R&E Report to:

tony.walton@hca.wa.gov

Report Quarter

☐ July 2019 to September 2019 ☐ October 2019 to December 2019

☐ January 2020 to March 2020 ☐ April 2020 to June 2020

Name of County completing Report: Click or tap here to enter text.

Please enter your status for each item, if item is incomplete please list your plan of correction (POC) including actions to be taken and target date for completion.

1. Contractor entered all encounters and supplemental transactions funded by CJTA into the "CJTA Provider Entry Workbook"?

☐ Yes ☐ No

If no, please enter POC.

2. County submitted the CJTA Provider Entry Workbook through the Secure File Transfer?

☐ Yes ☐ No

If no, please enter POC.

3. County submitted the Quarterly Revenue and Expenditure Report?

☐ Yes ☐ No

If no, please enter POC.

Attachment 2: Quarterly Progress Report Template

4. County has made attempts to expand access to Recovery Support Services for the intended population?

☐Yes ☐No

If no, please enter POC.

5. CJTA funding provides services for individual in a Therapeutic Court Program?

☐Yes ☐No

If Yes, please indicate the number of individuals who were admitted into the program during this quarter who are receiving medication assisted treatment or medications for opioid use disorder:

If Yes, please indicate what medications the individuals admitted into the program during this quarter are receiving (e.g. Buprenorphine, Methadone, Naltexone):

6. Is there any indication that the Therapeutic Court programs benefitting from CJTA are denying access to, or requiring titration from, any medications for opioid use disorder?

☐Yes ☐No

Please enter any additional comments here:

7. CJTA funding used in the local, county, city, or tribal Jail?

☐Yes ☐No

If Yes, please indicate any barriers to providing treatment services and transitioning individuals into the community:

Attachment 2: Quarterly Progress Report Template

8. List any other significant accomplishments.
9. List any training or technical assistance needs.
10. Summarize any barrier(s) encountered and plans to overcome the barrier(s) with timeline.
11. Please include any other comments you would like to convey to the HCA Contract Manager:

Completed By:

Date:

Attachment 3: Quarterly Revenue and Expenditure Report Template

CJTA Revenue & Expenditure Report**County Name****[Month] - [Month] [Year]**

REVENUES	AMOUNT	
Non-Medicaid Revenues		
Criminal Justice Treatment Acct (CJTA)		
State Drug Court (CJTA)		
TOTAL REVENUES	\$ -	
EXPENDITURES - Substance Use Disorder	AMOUNT	Number Served
Assessment (to include assessments done while in jail)		
Interim Services		
Community Outreach		
Brief Intervention (Any level, assessment not required)		
Acute Withdrawal Management (Detoxification)		
Involuntary Commitment Investigations and Treatment		
Sub-Acute Withdrawal Management (Detoxification)		
Outpatient Treatment (Group or Individual)		
Intensive Outpatient Treatment		
Opiate Substitution Treatment		
Case Management		
Urinalysis		
Room and Board (Residential Treatment only)		
Intensive Inpatient Residential Treatment Services		
Long-Term Care Residential Treatment Services		
Recovery House Residential Treatment Services		
Treatment in the jail (8 Sessions)		
Recovery Support Services		
Administration-10% Maximum		
Transportation		
Childcare Services		
TOTAL EXPENDITURES	\$ -	-

Attachment 3: Quarterly Revenue and Expenditure Report Template

Additional Required Reporting:

CJTA	Amount
Adult	
Youth	
PPW	
Total	\$ -
Discrepancy	\$ -

CJTA - Minimum 30% Innovative	\$ -	
		100% Match
Contracted Directly with Courts	\$0.00	\$0.00



Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2019-501

File ID:	AB2019-501	Version:	1	Status:	Agenda Ready
File Created:	09/24/2019	Entered by:	BBushaw@co.whatcom.wa.us		
Department:	Public Works Department	File Type:	Contract		
Assigned to:	Council Finance and Administrative Services Committee				Final Action:
Agenda Date:	10/08/2019	Enactment #:			

Primary Contact Email: sdraper@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into a contract between Whatcom County and FLO Analytics to assist with the developing of the 2020 Lake Whatcom Stormwater Utility Fee in the amount of \$28,715.00

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Assist Whatcom County with Geographic Information System (GIS) data base management and assistance with running the process to develop the 2020 fee roll for Lake Whatcom Stormwater Utility

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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**WHATCOM COUNTY
PUBLIC WORKS DEPARTMENT**

**Jon Hutchings
Director**



STORMWATER
322 N. Commercial, Suite 224
Bellingham, WA 98225
Main: (360) 778-6210
FAX: (360) 778-6201
www.whatcomcounty.us

MEMORANDUM

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

THROUGH: Jon Hutchings, Public Works Director *JH*

FROM: Kraig Olason, Stormwater Program Manager *KO*

DATE: September 23, 2019

RE: Running the Lake Whatcom Stormwater Utility 2020 Fee Roll

Requested Action

Please find attached for your review and approval two (2) signed originals of a contract for services between FLO Analytics and Whatcom County for Geographic Information System (GIS) data base management and assistance with running the process to develop the 2020 fee roll for Lake Whatcom Stormwater Utility.

Background and Purpose

Whatcom County Public Works Stormwater Division has recently developed a highly customized billing system to generate the annual fee roll for the Lake Whatcom Stormwater Facility (Contract # 201908018). FLO Analytics, the firm that worked with Whatcom County to develop that program, will assist in producing the fee roll for 2020 under this contract.

Funding Amount and Source

Contract total of \$28,715 will be funded by existing authority in the Stormwater Division budget (cost center 123201). This amount is in addition to \$27,405 included in contract # 201908018 for the development of the fee roll program.

Please contact Kraig Olason at 6301, if you have any questions or concerns regarding the terms of this agreement.

Encl.

WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No.

Originating Department:	Public Works
Division/Program: (i.e. Dept. Division and Program)	Stormwater 907620
Contract or Grant Administrator:	Kraig Olason, Program Manager
Contractor's / Agency Name:	Flo Analytics
Is this a New Contract? Yes <input checked="" type="radio"/> No <input type="radio"/> 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 checked="" type="radio"/> No <input type="radio"/> If yes, RFP and Bid number(s): RFQ-19-01 Contract Cost Center: 123201-6630	
Is this agreement excluded from E-Verify? No <input checked="" type="radio"/> Yes <input type="radio"/> If no, include Attachment D Contractor Declaration form.	
If YES, indicate exclusion(s) below: <input checked="" type="checkbox"/> Professional services agreement for certified/licensed professional. <input checked="" type="checkbox"/> Contract work is for less than \$100,000. <input 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): \$ 28,715.00 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: 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: FLO Analytics will run the 2020 fee roll for the newly formed Lake Whatcom Stormwater Utility and provide follow up technical assistance for any necessary updates.	
Term of Contract:	Expiration Date: 9/30/2020

Contract Routing:	1. Prepared by: Kraig Olason	Date: 9/13/19
	2. Attorney signoff: Christopher Quinn	Date: 9/19/2019
	3. AS Finance reviewed: bbennett	Date: 9/23/19
	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:

CONTRACT FOR SERVICES AGREEMENT
GIS DATA MANAGEMENT AND ASSISTANCE WITH
PRODUCING THE LAKE WHATCOM STORMWATER
UTILITY FEE ROLL FOR 2020

Whatcom County Contract No. _____

FLO Analytics, hereinafter called **Contractor**, and Whatcom County, hereinafter referred to as **County**, agree and contract as set forth in this Agreement, including:

General Conditions, pp. 1 to 8,

Exhibit A (Scope of Work), pp. 9 to 9,

Exhibit B (Compensation), pp. 10 to 11,

Exhibit C (Certificate of Insurance).

Copies of these items are attached hereto and incorporated herein by this reference as if fully set forth herein.

The term of this Agreement shall commence on the 1st day of October, 20 19, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 30th day of September, 20 20.

The general purpose or objective of this Agreement is to: assist Whatcom County with GIS data management and assistance with developing the 2020 Lake Whatcom Stormwater Utility Fee Roll, as more fully and definitively described in Exhibit A hereto. The language of Exhibit A controls in case of any conflict between it and that provided here.

The maximum consideration for the initial term of this agreement or for any renewal term shall not exceed \$ 28,715.00. The Contract Number, set forth above, shall be included on all billings or correspondence in connection therewith.

Contractor acknowledges and by signing this contract agrees that the Indemnification provisions set forth in Paragraphs 11.1, 21.1, 30.1, 31.2, 32.1, 34.2, and 34.3, if included, are totally and fully part of this contract and have been mutually negotiated by the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement this ____ day of _____, 20 ____.

CONTRACTOR:

FLO Analytics



Tyler Vick, Principal

STATE OF WASHINGTON)

) ss.

COUNTY OF CLARK)

On this 23 day of SEPT, 20 19, before me personally appeared TYLER VICK to me known to be the PRINCIPAL (title) of FLO ANALYTICS (Company) and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.


NOTARY PUBLIC in and for the State of Washington, residing at CLARK, CO. My commission expires 02-18-22.

STEPHANIE R ASHMORE
Notary Public
State of Washington
My Commission Expires
February 18, 2022

WHATCOM COUNTY:

Recommended for Approval:

[Signature] 9/25/19
Department Director Date

Approved as to form:

[Signature] 9/26/19
Senior Deputy Prosecuting Attorney-Civil Division Date

Approved:

Accepted for Whatcom County:

By: _____
Jack Louws, Whatcom County Executive

STATE OF WASHINGTON)
) ss
COUNTY OF WHATCOM)

On this _____ day of _____, 20 __, before me personally appeared Jack Louws, to me known to be the Executive of Whatcom County, who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

NOTARY PUBLIC in and for the State of Washington, residing at
_____. My commission expires _____.

CONTRACTOR INFORMATION:

FLO Analytics

Tyler Vick, Principal

Address:
200 NW 19th Avenue, Suite 200
Portland, Oregon 97209

Contact Name: Tyler Vick

Contact Phone: 1-503-501-5232

Contact Email: tvick@flo-analytics.com

GENERAL CONDITIONS

Series 00-09: Provisions Related to Scope and Nature of Services

0.1 Scope of Services:

The Contractor agrees to provide to the County services and any materials as set forth in the project narrative identified as Exhibit "A", during the agreement period. No material, labor, or facilities will be furnished by the County, unless otherwise provided for in the Agreement.

Series 10-19: Provisions Related to Term and Termination

10.1 Term:

Services provided by Contractor prior to or after the term of this contract shall be performed at the expense of Contractor and are not compensable under this contract unless both parties hereto agree to such provision in writing. The term of this Agreement may be extended by mutual agreement of the parties; provided, however, that the Agreement is in writing and signed by both parties.

10.2 Extension: Not Applicable

11.1 Termination for Default:

If the Contractor defaults by failing to perform any of the obligations of the contract or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the County may, by depositing written notice to the Contractor in the U.S. mail, first class postage prepaid, terminate the contract, and at the County's option, obtain performance of the work elsewhere. Termination shall be effective upon Contractor's receipt of the written notice, or within three (3) days of the mailing of the notice, whichever occurs first. If the contract is terminated for default, the Contractor shall not be entitled to receive any further payments under the contract until all work called for has been fully performed. Any extra cost or damage to the County resulting from such default(s) shall be deducted from any money due or coming due to the Contractor. The Contractor shall bear any extra expenses incurred by the County in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the County by reason of such default.

11.2 Termination for Reduction in Funding:

In the event that funding from State, Federal or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement, and prior to its normal completion, the County may summarily terminate this Agreement as to the funds withdrawn, reduced, or limited, notwithstanding any other termination provisions of this Agreement. If the level of funding withdrawn, reduced or limited is so great that the County deems that the continuation of the programs covered by this Agreement is no longer in the best interest of the County, the County may summarily terminate this Agreement in whole, notwithstanding any other termination provisions of this Agreement. Termination under this section shall be effective upon receipt of written notice as specified herein, or within three days of the mailing of the notice, whichever occurs first.

11.3 Termination for Public Convenience:

The County may terminate the Agreement in whole or in part whenever the County determines, in its sole discretion, that such termination is in the interests of the County. Whenever the Agreement is terminated in accordance with this paragraph, the Contractor shall be entitled to payment for actual work performed at unit contract prices for completed items of work. An equitable adjustment in the contract price for partially completed items of work will be made, but such adjustment shall not include provision for loss of anticipated profit on deleted or uncompleted work. Termination of this Agreement by the County at any time during the term, whether for default or convenience, shall not constitute breach of contract by the County.

Series 20-29: Provisions Related to Consideration and Payments

20.1 Accounting and Payment for Contractor Services:

Payment to the Contractor for services rendered under this Agreement shall be as set forth in Exhibit "B." Where Exhibit "B" requires payments by the County, payment shall be based upon written claims supported, unless otherwise provided in Exhibit "B," by documentation of units of work actually performed and amounts earned, including, where appropriate, the actual number of days worked each month, total number of hours for the month, and the total dollar payment requested, so as to comply with municipal auditing requirements.

Unless specifically stated in Exhibit "B" or approved in writing in advance by the official executing this Agreement for the County or his designee (hereinafter referred to as the "Administrative Officer") the County will not reimburse the Contractor for any costs or expenses incurred by the Contractor in the performance of this contract. Where required, the County shall, upon receipt of appropriate documentation, compensate the Contractor, no more often than monthly, in accordance with the County's customary procedures, pursuant to the fee schedule set forth in Exhibit "B."

21.1 Taxes:

The Contractor understands and acknowledges that the County will not withhold Federal or State income taxes. Where required by State or Federal law, the Contractor authorizes the County to withhold for any taxes other than income taxes (i.e., Medicare). All compensation received by the Contractor will be reported to the Internal Revenue Service at the end of the calendar year in accordance with the applicable IRS regulations. It is the responsibility of the Contractor to make the necessary estimated tax payments throughout the year, if any, and the Contractor is solely liable for any tax obligation arising from the Contractor's performance of this Agreement. The Contractor hereby agrees to indemnify the County against any demand to pay taxes arising from the Contractor's failure to pay taxes on compensation earned pursuant to this Agreement.

The County will pay sales and use taxes imposed on goods or services acquired hereunder as required by law. The Contractor must pay all other taxes, including, but not limited to, Business and Occupation Tax, taxes based on the Contractor's gross or net income, or personal property to which the County does not hold title. The County is exempt from Federal Excise Tax.

22.1 Withholding Payment:

In the event the County's Administrative Officer determines that the Contractor has failed to perform any obligation under this Agreement within the times set forth in this Agreement, then the County may withhold from amounts otherwise due and payable to Contractor the amount determined by the County as necessary to cure the default, until the Administrative Officer determines that such failure to perform has been cured. Withholding under this clause shall not be deemed a breach entitling Contractor to termination or damages, provided that the County promptly gives notice in writing to the Contractor of the nature of the default or failure to perform, and in no case more than 10 days after it determines to withhold amounts otherwise due. A determination of the Administrative Officer set forth in a notice to the Contractor of the action required and/or the amount required to cure any alleged failure to perform shall be deemed conclusive, except to the extent that the Contractor acts within the times and in strict accord with the provisions of the Disputes clause of this Agreement. The County may act in accordance with any determination of the Administrative Officer which has become conclusive under this clause, without prejudice to any other remedy under the Agreement, to take all or any of the following actions: (1) cure any failure or default, (2) to pay any amount so required to be paid and to charge the same to the account of the Contractor, (3) to set off any amount so paid or incurred from amounts due or to become due the Contractor. In the event the Contractor obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to Contractor by reason of good faith withholding by the County under this clause.

23.1 Labor Standards:

The Contractor agrees to comply with all applicable state and federal requirements, including but not limited to those pertaining to payment of wages and working conditions, in accordance with RCW 39.12.040, the Prevailing Wage Act; the Americans with Disabilities Act of 1990; the Davis-Bacon Act; and the Contract Work Hours and Safety Standards Act providing for weekly payment of prevailing wages, minimum overtime pay, and providing that no laborer or mechanic shall be required to work in surroundings or under conditions which are unsanitary, hazardous, or dangerous to health and safety as determined by regulations promulgated by the Federal Secretary of Labor and the State of Washington.

Series 30-39: Provisions Related to Administration of Agreement

30.1 Independent Contractor:

The Contractor's services shall be furnished by the Contractor as an independent contractor, and nothing herein contained shall be construed to create a relationship of employer-employee or master-servant, but all payments made hereunder and all services performed shall be made and performed pursuant to this Agreement by the Contractor as an independent contractor.

The Contractor acknowledges that the entire compensation for this Agreement is specified in Exhibit "B" and the Contractor is not entitled to any benefits including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, or any other rights or privileges afforded to employees of the County. The Contractor represents that he/she/it maintains a separate place of business, serves clients other than the County, will report all income and expense accrued under this contract to the Internal Revenue Service, and has a tax account with the State of Washington Department of Revenue for payment of all sales and use and Business and Occupation taxes collected by the State of Washington.

Contractor will defend, indemnify and hold harmless the County, its officers, agents or employees from any loss or expense, including, but not limited to, settlements, judgments, setoffs, attorneys' fees or costs incurred by reason of claims or demands because of breach of the provisions of this paragraph.

30.2 Assignment and Subcontracting:

The performance of all activities contemplated by this agreement shall be accomplished by the Contractor. No portion of this contract may be assigned or subcontracted to any other individual, firm or entity without the express and prior written approval of the County.

30.3 No Guarantee of Employment:

The performance of all or part of this contract by the Contractor shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of the Contractor or any employee of the Contractor or any subcontractor or any employee of any subcontractor by the County at the present time or in the future.

31.1 Ownership of Items Produced:

All writings, programs, data, public records or other materials prepared by the Contractor and/or its consultants or subcontractors, in connection with performance of this Agreement, shall be the sole and absolute property of the County.

31.2 Patent/Copyright Infringement:

Contractor will defend and indemnify the County from any claimed action, cause or demand brought against the County, to the extent such action is based on the claim that information supplied by the Contractor infringes any patent or copyright. The Contractor will pay those costs and damages attributable to any such claims that are finally awarded against the County in any action. Such defense and payments are conditioned upon the following:

A. The Contractor shall be notified promptly in writing by the County of any notice of such claim.

B. Contractor shall have the right, hereunder, at its option and expense, to obtain for the County the right to continue using the information, in the event such claim of infringement, is made, provided no reduction in performance or loss results to the County.

32.1 Confidentiality:

The Contractor, its employees, subcontractors, and their employees shall maintain the confidentiality of all information provided by the County or acquired by the Contractor in performance of this Agreement, except upon the prior written consent of the County or an order entered by a court after having acquired jurisdiction over the County. Contractor shall immediately give to the County notice of any judicial proceeding seeking disclosure of such information. Contractor shall indemnify and hold harmless the County, its officials, agents or employees from all loss or expense, including, but not limited to, settlements, judgments, setoffs, attorneys' fees and costs resulting from Contractor's breach of this provision.

33.1 Right to Review:

This contract is subject to review by any Federal, State or County auditor. The County or its designee shall have the right to review and monitor the financial and service components of this program by whatever means are deemed expedient by the Administrative Officer or by the County Auditor's Office. Such review may occur with or without notice and may include, but is not limited to, on-site inspection by County agents or employees, inspection of all records or other materials which the County deems pertinent to the Agreement and its performance, and any and all communications with or evaluations by service recipients under this Agreement. The Contractor shall preserve and maintain all financial records and records relating to the performance of work under this Agreement for three (3) years after contract termination, and shall make them available for such review, within Whatcom County, State of Washington, upon request. Contractor also agrees to notify the Administrative Officer in advance of any inspections, audits, or program review by any individual, agency, or governmental unit whose purpose is to review the services provided within the terms of this Agreement. If no advance notice is given to the Contractor, then the Contractor agrees to notify the Administrative Officer as soon as it is practical.

34.1 Proof of Insurance:

The Contractor shall carry for the duration of this Agreement general liability and property damage insurance with the following minimums:

Property Damage per occurrence - \$500,000.00 (this amount may vary with circumstances)

General Liability & Property Damage for bodily injury- \$1,000,000.00 (this amount may vary with circumstances)

A Certificate of insurance, that also identifies the County as an additional insured, is attached hereto as Exhibit "C". This insurance shall be considered as primary and shall waive all rights of subrogation. The County insurance shall be noncontributory.

a. Professional Liability - \$1,000,000 per occurrence:

If the professional liability insurance is a claims made policy, and should the contractor discontinue coverage either during the term of this contract or within three years of completion, the contractor agrees to purchase tail coverage for a minimum of three years from the completion date of this contract or any amendment to this contract.

Professional Liability - \$1,000,000. per occurrence

34.2 Industrial Insurance Waiver:

With respect to the performance of this agreement and as to claims against the County, its officers, agents and employees, the Contractor expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, for injuries to its employees and agrees that the obligations to indemnify, defend and hold harmless provided in this agreement extend to any claim brought by or on behalf of any employee of the Contractor. This waiver is mutually negotiated by the parties to this agreement.

34.3 Defense & Indemnity Agreement:

The Contractor agrees to defend, indemnify and save harmless the County, its appointed and elective officers and employees, from and against all loss or expense, including, but not limited to, judgments, settlements, attorneys' fees and costs by reason of any and all claims and demands upon the County, 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, whether such injury to persons or damage to property is due to the negligence of the Contractor, its subcontractors, its successor or assigns, or its agents, servants, or employees, the County, its appointed or elected officers, employees or their agents, except only such injury or damage as shall have been occasioned by the sole negligence of the County or its appointed or elected officials or employees. In case of damages caused by the concurrent negligence of Contractor, its subcontractors, its successors or assigns, or its agents, servants, or employees, and the County, its appointed or elected officers, employees or their agents, then this indemnification provision is enforceable only to the extent of the negligence of the Contractor, its agents, or its employees.

It is further provided that no liability shall attach to the County by reason of entering into this contract, except as expressly provided herein. The parties specifically agree that this agreement is for the benefit of the parties only and this agreement shall create no rights in any third party.

35.1 Non-Discrimination in Employment:

The County's policy is to provide equal opportunity in all terms, conditions and privileges of employment for all qualified applicants and employees without regard to race, color, creed, religion, national origin, sex, sexual orientation, age, marital status, disability, or veteran status. The Contractor shall comply with all laws prohibiting discrimination against any employee or applicant for employment on the grounds of race, color, creed, religion, national origin, sex, sexual orientation, age, marital status, disability, or veteran status, except where such constitutes a bona fide occupational qualification.

Furthermore, in those cases in which the Contractor is governed by such laws, the Contractor shall take affirmative action to insure that applicants are employed, and treated during employment, without regard to their race, color, creed, religion, national origin, sex, age, marital status, sexual orientation, disability, or veteran status, except where such constitutes a bona fide occupational qualification. Such action shall include, but not be limited to: advertising, hiring, promotions, layoffs or terminations, rate of pay or other forms of compensation benefits, selection for training including apprenticeship, and participation in recreational and educational activities. In all solicitations or advertisements for employees placed by them or on their behalf, the Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

The foregoing provisions shall also be binding upon any subcontractor, provided that the foregoing provision shall not apply to contracts or subcontractors for standard commercial supplies or raw materials, or to sole proprietorships with no employees.

35.2 Non-Discrimination in Client Services:

The Contractor shall not discriminate on the grounds of race, color, creed, religion, national origin, sex, age, marital status, sexual orientation, disability, or veteran status; or deny an individual or business any service or benefits under this Agreement; or subject an individual or business to segregation or separate treatment in any manner related to his/her/its receipt any service or services or other benefits provided under this Agreement; or deny an individual or business an opportunity to participate in any program provided by this Agreement.

36.1 Waiver of Noncompetition:

Contractor irrevocably waives any existing rights which it may have, by contract or otherwise, to require another person or corporation to refrain from submitting a proposal to or performing work or providing supplies to the County, and contractor further promises that it will not in the future, directly or indirectly, induce or solicit any person or corporation to refrain from submitting a bid or proposal to or from performing work or providing supplies to the County.

36.2 Conflict of Interest:

If at any time prior to commencement of, or during the term of this Agreement, Contractor or any of its employees involved in the performance of this Agreement shall have or develop an interest in the subject matter of this Agreement that is potentially in conflict with the County's interest, then Contractor shall immediately notify the County of the same. The notification of the County shall be made with sufficient specificity to enable the County to make an informed judgment as to whether or not the County's interest may be compromised in any manner by the existence of the conflict, actual or potential. Thereafter, the County may require the Contractor to take reasonable steps to remove the conflict of interest. The County may also terminate this contract according to the provisions herein for termination.

37.1 Administration of Contract:

This Agreement shall be subject to all laws, rules, and regulations of the United States of America, the State of Washington, and political subdivisions of the State of Washington. The Contractor also agrees to comply with applicable federal, state, county or municipal standards for licensing, certification and operation of facilities and programs, and accreditation and licensing of individuals.

The County hereby appoints, and the Contractor hereby accepts, the Whatcom County Executive, and his or her designee, as the County's representative, hereinafter referred to as the Administrative Officer, for the purposes of administering the provisions of this Agreement, including the County's right to receive and act on all reports and documents, and any auditing performed by the County related to this Agreement. The Administrative Officer for purposes of this agreement is:

FLO Analytics: Tyler Vick, Principal, 200 NW 19th Avenue, Suite 200, Portland, Oregon 97209

Whatcom County: Kraig Olason, Stormwater Program Manager, 322 N. Commercial St, Suite 224, Bellingham, WA 98225

37.2 Notice:

Except as set forth elsewhere in the Agreement, for all purposes under this Agreement except service of process, notice shall be given by the Contractor to the County's Administrative Officer under this Agreement. Notice to the Contractor for all purposes under this Agreement shall be given to the address provided by the Contractor herein above in the "Contractor Information" section. Notice may be given by delivery or by depositing in the US Mail, first class, postage prepaid.

38.1 Certification of Public Works Contractor's Status under State Law: Not Applicable

38.2 Certification Regarding Federal Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions: Not Applicable

38.3 E-Verify: Not Applicable

Series 40-49: Provisions Related to Interpretation of Agreement and Resolution of Disputes

40.1 Modifications:

Either party may request changes in the Agreement. Any and all agreed modifications, to be valid and binding upon either party, shall be in writing and signed by both of the parties.

40.2 Contractor Commitments, Warranties and Representations:

Any written commitment received from the Contractor concerning this Agreement shall be binding upon the Contractor, unless otherwise specifically provided herein with reference to this paragraph. Failure of the Contractor to fulfill such a commitment shall render the Contractor liable for damages to the County. A commitment includes, but is not limited to, any representation made prior to execution of this Agreement, whether or not incorporated elsewhere herein by reference, as to performance of services or equipment, prices or options for future acquisition to remain in effect for a fixed period, or warranties.

41.1 Severability:

If any term or condition of this contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this contract are declared severable.

41.2 Waiver:

Waiver of any breach or condition of this contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this contract shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto. The failure of the County to insist upon strict performance of any of the covenants and agreements of this Agreement, 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, or any other covenants or agreements, but the same shall be and remain in full force and effect.

42.1 Disputes:

a. General:

Differences between the Contractor and the County, arising under and by virtue of the Contract Documents, shall be brought to the attention of the County at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Except for such objections as are made of record in the manner hereinafter specified and within the time limits stated, the records, orders, rulings, instructions, and decisions of the Administrative Officer shall be final and conclusive.

b. Notice of Potential Claims:

The Contractor shall not be entitled to additional compensation which otherwise may be payable, or to extension of time for (1) any act or failure to act by the Administrative Officer or the County, or (2) the happening of any event or occurrence, unless the Contractor has given the County a written Notice of Potential Claim within ten (10) days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the County. The written Notice of Potential Claim shall set forth the reasons for which the Contractor believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. Contractor shall keep full and complete daily records of the work performed, labor and material used, and all costs and additional time claimed to be additional.

c. Detailed Claim:

The Contractor shall not be entitled to claim any such additional compensation, or extension of time, unless within thirty (30) days of the accomplishment of the portion of the work from which the claim arose, and before final payment by the County, the Contractor has given the County a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or the extension of time claimed to be due.

d. Arbitration:

Other than claims for injunctive relief brought by a party hereto (which may be brought either in court or pursuant to this arbitration provision), and consistent with the provisions hereinabove, any claim, dispute or controversy between the parties under, arising out of, or related to this Agreement or otherwise, including issues of specific performance, shall be determined by arbitration in Bellingham, Washington, under the applicable American Arbitration Association (AAA) rules in effect on the date hereof, as modified by this Agreement. There shall be one arbitrator selected by the parties within ten (10) days of the arbitration demand, or if not, by the AAA or any other group having similar credentials. Any issue about whether a claim is covered by this Agreement shall be determined by the arbitrator. The arbitrator shall apply substantive law and may award injunctive relief, equitable relief (including specific performance), or any other remedy available from a judge, including expenses, costs and attorney fees to the prevailing party and pre-award interest, but shall not have the power to award punitive damages. The decision of the arbitrator shall be final and binding and an order confirming the award or judgment upon the award may be entered in any court having jurisdiction. The parties agree that the decision of the arbitrator shall be the sole and exclusive remedy between them regarding any dispute presented or pled before the arbitrator. At the request of either party made not later than forty-five (45) days after the arbitration demand, the parties agree to submit the dispute to nonbinding mediation, which shall not delay the arbitration hearing date; provided, that either party may decline to mediate and proceed with arbitration.

Unless otherwise specified herein, this Agreement shall be governed by the laws of Whatcom County and the State of Washington.

43.1 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 courts of the State of Washington in and for the County of Whatcom. This Agreement shall be governed by the laws of the State of Washington.

44.1 Survival:

The provisions of paragraphs 11.1, 11.2, 11.3, 21.1, 22.1, 30.1, 31.1, 31.2, 32.1, 33.1, 34.2, 34.3, 36.1, 40.2, 41.2, 42.1, and 43.1, if utilized, shall survive, notwithstanding the termination or invalidity of this Agreement for any reason.

45.1 Entire Agreement:

This written Agreement, comprised of the writings signed or otherwise identified and attached hereto, represents the entire Agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

EXHIBIT "A"
(SCOPE OF WORK)

At your request, FLO Analytics (FLO) has prepared this scope of work and budget. This scope assumes that the development work for the fee roll will be completed under a separate scope.

PURPOSE

The primary activity of this scope of work is to run the inaugural stormwater Fee Roll for the new Lake Whatcom Stormwater Utility service area (LWSU). The proposed work will focus on generating the fee roll, documentation and providing support for 12 months following the fee roll creation.

SCOPE OF WORK

Task 1—Coordinate fee roll data

This task involves a phone meeting with County staff to formally kick off the project. In addition to a discussion of the scope of work and project timeline, a primary goal of the meeting will be to confirm project goals, deadlines, communications channels and the identification and transfer of appropriate data and materials relevant to updating the Fee Roll.

Task Deliverables:

- Kickoff Meeting (1 hour)
- Document summary of project goals, scope and timeline

Task 2—Create the Fee Roll

This task is concerned with creating the inaugural fee roll for the LWSU. The Fee Roll will be generated, along with a report documenting the basis for the rates and a processing log. An LWSU Customer Service database will be created, based on the BBWARM model as appropriate, and populated with the Fee Roll data. Throughout the process, close coordination with County staff will be maintained.

Task Deliverables:

- Fee Roll Final
- Customer Service Database
- Assessor Export
- Fee Roll Report documenting the basis for rates

Task 4—On Call Fee Roll Support

FLO will provide on-call technical assistance and GIS services to meet ongoing needs related to the Fee Roll. This is anticipated to be significantly higher than compared to the existing BBWARM technical support requirements as it is the first year of the fee roll.

Task Deliverables:

- On-Call Technical Support

EXHIBIT "B"**(BUDGET)**

The estimated cost to perform the proposed work is \$28,715. The estimated cost and proposed scope of work are based on information available to FLO Analytics at this time. If conditions change, unforeseen circumstances are encountered, or work efforts are redirected, the cost estimate may require modification.

Task No.	Personnel/Activities/Item	Title	Unit	Unit Cost	Quantity	Percent Markup	Cost	Subtotal	Total
1	Coordinate fee roll data								
	MFA Labor								
	Grant Herbert	Senior GIS Analyst	hr	\$145.00	0	0%	\$0.00		
	Ruth McColly	Senior GIS Analyst	hr	\$135.00	3	0%	\$405.00		
	Elliot Frank	Staff GIS Technician	hr	\$115.00	3	0%	\$345.00		
	Total MFA Hours/ Labor Costs				6			\$750	
	Task 1 Total Cost								\$750
2	Create Fee Roll								
	MFA Labor								
	Grant Herbert	Senior GIS Analyst	hr	\$145.00	11	0%	\$1,595.00		
	Ruth McColly	Senior GIS Analyst	hr	\$135.00	44	0%	\$5,940.00		
	Elliot Frank	Staff GIS Technician	hr	\$115.00	97	0%	\$11,155.00		
	Total MFA Hours/ Labor Costs				152			\$18,690	
	Task 2 Total Cost								\$18,690
3	On Call Support								
	MFA Labor								
	Grant Herbert	Senior GIS Analyst	hr	\$145.00	5	0%	\$725.00		
	Ruth McColly	Senior GIS Analyst	hr	\$135.00	25	0%	\$3,375.00		
	Elliot Frank	Staff GIS Technician	hr	\$115.00	45	0%	\$5,175.00		
	Total MFA Hours/ Labor Costs				75			\$9,275	
	Task 3 Total Cost								\$9,275
	Total Estimated Cost								\$28,715

Budget Narrative

Contract amounts shall not exceed the total budget referenced above. As consideration for services provided in Exhibit A, Scope of Work, the County agrees to compensate the contractor according to the hourly rates provided in the project budget (Exhibit B). Other reasonable expenses incurred in the course of performing the duties herein shall be reimbursed, including mileage at the current IRS rate. Lodging and per diem shall not exceed the GSA rate for the location where services are provided. Other expenditures such as printing, postage, and telephone charges shall be reimbursed at actual cost plus 10%. Expense reimbursement requests must be accompanied by copies of paid invoices. Any work performed prior to the effective date or continuing after the completion date of the contract, unless otherwise agreed upon in writing, will be at the contractor's expense.

SCHEDULE OF CHARGES

PERSONNEL CHARGES

Principal	\$170–250/hour
Senior	\$130–185/hour
Project	\$120–150/hour
Staff	\$100–135/hour
Technical Writer/Editor	\$80–95/hour
Administrative Assistant.....	\$80–90/hour

Depositions and expert witness testimony, including preparation time, will be charged at 150 percent of the above rates.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

9/17/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Durham and Bates Agencies, Inc.
720 SW Washington St.
Ste 250
Portland OR 97205-3554

CONTACT
NAME: Kristi Calvin
PHONE (A/C, No, Ext): 503-241-9219
FAX (A/C, No): 503-542-0623
E-MAIL ADDRESS: kristic@dbates.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Starr Surplus Lines Ins. Co.	13604
INSURER B : Hartford Underwriters Ins Co	30104
INSURER C : Saif Corporation	36196
INSURER D : Hartford	
INSURER E :	
INSURER F :	

INSURED
Maul Foster & Alongi, Inc.
109 E 13th Street
Vancouver WA 98660

COVERAGES

CERTIFICATE NUMBER: 1997447434

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:		1000067374191	4/25/2019	4/25/2020	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY		52UECKT2223	4/25/2019	4/25/2020	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$					EACH OCCURRENCE \$ AGGREGATE \$ \$
C	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y / N <input checked="" type="checkbox"/> N	781107 - Oregon 52WECRR1259- Other States incl WA Stop Gap	10/1/2019 10/1/2019	10/1/2020 10/1/2020	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Whatcom County -See attached form(s) containing provisions for: General Liability Additional Insured, Primary and Non-Contributory.

CERTIFICATE HOLDER

Whatcom County Public Works - Stormwater
Civic Center Annex
322 N. Commercial Street, Suite 301
Bellingham WA 98225
USA

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE



Starr Surplus Lines Insurance Company

Primary and Non-contributory, Additional Insured and Waiver of Subrogation

Policy Number: 1000067374191

Effective Date: April 25, 2019 at 12:01 A.M.

Named Insured: Maul Foster & Alongi, Inc.

This endorsement modifies the insurance coverage form(s) listed below that have been purchased by you and evidenced as such on the Declarations page. Please read the endorsement and respective policy(ies) carefully.

Commercial General Liability Coverage Form
Owners and Contractors Protective Liability Coverage Form
Products/Completed Operations Liability Coverage Form
Contractors Pollution Liability Coverage Form
Professional Liability Coverage Form
Site Pollution Liability Coverage Form

SCHEDULE

Any person(s) or organization(s) whom the Named Insured agrees, in a written contract, to name as an Additional Insured. However, this status exists only for the project specified in that contract.


- A. **SECTION II - WHO IS AN INSURED** is amended to include as an insured the person or organization shown in the schedule of this endorsement, but only with respect to liability arising out of "your work" for that insured by or for you.
- B. As respects additional insureds as defined above, this insurance also applies to "bodily injury" or "property damage" arising out of your negligence when the following written contract requirements are applicable:
1. Coverage available under this coverage part shall apply as primary insurance. Any other insurance available to these additional insured's shall apply as excess and not contribute as primary to the insurance afforded by this endorsement.
 2. We waive any right of recovery we may have against these additional insured's because of payments we make for injury or damage arising out of "your work" done under a written contract with the additional insured.
 3. The term insured is used separately and not collectively, but the inclusion of more than one insured shall not increase the limits or coverage provided by this insurance.

Insureds and Agents are advised that certificates of insurance should be used only to provide evidence of insurance in lieu of an actual copy of the applicable insurance policy. Certificates should not be used to amend, expand or otherwise alter the terms of the actual policy.

All other terms and conditions of this Policy remain unchanged.

Signed for STARR SURPLUS LINES INSURANCE COMPANY


Steve Blakey, President


Nehemiah E. Ginsburg, General Counsel



Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2019-493

File ID:	AB2019-493	Version:	1	Status:	Agenda Ready
File Created:	09/23/2019	Entered by:	skorthui@co.whatcom.wa.us		
Department:	County Executive's Office	File Type:	Report		
Assigned to:	Council Criminal Justice and Public Safety Committee	Final Action:			
Agenda Date:	10/08/2019	Enactment #:			

Primary Contact Email: ERichey@whatcomcounty.us

TITLE FOR AGENDA ITEM:

Report from the Prosecuting Attorney's Office

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Prosecuting Attorney Eric Richey will present his annual report to Council

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2019-510

File ID:	AB2019-510	Version:	1	Status:	Agenda Ready
File Created:	09/30/2019	Entered by:	DBrown@co.whatcom.wa.us		
Department:	Council Office	File Type:	Presentation		
Assigned to:	Council Public Works & Health Committee			Final Action:	
Agenda Date:	10/08/2019			Enactment #:	

Primary Contact Email: bbrenner@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Presentation regarding procedural history of WRIA 1 watershed management planning (years 1999-2016)

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Presentation regarding procedural history of WRIA 1 watershed management planning (years 1999-2016)

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Why Process Matters: A Procedural History of WRIA 1 Watershed Management Planning 1999-2016

Summary Findings of Fact

The Watershed Planning Act (RCW 90.82, the Act) vested responsibility for review and approval of watershed plans, including implementation plans, with planning units and no other body, and further provided that planning units would manage the planning process. [\[Page 4\]](#)

In 1998 The WRIA 1 Initiating Governments (IGs) initiated the WRIA 1 Watershed Management Project Watershed (Project) under the auspices of the Act and determined the composition of the WRIA 1 Planning Unit (PU) in a Structure and Function memo dated March 25 1999. [\[Pages 4-5\]](#)

December 1999 County Attorney Dan Gibson confirmed at a PU meeting that the Act vested responsibility for review and approval of a watershed plan with the PU, and no other body. [\[Page 5-6\]](#)

WRIA 1 PU reviewed and approved the 2005 Watershed Management Plan, Phase 1 (2005 WMP) and the 2007 Detailed Implementation Plan (2007 DIP). [\[Page 6\]](#)

In Fall 2007 a state Attorney General's opinion determined that post-plan adoption roles of planning units would remain as before plan adoption by default, unless the adopted plan provided otherwise. [\[Page 6\]](#)

Both the 2005 WMP and 2007 DIP explicitly provide for a post-adoption role for the PU. [\[Page 7\]](#)

In 2000 the IGs entered into an Interlocal Agreement (ILA) forming the Joint Administrative Board (JAB); the ILA provides for administrative functions only. Nothing in said ILA amended or reduced the role of the Planning Unit, or transferred any of the Planning Unit's statutory responsibility to the JAB. [\[Page 8\]](#)

In February 2009, the WRIA 1 Staff Team decided the PU should be converted to an advisory committee. The PU rejected that proposal at its June 30 2009 regular meeting. [\[Page 9\]](#)

July 8 2009 JAB decided it should resolve its authority over the PU "in a reasonable time frame," and **"Planning Unit remain in place until further discussion by Planning Unit and ... Boards."** [\[Pages 10-11\]](#)

Various WRIA 1 participants have tried to justify suspending PU activities by claiming that the PU's role is over, since the process of watershed planning concluded once implementation began. Yet the 2005 WMP clearly states it is an interim plan only, that it will require revision from time to time. [\[Pages 11-12\]](#)

Further, the Adaptive Management provisions of the plan call for iteration between planning and implementation, driven by monitoring of results. [\[Page 12-15\]](#)

Thereafter, Staff Team stopped scheduling PU meetings; the latter, at that time having no independent means of operating, languished in limbo for over four years. [\[Page 15\]](#)

The JAB developed the 2010 Lower Nooksack Strategy (LNS) without PU involvement. [\[Pages 15-16\]](#)

Legal and other questions remain unanswered regarding the propriety of procedures used to develop LNS, as well as conflicts between Instream Flow Action Plan (IFAP) and LNS Objective 1. [\[Pages 16-17\]](#)

County Council Surface Water Work Session does not resolve the issues regarding PU [\[Page 17\]](#)

In February 2013, prompted by County Attorney Dan Gibson memo on the legal status of the PU, County Executive Louws reversed his position and recommended to council the PU be re-started. [\[Pages 18-19\]](#)

In Resolution 2013-025, approved July 23 2013, council recognized the PU for its statutory role in watershed planning, and added an advisory role for matters outside watershed planning. [\[Page 24--25\]](#)

PU survives, but, isolated from JAB, plays no meaningful role in the Project. [\[Pages 25 -- 26\]](#)

JAB and staff team continue to mischaracterize the PU [\[Page 26\]](#)

JAB morphs itself into the watershed management board: [\[Pages 27 - 29\]](#)

JAB representative on PU makes false claims regarding PU role in an interlocal agreement [\[Pages 29 - 30\]](#)

Government participation in the Planning Unit dwindles over time [\[Page 30\]](#)

Procedural History of WRIA 1 Watershed Management Planning

Page 1

68 **Statutory Role and Procedural History of WRIA 1 Watershed Planning Unit 1999-2018**

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76 [Questions regarding the March 1999 Structure and Function Memo Arose During Planning Unit](#)
77 [Meetings](#) [Pages 5 -6]

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79 [WRIA 1 Planning Unit work products](#) [Page 6]

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81 [Status and role of the Planning Unit after Plan adoption](#) [Page 6]

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85 [The Act places responsibility for implementation plans with planning units](#) [Page 8]

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[Appendix 2](#): Figure 3 Management logic model of the WRIA 1 Watershed Project [Page 36]

[Appendix 3](#): Figure 2 Planning logic model of the WRIA 1 Watershed Project [Page 37]

[Appendix 4](#): Contradictory Logic Models for the WRIA 1 Salmon Recovery Project [Pages 38 - 39]

[Appendix 5](#): Transcript of state auditor's exit interview with JAB personnel [Page 40]

[Appendix 6](#): PUD staff misrepresentations before PU meeting October 25 2015 [Pages 41- 43]

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Statutory Role and Procedural History of the WRIA 1 Watershed Planning Unit 1999-2018

NOTE: References and links found in [Appendix 1](#)

Statutory Role of planning units:

The Watershed Planning Act [RCW 90.82] provides an operational definition of initiating governments, and directs said initiating governments to form a planning unit that would provide citizens representing local water resources interests maximum input and direction to the planning process, in a fair and equitable manner. In so doing it found as a matter of fact that such broad representation was necessary because “... *the local development of watershed plans for managing water resources and for protecting existing water rights is vital to both state and local interests. The local development of these plans serves vital local interests by placing it in the hands of people: Who have the greatest knowledge of both the resources and the aspirations of those who live and work in the watershed; and who have the greatest stake in the proper, long-term management of the resources.*” [RCW 90.82.005; RCW 90.82.010; RCW 90.82.030]

Further, the Act placed responsibility for managing the overall planning process with planning units, per RCW 90.82.030(1) “All WRIA planning units established under this chapter shall develop a process to assure that water resource user interests and directly involved interest groups at the local level have the opportunity, in a fair and equitable manner, to give input and direction to the process.” [emphasis added]

Thus, the legislature placed unprecedented responsibility upon planning units. RCW 90.82.130 requires that only a planning unit can recommend approval of watershed plans, and that while county legislatures are given authority for final plan approval, counties cannot amend a watershed plan, they may only send it back to the planning unit for revision [RCW 90.82.130 (2) (b)]. This limitation contrasts markedly from the usual practice, where the members of bodies such as planning commissions are appointed by the county and present their work to the county, which can do with it whatever it sees fit. During the discussion held in the County Council’s July 23rd 2013 Public Works Committee meeting, of AB2013-190 regarding Resolution 2013-025, entitled *Resolution Recognizing the Role of the WRIA 1 Planning Unit to Assist the Whatcom County Council Regarding Water Resources*, county attorney Dan Gibson consulted the Act and confirmed this point at the request of Committee members.

The legislature also empowered planning units to petition Ecology for general stream adjudications [as provided for under RCW 90.03.105].

With one exception, the legislature empowered planning units, and no other body, to seek the grants made available under the Act.

No subsequent amendments to the Watershed Planning Act modify the role of planning units.

[\[Return to Findings\]](#) [\[Return to ToC\]](#)

Formation of the WRIA 1 Planning Unit.

In October 1998 Whatcom County, PUD, Bellingham and Lummi Nation entered into a Memorandum of Agreement (MOA) that, among other things, committed those parties to act as the Initiating Governments under the Act, to initiate watershed planning under its auspices, which required formation of a planning unit. Nooksack Tribe did not sign the MOA, but later agreed to participate as an initiating government as defined by the Act.

Thereafter, the five WRIA 1 Initiating Governments issued a memo on the structure and function of the WRIA 1 Watershed Management Project in March of 1999, in which they set forth the detailed caucus structure of the WRIA 1 Planning Unit, named each caucus, and established the basic rules of caucus formation (self-selected representatives, etc.). Each caucus that needed to bring a large and diverse membership together (including, but not limited to, environment, land development, private wells, forestry, and fishers) did so under the watchful eye and with the explicit support of the WRIA 1 Initiating Governments.

Excerpts from the March 25 1999 Structure and Function Memo read in relevant part:

200 “The state legislature, with agreements from federal agencies, has provided an opportunity for
201 watershed management decisions to be made locally. The local opportunity was provided by the Watershed
202 Management Act (ESHB 2514, RCW 90.82) of April 1998. The law provides that if local representatives in
203 WRIA 1 can work together, make scientifically sound assessments of the problems; collaborate to form a
204 Planning Unit; forge agreements among the affected parties; adhere to federal, tribal, state, and local laws;
205 and create a comprehensive watershed management plan and implementation strategy, than the state
206 agencies will accept the locally determined decisions. Federal agencies participating or represented in the
207 planning project may also accept the applicable obligations included in the plan. From Page 1

209 “An initial attempt to describe the structure and function of the Watershed Management Project was
210 released on December 29, 1998. In response to comments received about the document, the structure has
211 been refined and additional information provided on the Public Involvement and Education plan and caucus
212 formation and function. A new schedule for formation of the Planning unit is also being developed. This
213 report presents the refined structure and function of the Planning Unit and the other elements of the
214 Watershed Management Project. This document does not, however, change or waive any rights of the
215 Initiating Governments under ESHB 2514. From Page 1, emphasis added.

217 “If local elected and appointed decision-makers can succeed at working together, they will
218 determine how water resources in WRIA 1 are managed. If local decision-makers cannot cooperate and
219 plan together, the state, tribal and federal governments will make the necessary water resource management
220 decisions. From Page 1.

222 “These [Initiating] governments have assembled a capable Staff Team that is action oriented and
223 has learned the lessons of past water resource planning efforts. The Watershed Management Act may
224 provide the last opportunity for local decision-makers to plan and implement necessary water resource
225 solutions. Now is the time to trust, cooperate, and work together. From Page 2, emphasis added.

227 “The attached diagram of WRIA No. 1 Watershed Planning defines and describes the components
228 and functions of the planning project. The arrows between the components in the diagram mostly represent
229 the flow of information, communication, and feedback, and should not be confused with organizational
230 charts that depict lines of authority and reporting responsibility. This process must be a collaborative effort,
231 characterized by cooperation, trust, and mutual support if it is to succeed. From Page 3, emphasis added.

233 “Whatcom County is the Lead Agency for the Watershed Management Project. The role of the Lead
234 Agency in this effort is administrative. The agency is to coordinate and facilitate the watershed planning
235 process. The Lead Agency will provide staff and receive and disburse funds for the execution of grants,
236 contracts, and services as determined by consensus of the Initiating Governments. Whatcom County, as the
237 general purpose government with county-wide taxing authority, is the rational source to fund the local
238 portion of the Watershed Management Project. From Page 4, emphasis added.

240 “The Initiating Governments intend to provide some support to the caucus organizations and to
241 facilitate the formation of the caucuses. It would not be appropriate, however, for the Initiating
242 Governments to assume responsibility for the formation and functioning of the caucus organizations. Each
243 caucus is the responsibility of its members. From Page 4.”

245 The WRIA 1 Planning Unit caucuses began meeting in June of 1999. Over the first several months of its
246 existence the Planning Unit developed a document setting forth its rules of business, entitled Process and
247 Procedural Agreement, which was executed in December of that year.

248 [\[Return to Findings\]](#) [\[Return to ToC\]](#)

250 **Questions regarding the March 1999 Structure and Function Memo Arose During Planning Unit** 251 **Meetings.**

252 In WRIA 1, discussion of the role of planning units and the related issue of what authority initiating
253 governments had over planning units after their formation, began as soon as the Planning Unit convened in
254 June of 1999. The discussion continued and intensity of the concerns built until, at its regular December 22

255 1999 meeting, county attorney Dan Gibson gave some legal advice regarding those issues. Excerpts from
256 the summary of that meeting read in relevant part:

257 Question [from Planning Unit member]: In terms of approval of the plan, who holds that authority
258 with respect to the structure established for this planning process in our WRIA? What relationship do the
259 IGs have as members of the PU in terms of approval or lack thereof of that plan to whoever has the final
260 authority to approve it?

261 Dan Gibson: I'm not going to go too far into my reaction to the way the IGs are relating to the PU.
262 If IGs expect to have a vote, as I read RCW they must do so as members of the PU. On the issue of plan
263 approval, if parties want a vote, they do so as members of the PU. They might identify themselves as IGs
264 within broader context of the PU. It is the PU that approves/disapproves the plan. It then moves forward
265 to County Council.

266 Question: The perception is that the PU makes a decision – and the Process and Procedural Agreement
267 stipulates that if the table cannot decide then it goes up to the IGs – the IGs will then make that decision
268 by consensus. So it sounds like, the understanding of the law is that tribes are not going to be voting
269 unless the PU can not agree.

270 Dan Gibson: The law does not say that. In the process, as it has developed here, there seems to
271 have been a wedge driven between the IGs and PU. The law makes no distinction in terms of plan
272 approval. Plan approval is made by the PU. IGs are perceived to be members of PU. One cannot avoid
273 section 90.82.130 of the statute, which calls for approval of the plan by PU and not by some other group.
274 So to the extent IGs have a voice and are clearly given large and significant voice, in fact veto power must
275 be done in context of the PU. [\[Return to Findings\]](#) [\[Return to ToC\]](#)

276

277 **WRIA 1 Planning Unit work products:**

278 The WRIA 1 Planning Unit recommended adoption of a 2005 Watershed Management Plan, Phase
279 1 (2005 WMP), and a 2007 Detailed Implementation Plan (2007 DIP). The County Council approved both
280 Plans. Such council approval was the final step in the plan adoption process as set forth in the Act.

281 The Planning Unit also reviewed and approved many other documents, including scopes of work for
282 contractors, and the work product of said contractors.

283 The Planning Unit also participated, on equal footing with other Project participants, in the selection
284 of contractors.

285 [\[Return to Findings\]](#) [\[Return to ToC\]](#)

286

287 **Status and role of the Planning Unit after Plan adoption:**

288 The issue of post-plan adoption role of planning units was raised by various WRIA 1 participants
289 and passed along to the state AG's office, with the following result, from a document entitled WRIA 1
290 Planning Unit Fall 2007 Update:

291 *Planning unit authority during implementation:*

292 RCW 90.82.043 and RCW 90.82.048 provide little additional guidance about how planning units are to be
293 established or organized, who the lead agency should be, or how decisions are to be made. Washington
294 Assistant AG Maia Bellon's recommendation was that absent detail in the statute authorizing Phase 4 actions,
295 the rules established in Phase 1 regarding initiation, structure, function, and decision-making still apply as
296 default. She also suggested that existing agreements already developed by the planning unit, and any guidance
297 provided in the approved watershed plan, are commonly used by other planning units as guidance for initiating
298 Phase 4. If the Planning Unit desires more clarity about planning unit structure in Phase 4, another alternative
299 could be to seek clarifying language in RCW 90.82 from the legislature. The Planning Unit approved Watershed
300 Plan states that the interim strategy for governance and administration during watershed plan implementation is
301 to retain the organizational structure for plan development but with modifications to the process to reflect a
302 reduced level of funding.

303 Link to Fall 2007 Update document [\[link not available as of 20191008\]](#)

304 [\[Return to Findings\]](#) [\[Return to ToC\]](#)

305

Continuing Role of Planning Unit: Both the 2005 WMP and 2007 DIP explicitly provide for ongoing involvement of the PU. Both WMP and DIP establish a schedule of quarterly PU meetings, budgeted for with Project funds, and a subcommittee was scheduled to address Project funding and governance issues left unresolved by the 2005 WMP. Below are relevant excerpts from both plans:

2007 DIP Page 25 Table of Tier 1 Actions

Page 25, In Second Row, Column labeled Milestones:

Organize and conduct Planning Unit meetings as described in the June 2005 WRIA 1 Watershed Management Plan.

Page 25, In Second Row, Column labeled Schedule:

Q1/08 and Q3/08 (tentative schedule for conducting Planning Unit meetings assuming continued process of 1st meeting to review and 2nd meeting to approve)

Page 25, In Second Row, Column labeled Activity Leads:

WRIA 1 Staff Team and support staff lead for coordinating tasks.

Further, in his memo to Executive Louws dated February 6 2013, Dan Gibson, after reviewing the relevant documents, stated: “Second, the primary reason that the planning unit continues to not simply exist but to exist with some expectation of functionality ... is because the Watershed Management Plan adopted in 2005 provides an on-going role for the planning unit, albeit that role is not crystal clear.

“Planning Unit - The composition of the Planning Unit with respect to caucuses represented will not change. Modifications to the Planning Unit processes include a reduction in meeting frequency. It is anticipated that the Planning Unit will have up to four (4) facilitated meetings per year. Scheduled meetings will be for the primary purpose of considering recommendations relative to instream flows or to the Federal/Tribal settlement negotiations, legislative changes, and formal WRIA 1 Watershed Management Plan updates. Opportunities for feedback and input from the Planning Unit on WRIA 1 WMP implementation activities outside of the scheduled facilitated meetings will be provided through a variety of communication methods including: monthly posting of implementation activities to the WRIA 1 project website; quarterly distribution of a simple newsletter to update WRIA 1 participants on program and project status; email notification of events, meetings, and other notable activities as appropriate; posting of Staff Team meeting summaries to the WRIA 1 Project website; and occasional informal, non-facilitated Planning Unit meetings to receive feedback from and/or provide updates to Planning Unit or other WRIA 1 participants. . . .” WMP, Section 2 [sic, it’s Section 4], p. 5.”

Here is the same language, verbatim:

119 Planning Unit – The composition of the Planning Unit with respect to caucuses represented
120 will not change. Modifications to the Planning Unit processes include a reduction in
121 meeting frequency. It is anticipated that the Planning Unit will have up to four (4)
122 facilitated meetings per year. Scheduled meetings will be for the primary purpose of
123 considering recommendations relative to instream flows or to the Federal/Tribal settlement
124 negotiations, legislative changes, and formal WRIA 1 Watershed Management Plan updates.
125 Opportunities for feedback and input from the Planning Unit on WRIA 1 WMP
126 implementation activities outside of the scheduled facilitated meetings will be provided
127 through a variety of communication methods including: monthly posting of implementation
128 activities to the WRIA 1 Project website; quarterly distribution of a simple newsletter to
129 update WRIA 1 participants on program and project status; email notifications of events,
130 meetings, and other notable activities as appropriate; posting of Staff Team meeting
131 summaries to the WRIA 1 Project website; and occasional informal, non-facilitated Planning
132 Unit meetings to receive feedback from and/or provide updates to Planning Unit and other
133 WRIA 1 participants. Planning Unit members are also encouraged to contact members of
134 the Staff Team, and in particular the Staff Team chair, if they have comments or concerns
135 that arise through their review of the various update mechanisms. The composition of the
136 Planning Unit with respect to interests represented will not change.

[\[Return to Findings\]](#) [\[Return to ToC\]](#)

The Act places responsibility for implementation plans with planning units

RCW 90.82.043 reads in full:

(1) Within one year of accepting funding under RCW [90.82.040](#)(2)(e), the planning unit must complete a detailed implementation plan. Submittal of a detailed implementation plan to the department is a condition of receiving grants for the second and all subsequent years of the phase four grant.

(2) Each implementation plan must contain strategies to provide sufficient water for: (a) Production agriculture; (b) commercial, industrial, and residential use; and (c) instream flows. Each implementation plan must contain timelines to achieve these strategies and interim milestones to measure progress.

(3) The implementation plan must clearly define coordination and oversight responsibilities; any needed interlocal agreements, rules, or ordinances; any needed state or local administrative approvals and permits that must be secured; and specific funding mechanisms.

(4) In developing the implementation plan, the planning unit must consult with other entities planning in the watershed management area and identify and seek to eliminate any activities or policies that are duplicative or inconsistent.

Source: <http://apps.leg.wa.gov/rcw/default.aspx?cite=90.82.043>

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The formation of the Joint Administrative Board (JAB):

While the March 1999 Structure and Function document made explicit reference to a “government-to-government” structure that would enable Lummi Nation and Nooksack Tribe to participate in the WRIA 1 Project without risking adverse impacts to the legal status of their treaty rights, as the Planning Unit began operation both tribes announced their legal counsel had advised against their direct participation in the Planning Unit. The Staff Team advocated the formation of the Joint Administrative Board (JAB), consisting of the executive decision makers of the five Initiating Governments, as a means to enable tribal participation in the Project without their direct involvement in the Planning Unit. The JAB was established by an interlocal agreement (ILA), executed by its parties in early 2000, which sets forth the JAB’s scope of responsibility as administrative functions including receipt and disbursement of funds and contracting for work approved by the Planning Unit.

Nothing in said ILA amended or reduced the role of the Planning Unit, or transferred any of the Planning Unit’s statutory responsibility to the JAB. The ILA doesn’t even mention the purpose of keeping the tribes at the table; the discussion of that issue took place during Planning Unit meetings between September and December, 1999, including a special Interlocal Committee of the Planning Unit established to review and approve the text of the Interlocal [source: Planning Unit meeting summaries September through December 1999].

Dan Gibson’s memo to Executive Louws of February 6 2013 provides additional background on this topic:

“There are a couple of wrinkles in the process [set forth in the Watershed Planning Act] as it has played out in Whatcom County that have contributed to the current level of uncertainty about the on-going role of the Planning Unit. First, while the statutes appear to presume that the initiating governments would be subsumed into the planning unit, so that the initiating governments’ interests and positions would all be mediated through the more broadly constituted planning unit, that presumption did not come to pass here in Whatcom County. Because of the long-standing position of tribes that they engage only in government-to-government negotiations, the tribes declined to become participants in the planning unit in Whatcom County. Instead a hybrid process was established whereby the planning unit, without tribal participation, did its work, after which that work was reviewed and accepted by the “joint board” (essentially the initiating governments), and following that the plan was referred to the County legislative authority for adoption.”

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In 2009, the Staff Team proposed changing the Planning Unit to an advisory group:

Subsequent to the approval of the 2007 DIP, some Planning Unit members questioned whether the WRIA 1 Watershed Management Project was drifting off course. For example, the County's Comprehensive Water Resource Integration Program (CWRIP) appeared to run afoul of some provisions of the 2005 WMP and the 2007 DIP. Further, some Planning Unit members questioned whether the Adaptive Management section of the WMP was being implemented properly. A discussion of this issue is captured in the meeting summary of the January 21 2009 regular Planning Unit meeting. The decision was made at that meeting to continue the discussion at a later meeting, after the Staff Team had had a chance to review the matter.

[source: January 21 2009 WRIA 1 Planning Unit meeting summary, beginning Pages 6 through 8; **due to crash of the original Project site, the following link is no longer valid:**
http://wria1project.whatcomcounty.org/uploads/PDF/Meeting%20Materials/Planning%20Unit/Planning_Unit_Summary_01-21-09_DRAFT.pdf

The Staff Team next met a month later. The written summary of the February 25 2009 Staff Team meeting contains the following, beginning Page 3:

6. WRIA 1 Program Integration Structure and Function

There was a discussion on the role of the Planning Unit (PU), based on tables that were created the last time this topic was on the ST/TTL agenda, as well as the legislation that discusses the role of the Planning Unit. The three phased structure document presented to the Joint Board in April 2007 was discussed as well. ST/TTL discussed the PU role during plan development and potential roles in transition of WRIA 1 governance into a more comprehensive structure. Becky [Peterson, Geneva Consulting, the WRIA 1 staff team/JAB contract coordinator] provided a review of the March 2000 SOW, Section 2.7, Process Flow Control Protocol. She asked if, regardless of the path forward, if this process was the intended process for purposes of implementing the three phased document. **A ST/TTL provided their interpretation of the PU decision making process, and it is that of an advisory role. Some ST/TTLs feel that for implementation the PU would function best if it is clearly stated they are an advisory committee, and that though it would be a difficult discussion, it needs to be held. While some PU members may be unhappy with this reorganization, they will at least know the fate of the PU.** It was noted that there is a need for water systems to have individual plans that are consistent with watershed planning, and there needs to be certainty. A ST/TTL noted a model for an advisory committee, under which there is a community advisory council, a board, and executive level decision makers, which would have a defined decision making process. Becky recommended reviewing how the 2007 document can be revised then taken to the PU and finally, presented to the Joint Board. A ST/TTL noted that the PU should be advisory, but include advisory ability for Salmon Recovery, hoping to result in a better way of making connections, rather than another layer of bureaucracy. Becky will draft a document that frames the discussion about proposed changes in the PU function to the advisory capacity. [emphasis added]

Action Item: Becky will draft a document that frames the discussion about proposed changes in the PU function to the advisory capacity."

Source: **[link no longer available since the original Project site crashed.]**

<http://wria1project.whatcomcounty.org/uploads/PDF/Meeting%20Materials/Staff%20Team/WRIA%201%20Staff%20Team%20Meeting%20Summary%202002-25-09.pdf>

The meeting summary makes no mention of any controlling legal authority to justify the proposal. The meeting summary appears to suggest that the entire Staff Team members present at said meeting supported the proposal.

The proposal was brought before the WRIA 1 Planning Unit at its June 30, 2009 meeting. The Planning Unit rejected the proposal, although some of its members supported it.

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JAB attempts to decide fate of Planning Unit:

At its meeting held July 8, 2009, the JAB rejected a proposal by the County to continue the Planning Unit, albeit in a somewhat limited role.

Source: http://wrialproject.whatcomcounty.org/uploads/PDF/Meeting%20Materials/Joint%20Board/07-08-2009/DRAFT_2009_July8_WatershedPlanning_SalmonRecovery_Policy%20Meeting.pdf

NOTE: link no longer valid due to crash of the original Project site.

The following are excerpts from the written meeting summary.

Discussion:

WRIA 1 Watershed Management and Salmon Recovery Programs Implementation

Jon Hutchings [then with Whatcom County Public Works] reviewed the status of transitioning in to an implementation governance structure that had been discussed by the program policy boards in 2007. At that time the policy boards approved the first phase, which was to consolidate the meetings of the two policy boards. The next phases were proposed to move forward when identified milestones were achieved. The additional phases of the structure proposed in 2007 were not approved by the Joint Board at the time, and the action was that the Staff Team would consider the next phases and feasibility of implementing them. For a number of reasons including that the milestones are progressing to completion, the Staff Team initiated a review of the organizational structure presented in 2007 for feasibility of implementing. Based on the review, a revised implementation structure was prepared for the Joint Board and Salmon Recovery Board consideration. Jon continued explaining that the revised implementation structure was discussed by the Staff Teams of both Boards, the Salmon Recovery Board's Steering Committee, and presented and discussed at two informal meetings with Planning Unit caucus representatives and at the June 30 Planning Unit meeting. Additionally, Whatcom County staff met individually with a number of Planning Unit representatives to discuss the current status of the Planning Unit and the role in implementation. Planning Unit members' comments from the June 30 Planning Unit meeting on the proposed implementation structure were distributed via email to the Joint Board.

Jon [Hutchings, Whatcom County] presented his recommendation to the Joint Board, which is to move forward with the structure while retaining the Planning Unit for purposes of the instream flow action plan. Points discussed and/or raised by the WRIA 1 Joint Board and Salmon Recovery Board members included:

- The Nooksack Tribe Joint Board member expressed the perspective of having a stakeholder group that can address all projects from a wide range of programs that come forward similar to a watershed council. He is not sure that the Planning Unit is structured to serve in that capacity, and that the role of the Planning Unit during the planning phase is not applicable to the implementation phase.
- The City of Bellingham member expressed the perspective that it is important to identify the role of the stakeholder group. If the Boards are asking a group to provide input then it is important that the Boards provide support for the stakeholder group.
- The PUD No. 1 raised the question that had been brought up at an earlier Planning Unit meeting involving the Planning Unit's authority once the Planning Unit is established and the watershed plan approved. The legislation is not clear on what happens once the plan is approved. The other related question is the authority vested in the Joint Board as it relates to the Planning Unit, and whether the Joint Board has the authority to sunset the Planning Unit if the Joint Board established it.
- The designated representative for the City of Blaine expressed the need to clarify within the organizational structure where discussions associated with out of stream water needs will take place.
- The designated representative for the City of Lynden expressed a perspective that the Planning Unit needs to remain in place because it is the only link the small cities have into the instream flow process at this time.
- Joint Board and Salmon Recovery Board discussed the proposed implementation structure and investments of time that have been made to date by the Planning Unit. Jon Hutchings recommended to the Boards that concerns expressed about the watershed panel and the process for selecting representatives continue to be discussed and resolved within a reasonable timeframe. In the meantime, he recommended the Boards approve the structure with the exception of the watershed panel, and that the Planning Unit remain in place until there is further discussion by both the Planning Unit and the two Boards. After receiving clarification that the proposed structure does not change the policy level of the proposed structure, the designated representative for the City of Lynden stated support for moving the WRIA 1 Management Team level of the proposed structure forward but not the other components until there is further discussion.

• The Joint Board and Salmon Recovery Board agreed by consensus to implement the WRIA 1 Management Team element of the proposed implementation structure. The watershed panel and process for selecting representatives will continue to be discussed and resolved within a reasonable timeframe. [Pages 3 & 4 of 5 pages]

Actions/Agreements:

The Joint Board and Salmon Recovery Board agreed by consensus to implement the WRIA 1 Management Team element of the proposed implementation structure. **The watershed panel and process for selecting representatives will continue to be discussed and resolved within a reasonable timeframe. The Planning Unit remain in place until there is further discussion by both the Planning Unit and the two Boards** [emphasis added; from Page 4 of 5 pages]

The July 8 2009 JAB meeting summary offers no indication that anyone present at said meeting offered an answer to the question reportedly raised by the PUD representative of what controlling legal authority the JAB had to make decisions regarding the Planning Unit. No subsequent Joint Board meeting summaries make reference to this topic. Thereafter, no mention of the Planning Unit appears in the written meeting summaries of the Joint Board or the Staff Team until 2013.

With respect to the question of whether the JAB “has the authority to sunset the Planning Unit,” county attorney Dan Gibson concluded otherwise. On February 6 2013, he issued a memo to County Executive Louws in which he concluded, as Louws’ summarized it to the County Council, “the Planning Unit has legal status.” Said memo reads in relevant part:

“... the planning unit was not less and could not legally be less than that for which the statute provided. Thus the planning unit did not owe its continued existence, after formation, to the Joint Board nor could the Joint Board unilaterally declare that the Planning Unit was terminated.

“While the statutes carve out no clear role for the planning unit following plan adoption, they do provide for its continuing existence until the formation of a water management board pursuant to RCW 90.92.030.”

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The interim nature of the 2005 WMP:

The WRIA 1 2005 Watershed Management Plan, Phase 1, was intended to serve only as an interim plan. When the legislative bodies of the small cities and other governments who were parties to the 2005 WMP approved it, they included language in their approving resolutions as follows:

“WHEREAS, the WRIA 1 Watershed Management Project – Phase 1 is a step toward the eventual adoption of a watershed management plan that addresses and may resolve water issues important to the City; and

WHEREAS, the WRIA 1 Watershed Management Project – Phase 1 is limited to identifying a “road map” for selecting and adopting instream flows, continuing data collection and monitoring, completing technical studies, and developing the next version of the watershed management plan;” [From City of Bellingham council resolution, Appendix G, 2005 WMP]. Almost exact same language appears in the approving resolutions from Lummi, Nooksack, and the small cities.

Furthermore, the 2005 WMP itself explicitly provides that it is a preliminary plan.

From 2005 WMP Executive Summary, Page 1:

This draft Water Resource Inventory Area 1 (WRIA 1) Watershed Management Plan – Phase 1 (WRIA 1 WMP) was developed through the cooperative efforts of local stakeholders and governments under the framework provided by the Washington State Watershed Management Act (RCW 90.82). The WRIA 1 WMP provides a roadmap for addressing water quantity, water quality, instream flow, and fish habitat challenges faced by residents of WRIA 1 now and in the future, with an initial focus on 2005/2006 activities. **It is to be viewed as a living document that will evolve and develop over time with continued refinement of the technical information necessary to respond to existing and new challenges.** [Emphasis added]

From 2005 WMP Section 3 Page 1:

The purpose of Section 3 is to identify the initial solutions, actions, and alternatives for addressing the key issues identified in Section 2, and the requirements described in the WRIA 1 March 2000 Scope of Work. **As noted in the March 2000 Scope of Work, the identification and evaluation of solutions requires an incremental/iterative process building upon recommendations from previous planning efforts and considering existing laws, programs, and other efforts.** [Emphasis added]

From 2005 WMP Section 3, Page 13:

The Management Options Subcommittee, which was a subcommittee of the WRIA 1 Staff Team, formed in June 2001 to explore approaches for defining, reviewing, and recommending management options for consideration in addressing issues identified as part of the WRIA 1 Project. The approach recommended by the Subcommittee to the WRIA 1 Planning Unit was a three-step process that the Planning Unit subsequently approved. The steps included:

Step 1: Defining Initial Potential Management Options/Creating an Options Catalog;

Step 2: Evaluating the Potential Management Options; and

Step 3: Selecting and Implementing Management Options.

The Management Options Subcommittee initiated the first step - defining initial management options and creating a catalog - with the intent of making the Management Options Catalog a comprehensive source of potential management options for consideration in the WRIA 1 Project. **Management options not pursued for the current iteration of the WRIA 1 Watershed Management Plan - Phase 1 remain in the catalog for consideration in future iterations. Additionally, as part of WRIA 1 Project implementation, there will be an ongoing effort to update the Management Option Catalog including providing a status of the options being pursued, adding new options for future consideration, and modifying language of specific management options as additional information is gathered.** [Emphasis added]

2005 WMP Section 3, Page 32:

Project Design Details for Consideration in Future WRIA 1 Project Updates:

The information outlined below reflects the original design concept outlined in the March 2004 Preliminary Review Draft WRIA 1 Watershed Management Plan. It includes parts of the original design that have not been included previously in this program description. **Retaining the original concept for project design is important because it may need to be referred to when developing future work plans, drafting Watershed Management Plan updates or amendments, and/or modifying project implementation elements as part of an adaptive management strategy.** [Emphasis added]

NOTE: This or similar language appears in various places in Section 3 of the 2005 WMP. Page 51 provides yet another example.

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Planning and implementation: linear transition or iterative process? The Adaptive Management provisions of the 2005 WMP:

From 2005 WMP, Section 4 (begins Page 7)

"4.3 Adaptive Management

Adaptive management is a process that can allow organizations to acknowledge and deal with uncertainty within a deliberate decision making framework. It is a process that facilitates the use of best available science in influencing public policy.

The March 2000 Scope of Work specifies the use of adaptive management in the Watershed Management Plan's implementation and provides a description of the process."

632 The description of the Plan' Adaptive Management provisions are thus found in the March 2000 SOW
633 (Appendix B to the 2005 WRIA 1 WMP):
634

635 2.7 Process Flow Control Protocol (Begins Page 12 Line 504)
636

637 The WRIA 1 watershed planning process, and the implementation of the action elements thereof, shall be
638 executed in a specific sequence of steps that have been established in order to maximize the chances of the
639 plan's success. The sequence embodies and employs the principles of adaptive management. The sequence shall
640 apply to each plan section for each sub-basin and each plan component.
641

642 Generalized Planning Flow Control:
643

644 2.7.1 Planning Process Flow Control Protocol (begins Line 511)
645 The planning process shall consist of the execution of each task within each section in this Scope of Work, in a
646 sequence to be determined by the decision making logic set forth below. The planning process applies to each
647 plan component (water quantity, water quality, instream flow, and fish habitat) within each sub-basin.
648

649 Generalized Implementation Flow Control:
650

651 2.7.2 Management/Implementation Process Flow Control Protocol (begins Line 540)
652 Provisions for adaptive management within the implementation phase (upper right shaded box of Figure 2) are
653 discussed below.
654

655 Provision for Specific Detailed Flow Control
656

657 2.7.3 Process Flow Protocols (begins Line 561)
658 The intent of these Process Flow Control Protocols and their accompanying diagrams is to portray only general
659 process flow. Specific, detailed process flow control protocols will be established, when and if needed, for
660 particular sections or sub-sections of the planning and/or implementation process.
661

662 2.7.4 Implementation Strategy/Status Files (begins Line 566)
663 In order to provide a clear and easily accessible record of the progress of each planning activity within each
664 section of this Scope of Work, project managers shall create and maintain files in a suitable and uniform
665 electronic format that describe the current implementation status of each such activity.
666 Content; File Type(s); Implementation Strategy/Status: where; what; why; when; who; how;
667

668 [NOTE: The Adaptive Management logic model flow charts are reproduced as Appendices 2 and 3 of this
669 document; Links: [Appendix 2](#) [Appendix 3](#); You can compare the WRIA 1 WMP management logic model
670 with that of the WRIA 1 Salmon Recovery Adaptive Management logic model [Appendix 4](#)]
671

672 From 2007 DIP Table 3 Tier 1 Actions (begins Page 25):
673

674 Task: **Adaptive Management**
675

676 Subtask: ☐ ☐ Develop Implementation Schedule for Tier 2 and Tier 3 Category WMP Actions
677

678 Milestones:
679 ☐ ☐ Review status of Tier 1 actions and effectiveness in meeting program/project goals.
680 ☐ ☐ Assess Tier 2 and Tier 3 WMP actions based on outcome of Tier 1 review and recommend
681 changes/modifications to the Tier 2 and Tier 3 actions.
682 ☐ ☐ Develop an implementation schedule for Tier 2 and Tier 3 actions. Incorporate modifications to
683 Tier 1 actions recommended as part of the effectiveness review.
684

685 Related Information:

□□The March 2000 Scope of Work for the WRIA 1 Watershed Management Project includes a strategy for adaptive management in Section 2.7. The review of the Tier 1 actions' effectiveness in addressing goals and objectives of the WRIA 1 Watershed Management Plan and modifications or changes that may need to be made to Tier 2 and Tier 3 actions based on the outcome of the review will be done consistent with the adaptive management process identified in the March 2000 Scope of Work.

□□Tier 1 actions include implementing the ISF Action Plan, which is intended to address water availability for instream and out of stream uses as part of the negotiation process. If after reviewing the Tier 1 actions, it is determined that the negotiation process is not sufficiently addressing water supply for future uses and the role of inchoate rights in meeting future supplies, additional strategies will be identified using the Adaptive Management strategy outlined in Section 2.7 of the March 2000 WRIA 1 Watershed Management Project Scope of Work.

Subtask: Implement Section 7, Adaptive Management of the WRIA 1 Long Term Monitoring Program Strategy

Milestones: □□Establish coordinating/technical team to implement adaptive management steps identified in the WRIA 1 LTMP strategy.

Related Information: □□The WRIA 1 Long Term Monitoring Program Strategy that includes Section 7, Adaptive Management, is included as an Appendix to the WRIA 1 Detailed Implementation Plan.

Subtask: □ Modifications/additions to strategies included in the June 2005 WRIA 1 Watershed Management Plan for addressing water quantity, water quality, instream flow, and fish habitat goals and objectives

Milestones:

□□Prepare annual status report of implementation actions identified in the Detailed Implementation Plan.

□□Based on report, evaluate implementation actions to identify need for modifications and/or additions to strategies for purposes of addressing WRIA 1 Watershed Management Project goals and objectives.

□□Present list of changes, if any, to Planning Unit and Joint Board for consideration.

Related Information:

□□Strategies and programs identified in the June 2005 WRIA 1 Watershed Management Plan were developed to address the goals and objectives identified in the March 2000 WRIA 1 Watershed Management Project Scope of Work. Section 2.7 identifies an adaptive management process for evaluating effectiveness of the implementation strategies included in the WRIA 1 Watershed Management Plan.

From 2007 DIP Long Term Monitoring Program (begins Page 55):

“WRIA 1 Long Term Monitoring Program Adaptive Management The WRIA 1 LTMP adaptive management approach is designed to incorporate monitoring results from programs identified in the LTMP strategy back into the decision-making process in a manner consistent with the overall adaptive management approach described in the June 2005 WRIA 1 Watershed Management Plan. Ensuring monitoring results are appropriately influencing or being incorporated into management programs requires consistent dedication of resources including staff and funding. The steps associated with the WRIA 1 LTMP adaptive management approach, which will run concurrent with the WRIA 1 LTMP strategy implementation, include:

1. Evaluate monitoring data associated with the over-arching monitoring element of the WRIA 1 LTMP strategy and assess extent to which the goals and objectives identified in Section 3.0 have been achieved;
2. Evaluate monitoring data associated with complementary programs;
3. Evaluate status of implementing WRIA 1 LTMP recommendations in Section 6.0;
4. Evaluate status of funding to support implementation of WRIA 1 LTMP strategy;

5. Assess outcome of evaluations identified in numbers 1-4 and determine appropriate adaptive management options;
6. Implement the appropriate adaptive management action consistent with the adaptive management approach described in the WRIA 1 Watershed Management Plan; and
7. Monitor the effects of the adaptive management actions. As part of the adaptive management process, a project team involved with coordinating implementation of the WRIA 1 Watershed Management Plan will initiate the process for implementing the steps outlined above. The process taken will be consistent with organizational procedures identified for the WRIA 1 Watershed Management Project.”
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Planning Unit Meetings Suspended Indefinitely:

Upon the Planning Unit’s rejection of the proposal for it to be relegated to an advisory role, Planning Unit meetings abruptly ceased. The 2007 DIP placed responsibility to schedule Planning Unit meetings with the Staff Team. Even though the JAB’s decision was for the Planning Unit to continue meeting until somehow a final resolution of the issue was achieved, the Staff Team stopped scheduling Planning Unit meetings. Thereafter, the Planning Unit, at that time having no independent means of operating, languished in limbo.

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The 2010 Lower Nooksack Strategy (LNS):

In October 2010 JAB issued a document entitled **Achieving Economic and Environmental Certainty in Water Availability for the Lower Nooksack River Sub-basin: Work Plan, Budget and Financing Strategy [Short Title Lower Nooksack Strategy]**

https://drive.google.com/file/d/1eErZa_KHg2_R8cNVCpas3A3x2xPSsfIv/view

Introduction/Background

On July 7, 2010 the WRIA 1 Joint Board directed its Management Team to propose a work plan, budget and financing strategy to advance a negotiated settlement of Tribal and state in-stream flow water rights on the mainstem of the Nooksack River, while maximizing the economic and environmental benefits of out-of-stream water use in the Lower Nooksack sub-basin. The Joint Board directed staff to (1) apply approximately \$600,000 in Joint Board budget capacity to the work, and (2) prepare a leveraged five-year financing strategy to achieve this shared goal. **11 This direction is consistent with WRIA 1 Watershed Management Plan priorities.** [Emphasis added]

The purpose of this document is to outline work that must be performed to achieve the shared goal and desired outcomes as they are described below.

The LNS contains five inter-related objectives, under each of which certain tasks needed to achieve the objective are outlined:

Objective 1: Develop and implement a process for negotiating settlement of water rights on the Mainstem Nooksack River.

Objective 2: Update and verify the Lower Nooksack River sub-basin water budget and provide technical support for decision-making.

Objective 3: Update the Whatcom County Coordinated Water System Plan.

Objective 4: Continue and, if appropriate, enhance targeted streamflow and water quality sampling at locations identified in the WRIA 1 Long Term Monitoring Program.

Objective 5: Advance work on tools that foster water resource allocations consistent with long-term economic and environmental land-use goals for implementation in five years.

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Procedural and Substantive Questions Arise regarding 2010 LNS:

Objective One, the negotiated settlement of water rights, appears to be based on, and to incorporate elements of, the 2005 Instream Flow Action Plan [IFAP], approved as part of the 2005 WMP.

Some Planning Unit caucuses have questioned, however, whether the two documents are entirely consistent, and assert that the official activities that took place subsequent to the adoption of the IFAP, including actions under the LNS, were inconsistent with some of IFAP's provisions. Further, some elements of the decision-making process set forth in the IFAP may violate provisions of the Watershed Planning Act. A memo dated May 6 2015 from Roger Brown of the WRIA 1 Water Districts Caucus, in part based on analysis of former Whatcom County attorney and municipal law expert Bob Carmichael, makes these and other points.

Objective Three, water supply planning, of which the update of the county-wide Coordinated Water System Plan is but one part, provoked controversy before the county council when the JAB sought Economic Development Investment (EDI) monies to fund a portion of the work. The meeting minutes of the September 13 committee meeting at which this issue was discussed read in relevant part:

COUNCIL "CONSENT AGENDA" ITEMS 1. REQUEST APPROVAL OF THE ECONOMIC DEVELOPMENT

INVESTMENT BOARD'S RECOMMENDATIONS FOR EDI FUNDING (AB2011-281) (11:27:07 AM)

Kershner moved to recommend approval to the full Council.

The following people spoke and answered questions:

Jon Hutchings, Public Works Department

Roger Brown, Birch Bay Water and Sewer District General Manager, referenced a letter he sent. The lower Nooksack strategy violates the terms of the adopted watershed management plan. The process for approving the lower Nooksack strategy has happened in secret. There are questions of whether the coordinated water system plan is well suited to address questions and whether the PUD is appropriate. Explore the questions in more depth during a water resource work session. He is concerned about their place in the project and the secrecy.

Steve Jilk, Whatcom Public Utility District (PUD), stated their request is a key component of the watershed management plan adopted several years ago. Meetings weren't held behind closed doors. Approve the economic development investment (EDI) allocation, but not approve the PUD until they have a discussion on how the project should be led. PUD is taking this on as a member of the Joint Board. The Joint Board approved the strategy, budget, and work plan last year. Part of this is using the coordinated water system plan as a basis for the water supply plan. The County is responsible for the coordinated water system plan. The PUD has shown it's willing to take this on to create a broader level of credibility about what is needed to support the local economy.

Knutzen asked and there was discussion of whether the Water Supply Planning Project would quantify agricultural use of water.

Mann asked and there was discussion of why the County wouldn't manage the Water Supply Planning Project.

Brenner asked and there was discussion of conflicts from different entities competing for the water.

(11:52:40 AM)

Crawford asked and there was discussion of:

Whether Mr. Jilk is amenable to reconvening the Planning Unit.

The formation and purposes of the Planning Unit and Joint Board.

Why the Joint Board would not drive this Water Supply Planning Project.

Whether the Water Supply Planning Project process has been secret, as Mr. Brown stated.

Whether the Planning Unit can convene and provide input. Convene the Planning Unit at the start of the process, and they can meet again at the end of the process to provide input.

Weimer asked and there was discussion of whether the Joint Board was unanimous in recommending that the PUD take the lead.

Hutchings referenced letters (*on file*) from the small cities and City of Bellingham, which are in the Council packet.

Kershner asked and there was discussion of:

How the Water Supply Planning Project would benefit the economy, since they're using EDI funds.
What this expense would pay for

Brenner stated she was concerned that the County wasn't involved.

Mann suggested a friendly amendment to withdraw the Water Supply Planning Project and schedule a discussion of it in a water resources work session.

The minutes of the evening council meeting held that same day read in relevant part:

1. REQUEST APPROVAL OF THE ECONOMIC DEVELOPMENT INVESTMENT BOARD'S RECOMMENDATIONS FOR EDI FUNDING (AB2011-281)

Mann reported for the Finance and Administrative Services Committee and *moved* to approve the request. Vote to allocate the funds now, and schedule a discussion of water law and the contract specifics during a Surface Water work session.

Crawford stated he will support the motion. His concerns have been addressed. Once they come up with a contract, they can specify they would like to reconvene the Water Resources Inventory Area (WRIA) One Planning Unit to provide input at the beginning of the contract and again toward the end of the contract.

Brenner stated she has misgivings about any party that competes for water rights being in a position like this. The County is not a water purveyor, so it should be in that position. She hopes the Planning Unit will make that recommendation. She is in favor of the motion, given the conditions.

Kershner stated she voted against the request during committee today because she is opposed to secret meetings that deal with issues in which the public has a vested interest. Also, she didn't understand how Economic Development Investment (EDI) funds could be used for this request. Now, she's concluded that water is essential to economic development. She will vote for this. She hopes the secret, exclusive meetings will cease.

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The November 15 2011 County Council Surface Water Work Session:

Meeting minutes:

<http://documents.whatcomcounty.us/weblink8/0/doc/3333499/Page1.aspx?searchid=b0031914-8ddb-4505-9b31-fe029793050e>

Audio recording:

<https://www.digitalarchives.wa.gov/Record/View/441C48AEFCA0E4B2FC25B7475A4AC139>

As directed by council, a Surface Water Work Session took place November 15 2011, at which county staff, represented by Dr. Jon Hutchings, then Assistant Director Public Works, summarized what led him to develop the presentation as follows, roughly transcribed from the recording of the session:

There was some discussion [by council] about future representation in this process and what the scope of work would ultimately be and how all that fits together, so you asked us to bring forward a discussion of the entirety of this water resource planning effort that has been underway, and bring us all the way to the present where we can have a conversation about what this LNS means as a component of that and how it ties into the CWSP [County Coordinated Water System Plan] update.

Rather than engage directly in those topics, Dr. Hutchings instead launched into a lengthy recitation of his or somebody's version of the history of the entire watershed planning process, supported by a two-page handout entitled "A Brief History of Watershed Planning in Whatcom County." Only at the end of that presentation was there time for any discussion of the underlying issues, as listed in the council meeting minutes quoted above.

At the conclusion of the November 15 Surface Water Work Session, Dr. Hutchings was asked by some council members what the next step would be. He said there were generally two next steps.

First, where [the Non-Government Water Systems caucus rep] left us is really the conversation that needs to happen over the course of the next months, into 2012, to talk about this question of representation and all that business. We've been through it, not made a lot of progress, needs to be brought to a head. At the same time, advancing the Lower Nooksack Strategy, so we'll come back around to you [council] with a scope of work for the Coordinated Water System Plan update, and we'll talk about reestablishing that committee [Water Utility Coordinating Committee] that, ah, so on and so forth.

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Planning Unit 2.0

The Tide Turns:

As documented in the section entitled [Procedural and Substantive Questions Arise re LNS](#), beginning Fall 2011, as a result of the public opposition to the implementation of Objective Three (water supply planning) of the LNS, County Council members began raising questions about the Planning Unit's proper role in the Project.

A couple of lengthy, detailed presentations by Planning Unit participants before the council's Public Works Committee in July and August of 2012 explicitly raised legal, ethical and practical problems associated with the continuation of watershed planning under RCW 90.82 in the absence of the duly-established body vested with the responsibility for such planning. At the January 17 2013 JAB meeting, members of the public openly expressed these concerns; one PU representative threatened a lawsuit if the PU was not restored to its proper role forthwith.

As a prophylactic measure, in early 2013 Executive Louws asked the county attorney's office to review the legal status of the PU. Dan Gibson's memo in response to that request, dated February 6 2013, after reviewing the statutory responsibility of planning units and summarizing how the PU and the JAB came to be constituted, concluded thus:

"... the planning unit was not less and could not legally be less than that for which the statute provided. Thus the planning unit did not owe its continued existence, after formation, to the Joint Board nor could the Joint Board unilaterally declare that the Planning Unit was terminated."

Further, Gibson noted "While the statutes carve out no clear role for the planning unit following plan adoption, they do provide for its continuing existence until the formation of a water management board pursuant to RCW 90.92.030."

Upon receipt of the Gibson memo, Executive Louws, on February 11 2013, issued a memo to council on the subjects of the Planning Unit, the proposed role of PUD in water supply planning in furtherance of Objective Three of the LNS, and the use of EDI funds for that purpose. Relevant excerpts follow:

Regarding Gibon's conclusions on the Planning Unit, in a memo to Council Executive Louws stated: "The condensed version is that the 'planning unit' has legal status."

"I recommend that the council take no action on all items related to the PUD contract tomorrow, including the budget amendments."

"This leads to the discussion of using EDI money to fund water related plans. The EDI Board, Administration, the county attorney, and the council approved use of the EDI funds in 2011 to fund these projects. After further review, it is my and staff's recommendation that EDI funds not be used for water plans or planning in the future."

"Recap of e-mail:

- * Planning Unit has legal status
- * PUD is not willing to facilitate WSP
- * EDI Funding is not available for funding
- * Recommend that Council take no action on all items related to PUD
- * Flood money is an option, along with General Fund for money"

"I recommend that we step back from making any big decisions related to this subject tomorrow [council meeting of Feb 12 2013]."

The council meeting minutes of February 12 2013 indicate it followed Executive Louws' advice:

Feb 12 regular Council Meeting minutes excerpt:

<http://documents.whatcomcounty.us/weblink8/0/doc/3329036/Page1.aspx?searchid=4b226045-428a-409a-ba54-34ce6518e5cf>

958
959 6. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO AN INTERLOCAL GRANT
960 AGREEMENT BETWEEN WHATCOM COUNTY AND PUBLIC UTILITY DISTRICT NO. 1 RELATED TO WATER SUPPLY
961 PLANNING, IN THE AMOUNT OF \$367,500 (AB2013-087)

962
963 Mann reported for the Finance and Administrative Services Committee and moved to approve the request.

964 The motion failed by the following vote:

965 Ayes: None (0)

966 Nays: Kremen, Crawford, Brenner, Weimer, Knutzen, Mann and Kershner (7)

967 [\[Return to Findings\]](#) [\[Return to ToC\]](#)
968
969

970 **JAB, Management Team and Staff Team address the Planning Unit issue:**

971 In order to assist JAB in addressing the fallout of the February 6 Gibson memo, the WRIA 1 Staff
972 Team issued a memo dated March 14 2013 that analyzed the situation and offered several options for
973 dealing with it. Said memo reads in relevant part:
974

975 **Background**
976

977 A new governance structure was approved by the Joint Board in 2009, but it did not resolve the
978 issue of the Planning Unit's involvement in the process once the transition from planning to
979 implementation occurred. The Planning Unit also met in 2009 to discuss its role and structure. At that time
980 the instream flow pilot negotiations were still underway and a Planning Unit role in the final outcome of
981 these negotiations was clearly defined in the ISF Selection and Adoption Action Plan [IFAP]. Given this
982 context, there was an interest in continuing, albeit at a lesser frequency of meeting, in order to test the flow
983 setting process within the existing structure. Since then, there were no changes made to Planning Unit
984 structure, there were no ISF agreements to review (the pilot negotiations were suspended in December
985 2010 as the Lummi Nation and Nooksack Indian Tribe seek a declaratory action of the instream flow
986 rights), and no Watershed Management Plan updates.
987

988 There are benefits to maintaining a Planning Unit consistent with the Watershed Management [sic]
989 Act. A watershed plan approved by a Planning Unit can provide a useful tool to add flexibility to the state
990 water code. A locally adopted plan can be used as a framework for the state in making future water
991 resource decisions for the watershed included in the plan (RCW 90.82.130(4)). A local advisory group not
992 recognized in Washington State statute [sic] may or may not provide the same.
993

994 If water resource planning in WRIA 1 is to continue under the auspices of the Watershed Management
995 [sic] Act, there needs to be a forum with clearly defined roles and responsibilities for water resource
996 interest once negotiations over the availability of water and fish habitat resume. Continued community
997 engagement in plan implementation beyond instream flow setting will also be important to long-term
998 watershed planning success.
999

1000 **Options for Moving Forward**

1001 Two options for Joint Board consideration, and the identified advantages and disadvantages of each
1002 option, are presented below. These options were identified by the WRIA 1 Staff Team and are based on
1003 the 2005 Watershed Management Plan (WMP), the 2007 Detailed Implementation Plan (DIP), and WRIA
1004 1 Staff Team recommendations and work done on this issue in 2009.
1005

1006 Option 1. Request a meeting of the Planning Unit with currently available governmental and non-
1007 governmental caucus representatives and request discussion leading to a decision to do one of the
1008 following:

1009 a) Dissolve the Planning Unit; or

1010 b) Re-engage the Planning Unit and retain its role in plan update approval and instream flow
1011 negotiations. This option could include updating the 2005 Watershed Management Plan and the 2007 DIP
1012 or simply providing an update to the Planning Unit on the current status of the 2005 WMP implementation
1013 efforts; or

c) Adopt the Watershed Panel structure described in the June 30, 2009 Governance Structure for Implementing WRIA 1 Programs, Integrated Working Draft. This structure provides for continued meaningful community engagement as specific water resource issues receive individual attention; or
d) Re-engage interested participants from the Planning Unit and begin meeting to create a entirely new local entity for stakeholders and propose a role of them in implementing watershed management goals.

Advantages of Option 1:

1. The Planning Unit determines its future.
2. The public re-engages in the process and can provide support for moving forward with implementation.
3. Option 1(c) removes the burden on caucuses to provide for representation and minimizes conflicts over decision making.

Disadvantages of Option 1:

1. Questions remain regarding the representativeness [sic] of the Planning Unit caucuses. At least one caucus suspended participation in the Planning Unit because the caucus representative did not feel that they could represent their membership.
2. Updating the 2005 Watershed Management Plan and 2007 Detailed Implementation Plan, given changes in the instream flow negotiation process, completion of technical work products, and governance would translate to additional resources (staff and monetary commitment).

Option 2. Dissolve the Planning Unit and establish a water resource interest group once instream flow negotiations resume and only then evaluate ways to fully integrate public involvement.

Advantages of Option 2:

1. None identified.

Disadvantages of Option 2:

1. Timeline for resuming the instream flow negotiations is undetermined.
2. If the litigation requests of the Lummi Nation and Nooksack Tribe are acted on by the United States, participation in the instream flow negotiations will be determined by the court.
3. Whatcom County legal opinion may conflict with this approach.

The [WRIA 1] Staff Team recommends Option 1.

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The JAB meeting summary of March 21 2013 reads in relevant part:

5. WRIA 1 Joint Board Discussion of Planning Unit

□ Jon Hutchings reviewed a memo that was prepared by the WRIA 1 Watershed Staff Team identifying Planning Unit options for discussion by the WRIA 1 Joint Board. Additionally, Whatcom County Executive had requested Whatcom County legal counsel Dan Gibson to provide a briefing paper pertaining to the Planning Unit's status, which is the Planning Unit has legal status. Executive Louws stated his intent to have Whatcom County facilitate reconvening the Planning Unit. The Planning Unit will have an opportunity to identify how they intend to proceed under the procedural agreements that the Planning Unit approved. Jon reviewed that the caucus structure and how the caucus demonstrates that they are representative of the caucus interest is also part of the procedural agreements.

□ Mayor Linville referred to the concentric circle diagram in the WRIA 1 Instream Flow Action Plan that was included in Jeremy Freimund's presentation and asked, in the absence of instream flow negotiations, what is there within the WRIA 1 process that the Planning Unit will work on. Peter Gill, Whatcom County Planning and Development Services, reviewed options for Planning Unit involvement including updates to the approved Watershed Management Plan and approved Detailed Implementation Plan. Chris Brueske reported that he had received feedback from community members that Planning Unit tasks could include reviewing the water budget and ground water technical work.

□ Steve Jilk indicated he supports reconvening the Planning Unit to review work being done and bring recommendations to the Joint Board. At some point, however, the relationship between the Planning Unit and the Joint Board needs to be discussed. It was clear when the PUD and the other initiating governments started the process and established the Planning Unit that the Planning Unit could not make

1073 decisions that impact the PUD. Correspondence circulating through the community is suggesting that the
1074 Joint Board should be disbanded and there is not a role for the Joint Board. This interpretation does not
1075 follow the intent of the RCW or the intent of the Memorandum of Agreement for the Joint Board. Mayor
1076 Linville indicated the original intent of the law was that any governmental entity had to agree to whatever it
1077 was that would impact their operation.

1078
1079 Executive Louws recommended that Whatcom County government take the lead on reconvening the
1080 Planning Unit, recognizing that the Planning Unit can convene on their own, so the Planning Unit can
1081 discuss their role and purpose. There are members of the Planning Unit and community that feel that there
1082 is a role for the Planning Unit.

1083
1084 ☐ The tribal perspective that the Planning Unit does not have a role in discussion of tribal treaty water
1085 rights was expressed by Bob Kelly and Leroy Deardorff although the Planning Unit had a valuable role as
1086 part of the watershed planning process and assisting the technical teams as the watershed plan was being
1087 developed.

1088 ☐ In response to public comment about the Joint Board's role and relationship to the County Council and
1089 Planning Unit, Jeremy Freimund clarified that the Joint Board is not advisory to Whatcom County. The
1090 County is a member of the Joint Board and throughout the planning process, the former County Executive
1091 expressed to the Planning Unit that he would represent their views on the Joint Board. He would not vote
1092 at the Joint Board table without consulting with the Planning Unit.

1093
1094 The official meeting summary of May 22 2013 Management Team meeting reads in relevant part:

1095 1096 3. Planning Unit Support Proposal

1097
1098 Chris Brueske provided background on a draft Planning Unit Support proposal. The proposal provides for four
1099 meetings of the Planning Unit and is modified from the initial draft distributed to the Management Team at its April
1100 meeting. The revisions to the proposal include removing the budget element to cover costs for County staff to
1101 administer the proposal and to add description of the anticipated purpose of the four Planning Unit meetings. The
1102 County is seeking Joint Board support to fund the proposal through an amendment to the Joint Board budget.

1103 1104 Discussion Points:

1105 ☐ Alan Chapman asked for clarification on the role of the Planning Unit. Chris replied that the Planning Unit is likely to
1106 discuss their continued role as part of the meetings and preparation of a work plan.

1107 ☐ Jon Hutchings commented that the landscape of implementation has changed and part of what the Planning Unit
1108 needs to consider is their role in that implementation. If the Management Team recommends support of the proposal,
1109 a Joint Board meeting will need to be scheduled for purposes of amending the Joint Board budget.

1110 Chris asked if the Joint Board Governments present had concerns with the proposal or recommending a Joint Board
1111 budget amendment for funding the proposal.

1112 ☐ Management Team members present recommended supporting the proposal and request for an amendment to the
1113 Joint Board budget as presented by Chris.

1114 A Joint Board meeting will be scheduled for a date the end of June or beginning of July.

1115 1116 Actions/Outcomes:

1117 ☐ WRIA 1 Management Team recommends forwarding the Planning Unit Support proposal as presented to the WRIA
1118 1 Joint Board for approval with a recommendation to amend the Joint Board budget according to the budget outlined
1119 in the proposal.

1120 ☐ A WRIA 1 Joint Board meeting will be scheduled for late June or early July.

1121 1122 Observer Notes on May 22 2013 WRIA 1 Management Team meeting:

1123
1124 Chris Brueske of County Public Works addressed a question regarding the County's position on the status
1125 and role of the Planning Unit, and what its officials hoped to get out of its proposal to fund PU meetings.

1126
1127 Brueske: According to the County Attorney, the Planning Unit is autonomous thus it will be up to the
1128 Planning Unit to determine how it will move forward.

1129
1130 Dr. Jon Hutchings, assistant director, public works, City of Bellingham:

1131 It was presumed in this transition from planning to implementation the roles of the Planning Unit
1132 would change. But there was no consensus achieved by the Planning Unit on what the change of its role

should be. I would hope there would be a recognition by Planning Unit members that the landscape had changed, and that the role of the Planning Unit should change with it.

A question by a Management Team member: So what, exactly, is the role of the Planning Unit?

Hutchings: The original role of the Planning Unit was clear, in terms of its involvement in the 2005 Watershed Management Plan. But going forward, now, its role should be to provide input from the ground up, that is, from all the affected water resource interests, to the governments who are now responsible for the WRIA 1 watershed management project. How that gets set up, I'm not sure.

The caucus system was no longer representative of the water resource interests by the time I got involved [2007]. The Planning Unit should be redefining its role in light of the transition from planning to implementation. In this transition there is a role for the Planning Unit "or something like it." I don't know if the caucus system will continue to exist; don't know it won't. [Emphasis added]

A question by a Management Team member: So is the role of the Planning Unit advisory to the Joint Board?

Hutchings: I don't know the answer to that, but it is difficult to see how the Joint Board, which consists of elected members of governments with responsibility to their constituents, would abrogate its responsibility to the Planning Unit or any other body. The Planning Unit has legitimacy, always has, but its role has not been recently clarified, and there will have to be Planning Unit meetings to achieve that clarification.

Since the Joint Board has control of the purse strings of the WRIA 1 monies, it is appropriate for it to be considering this proposal to fund Planning Unit meetings. [Emphasis added]

The JAB meeting summary of June 2013 reads in relevant part:

4. WRIA 1 Joint Board Budget Amendment for Planning Unit Proposal

□ Chris Brueske reviewed that a scope of work for Planning Unit Support has been reviewed by Watershed Staff Team and Management Team, and is being presented to the WRIA 1 Joint Board for approval. The proposal requests \$14,000 from the WRIA 1 Joint Board fund facilitation of up to four Planning Unit meetings. The scope of work outlines the anticipated purpose of each of the meetings:

□ Meeting 1 informal open meeting to review and discuss the Planning Unit process and procedure documents.

□ Meeting 2 formal meeting to discuss planning unit role, review implementation plan and work completed, and discuss work plan for 2014.

□ Meeting 3 formal meeting to discuss work plan and budget.

□ Meeting 4 formal meeting to finalize work plan and financing plan.

Chris noted that since the Planning Unit is autonomous, the outline of the meeting purposes is the vision of how those meetings would proceed. The proposal is really for \$14,000 for the facilitation of up to four Planning Unit meetings.

□ Executive Louws asked if there is a motion to approve the expenditure of \$14,000 for the Planning Unit proposal. Motion by Jon Hutchings on behalf of the City of Bellingham; second from Merle Jefferson. Executive opened the item for discussion.

□ Merle asked if there was something in writing that explains what the role of the Planning Unit will be. Chris reviewed that the Planning Unit role as it is currently written is to review and approve updates to the Watershed Management Plan. They will have some ability to self-direct since they are recognized an autonomous group. Merle wanted to clarify for the record that the Planning Unit recommendations are to the County.

□ [PUD] Commissioner McClure asked for clarification on whether the Planning Unit is approving plans or are they making recommendations to the County Council. Executive Louws indicated his understanding is that if there are changes to the Water shed Management Plan that the Planning Unit approves those changes. Commissioner McClure asked if the final work product for the scope – the Planning Unit work plan – will be presented to the Joint Board upon completion of the four meetings in the scope.

1195 Executive Louws felt it was appropriate for there to be communication between the Planning Unit and Joint
1196 Board.
1197
1198 □ Being no further discussion, Executive Louws asked WRIA 1 Joint Board members present
1199 (representatives of the City of Bellingham, Lummi Nation, and Public Utility District No. 1)
1200 if they support expending \$14,000 of WRIA 1 Joint Board funds as moved by Jon Hutchings and seconded
1201 by Merle Jefferson. The expenditure of the Joint Board funds was unanimously agreed to under their
1202 consensus decision-making process.
1203

1204 WRIA 1 Staff Team meeting summary of July 8 2013 reads in relevant part:

1205 3. Next Steps for Planning Unit Process

1206 It was noted that the Joint Board approved the budget amendment for the Planning Unit process. Peter
1207 [Gill, WCPDS] indicated that a RFP would be prepared for facilitating the Planning Unit meetings. A
1208 resolution pertaining to the Planning Unit was proposed by Barbara Brenner and is scheduled for the
1209 Whatcom County Council meeting.

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1211

1212 **Council Resolution 2013-025:**

1213 On July 9 2013 the council Public Works Committee considered a resolution on the Planning Unit.
1214 After various amendments, the council passed the final version of the resolution on July 23 2013. The
1215 minutes of the council meeting

1216 [http://documents.whatcomcounty.us/WebLink8/PDF/a5htsq45n5zbwaznttuvhiig/65/Council%20Jul](http://documents.whatcomcounty.us/WebLink8/PDF/a5htsq45n5zbwaznttuvhiig/65/Council%20July%2023%202013.pdf)
1217 [y%2023%202013.pdf](http://documents.whatcomcounty.us/WebLink8/PDF/a5htsq45n5zbwaznttuvhiig/65/Council%20July%2023%202013.pdf)

1218 read in relevant part:

1219

1220 7. RESOLUTION RESTORING THE WRIA 1 PLANNING UNIT TO ASSIST THE WHATCOM COUNTY COUNCIL
1221 REGARDING WATER RESOURCES (AB2013-190)
1222

1223 Brenner moved to approve the resolution and moved to amend the resolution with the change submitted by Roger
1224 Brown, "Section 6: Review and Approval of Watershed Plans. The County Council requests that the Planning Unit
1225 regularly review and approve and [provide appropriate recommendations as appropriate on] any ongoing
1226 assessments of the current water resource situation, including, but not limited to water availability, instream flow,
1227 water quality, and habitat. As provided...."
1228

1229 Crawford asked if the language should strikeout "regularly review and approve." Prosecutor Dan Gibson was trying to
1230 mimic State law in saying this Planning Unit does not have approval authority. The County Council has that authority.
1231 Karen Frakes, Prosecuting Attorney's Office, stated she spoke with Mr. Gibson about this specifically. He told her
1232 that Mr. Brown's language is language that Bob Carmichael worked on and he'd seen. Mr. Gibson said he could live
1233 with that language.
1234

1235 Crawford stated that's alright, if Mr. Gibson has looked at it. Having served during the original Planning Unit, the
1236 Planning Unit did not have any authority for final approval. That always rested with the County Council. Be careful
1237 here. He'll accept it's okay with the words "as appropriate." Make sure the Planning Unit understands they don't have
1238 final approval. Only the County Council can do that, which is consistent with State law. The elected officials have to
1239 be accountable, not planning group appointees.
1240

1241 The motion to amend carried by the following vote:

1242
1243 Ayes: Brenner, Mann, Crawford, Knutzen, Weimer and Kremen (6)

1244 Nays: None (0)

1245 Absent: Kershner (1)
1246

1247 The motion to approve as amended carried by the following vote:

1248
1249 Ayes: Brenner, Mann, Crawford, Knutzen, Weimer and Kremen (6)

1250 Nays: None (0)

1251 Absent: Kershner (1)
1252

1253

1254 Link to Resolution 2013-025 text:

1255 <http://documents.whatcomcounty.us/WebLink8/PDF/a5htsq45n5zbwaznttuvhiig/64/res2013-025.pdf>

Several statements contained in the Resolution subsequently caused some confusion among various WRIA 1 participants.

The Resolutions' caption reads: **RECOGNIZING THE ROLE OF THE WRIA 1 PLANNING UNIT TO ASSIST THE WHATCOM COUNTY COUNCIL REGARDING WATER RESOURCES**

The caption makes no reference to the Planning Unit's statutory role under the Watershed Planning Act, yet the recitals of the Resolution include excerpts from the Act.

The body of the Resolution, Section 1, reads: "The Council finds that the Planning Unit is the advisory board established and responsible for recommending WRIA 1 water resource plans under RCW 90.82, including development of instream flow recommendations ..."

Some have suggested the term "advisory body" in that finding, together with similar references means the Council intended the role of the Planning Unit is merely advisory to the Council and has no other role in the WRIA 1 Watershed Management Project.

The Resolution further states: "Section 6: Review and Approval of Watershed Plans. The County Council requests that the Planning Unit regularly review and approve [provide appropriate recommendations on] any ongoing assessments of the current water resource situation, including, but not limited to water availability, instream flow, water quality, and habitat."

This language appears to be capable of being read to support the contention that the Council's intent was to limit the Planning Unit to an advisory role, or, to the contrary, to acknowledge its role under the Act, or both. Similar ambiguity can be found in other sections.

The recitals also include a reference, however oblique, to the Adaptive Management provisions of the 2005 WMP: "**WHEREAS**, Whatcom County Council has consistently recognized that review and approval of watershed plans and plan amendments shall be conducted by the Planning Unit **in a continuous improvement process** in the manner provided for by the Council-adopted WMP and DIP ..." [emphasis added]

Further, the recitals note " ... the Planning Unit has not met since June 30, 2009 and thus has not functioned to carry out its role as contemplated in the adopted WMP and DIP ... "

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The PU re-starts in isolation from the JAB

State Accountability Audit of the JAB:

Meanwhile, JAB underwent an audit of its operations by the State Auditor's Office (SAO), which in its Accountability Report number 1009043 issued February 4 2014 states:

RESULTS

In the areas we examined, the Board's internal controls were adequate to safeguard public assets. The Board also complied with state laws and its own policies in the areas we examined.

In its Exit Interviews letter of January 30 2014 to JAB, SAO also found:

The Joint Board is a public agency established under RCW 39.34.030(4) to oversee implementation of the watershed management plan. The Joint Board expended \$252,073 and \$32,427 in 2012 and 2011, respectively.

State law requires all actions of the Joint Board to take place in a meeting open to the public. Actions mean transaction of business and include approving claims against the Joint Board for payment. A quorum was not present for any Joint Board meetings during 2012 and 2011; and account payable and payroll related payments for the period were not approved inside of an open public meeting.

The Board was unaware that its form of government was required to comply with the Open Public Meetings Act.

We recommend the Joint Board comply with state law and approve all expenditures in an open public meeting (RCW 42.90 Open Public Meetings Act and RCW 42.24 Payment of claims for expenses, material, purchases-advancements).

The SAO report goes on to describe JAB thus:

ABOUT THE BOARD The Water Resource Inventory Area Watershed Management Project brings together citizens, local governments, tribes and state and federal agencies to develop plans for allocating water, protecting water quality and restoring fish habitat. Whatcom County provides staff support for the planning process, which focuses on the Nooksack River basin and certain adjacent watersheds.

Five governments initiated the Watershed Management Project. Each has an administrative decision maker and at least one staff member. In January 2000, the initiating governments signed an agreement, creating a joint board to handle the project's administrative functions. The initiating governments include Whatcom County, city of Bellingham, Public Utility District No. 1 of Whatcom County, the Nooksack Tribe and the Lummi Nation.

Note that no mention whatsoever is made of the Planning Unit in this official state report.

Link to SAO report:

<http://portal.sao.wa.gov/ReportSearch/Home/ViewReportFile?arn=1009043&isFinding=false&sp=false>

Staff team private meetings continue:

Despite the state auditor's admonishment cited above, during this period the staff team began meeting in private.

Further, the PUD did initiate the regional water supply planning meetings as part of Objective 3 of the 2010 LNS (and later, Strategy 3 of the Watershed Management Board's 2018—2023 Work Plan [subsequently renamed], and they are also being held in private.

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2013-2017; The PU survives:

From the get-go the county's efforts at resuscitating the PU were limited.

The county gave no funds for PU caucuses to reform, as had been provided during the initial formation and first few years of operation of the PU, despite repeated explicit requests from the PU to the council for such funds, including detailed justifications for those funds.

The JAB made no provision to re-integrate the PU back into the watershed management project, over which the JAB, in the PU's absence, had seized total control despite having no statutory or other controlling legal authority to do so.

The PU began meeting in September 2013. The PU adopted a new set of business rules that enabled it to operate independently of the JAB and staff team. It also adopted a comprehensive and ambitious work plan.

The county made poor selections for PU facilitators. The first, who the PU endured for a year and three months, contributed little to the effort save chaos. Her conduct was so far below minimal professional standards that no PU member, even those who were also JAB members, supported her retention.

The second facilitator lasted one year. Her primary mission was to manipulate PU members into voluntarily disbanding. After concerted effort by a majority of PU members thwarted that goal, the PU decided to do away with facilitators and select from among its members volunteers to serve as chair and vice-chair.

Role of the Planning Unit discussed but not resolved to the satisfaction of all parties:

As the PU re-started in September 2013, its members re-initiated the discussion of the proper role of the PU, and the group spent a substantial amount of meeting time engaging in a meandering and often contentious debate on the subject which have continued to this day [2019 10 08] without resolution.

In January 2015 the PU adopted a final version of its current Work Plan. The discussion of the proper role of the PU was made part of Objective Six of said Work Plan, embodied as Task 6.3, "Clarify

1366 Project status and Planning Unit relationships with JAB, Whatcom County, Salmon Recovery Board, et al.”
1367 Subsequently, the PU sent the issue to the PU’s Governance and Funding Committee. Meanwhile, the PU
1368 asked the county attorney for an opinion on whether the council had the authority to establish a standing
1369 formal advisory committee to it, which would retain its statutory responsibilities and its caucus structure
1370 with self-selection of representatives. Dan Gibson’s reply reads in full:

1371 Gary [Stoyka, WCPC and county PU rep]:

1372 “Though I would not characterize the Planning Unit as a "standing advisory committee to the
1373 County Council", it is nonetheless evident that the Council does intend to draw upon the Planning Unit for
1374 advice, as demonstrated in the Council resolution from about 2 years ago [2013-025], and I see no legal
1375 reason why the Council cannot do that. My advice is to leave the advisory status issue right where it is,
1376 which basically puts the ball in the Council's court to seek advice when it believes it is helpful to do so.”

1377 On March 2015, at its regular meeting, the PU adopted and sent to council a report from the
1378 Governance and Funding Committee which found:

1380 “3. Retain its existing membership structure, with self-selection of Caucus representatives.”

1383 The report also noted, in its concluding paragraph,

1384 “The Committee is aware of the recent consideration by the WRIA 1 Staff Team, Management Team and
1385 Joint Administrative Board regarding changes to the relationships between Project entities, including the
1386 Planning Unit. The Committee is considering a proposal regarding the Planning Unit’s role in possible
1387 response to changes proposed by the other entities.”

1388 https://drive.google.com/file/d/1DH7ozEGrBB2BSO9LrVoi27Jawt9_rTV0/view

1390 At its August 2015 meeting the full PU adopted a motion that recognized the dual role as stated
1391 above.

1392 <https://drive.google.com/file/d/1Zf7gssmhAzvnqcUM9ko4KmtPqGmwGScg/view>

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1395

1396 **Ongoing conflict between county attorney opinion and that of administration staff:**

1397 Since the reconvening of the PU various county departments and other parties made false
1398 statements regarding the PU that directly contradicts the conclusions of the February Gibson memo.

1399 For instance, during the county comprehensive plan update began in 2015, in the water resources
1400 section of the Environment Chapter 11, county planning staff asserted the following:

1401 “The role of the Initiating Governments was to review a recommended Watershed Plan and take it
1402 to their governments for adoption.” That statement directly conflicts with the documents cited herein,
1403 beginning with the Watershed Planning Act, in that it provides no role for the PU.

1404 In the same document planning staff’s assertion that the joint policy boards have authority to
1405 “Provide WRIA 1 programs policy direction” is supported by no statute or other controlling legal authority.

1406 County planning staff continued with the following erroneous assertions found in staff responses to
1407 comments on the update to the county comprehensive plan calling for recognition of the PU:

1408 “... The PU is a subcommittee of the Joint Boards, as are the Watershed Management
1409 Team, the Watershed Staff Team, and the Salmon Staff Team. Staff purposefully left all but
1410 the highest levels of the organization out. Furthermore, the organization of the WRIA 1 is
1411 currently undergoing potential change, and the status of the PU is unknown.”

1413 [\[Return to Findings\]](#) [\[Return to ToC\]](#)

1414

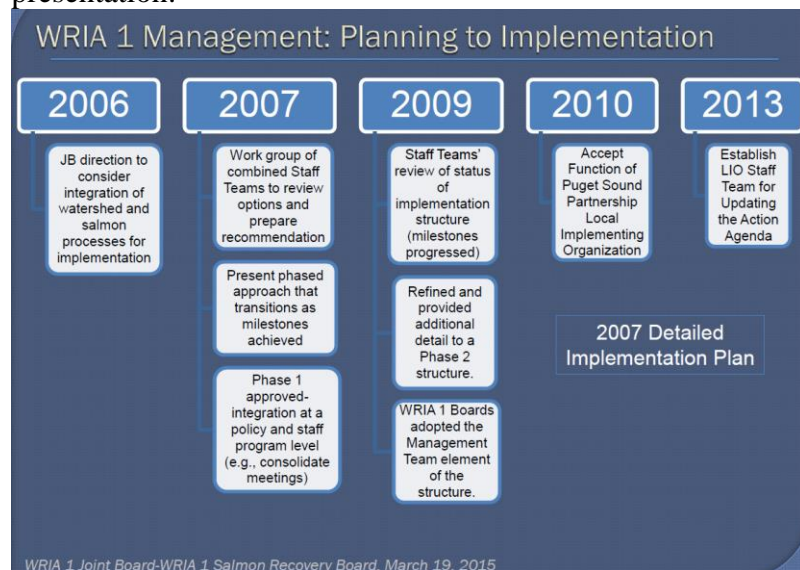
1415

1416 **A 2016 interlocal agreement establishes the watershed management board:**

1417 Beginning in early 2015 the JAB, which was running out of money, began advocating the formation
1418 of a new board which fully combined the salmon recovery board and the JAB, and all their staff groups,
1419 into one meta-bureaucracy.

As members of the staff team and JAB began lobbying the county and city councils on behalf of the new structure, they based their sales pitch on questionable assertions.

At a presentation March 19 2015 to the County Council, as the staff team rolled out their justification for the new entity, they continued to purvey the myth that the 2005 WMP called for a linear one-way transition from planning to implementation ([refuted above](#)), as displayed in this slide from the presentation:



Notice the reference to the 2007 DIP, which provides for a continuing role of the PU. Note also that no mention is made of the failure of the confidential negotiations to settle instream flow and quantify tribal water rights, without the success of which the rest of the effort could well be moot.

The staff team and JAB's insisting that the 2005 WMP provides for a one-way linear transition from planning to implementation has the effect of justifying their power over water resources within WRIA 1. By insisting that there is nothing left to do but implementation, of which they have placed themselves in sole charge, they have attempted to justify cutting the PU out of the decision loop.

Note that in all the discussion to date [20191008], no one has come forth with a citation of the IGs authority to made the determination of what is planning and what is implementation.

In selling the new interlocal and the new entity it would establish, the staff team's pitch included the following:

First, they laid out three "straw man" choices with the implication that those choices constituted an exhaustive list – that no other reasonable choices could exist. They successfully structured the discussion before the county and city councils to preclude any consideration of other choices, despite at least one PU member pointing out that there were in fact alternatives that could be considered.

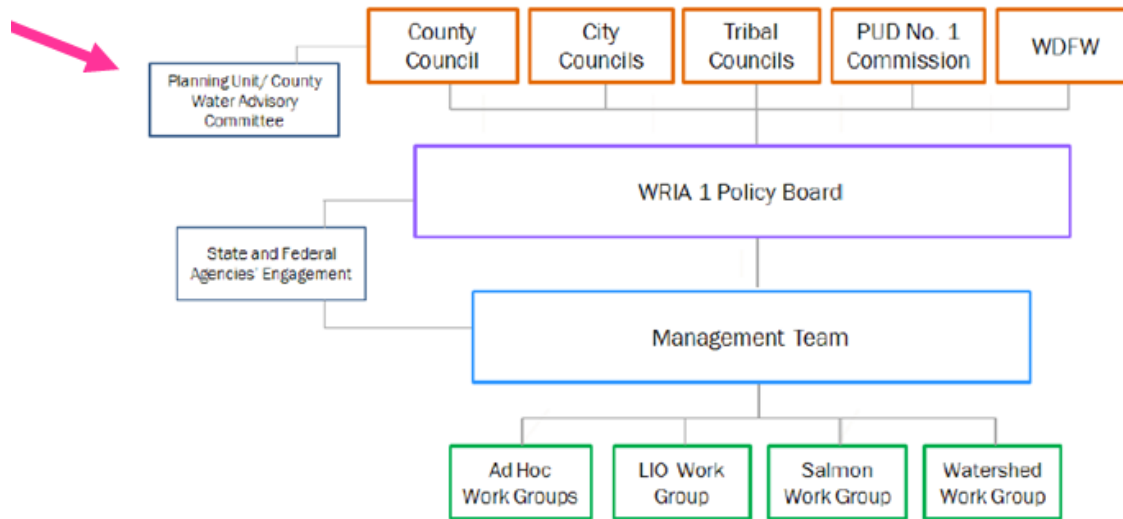
Second, despite having suspended its activities for over four years, and steadfastly refusing to engage with it after it restarted, suddenly the staff team began to feign concern about the fate of the PU. Note below they list as a "challenge" of both the status quo and the second "straw man" option that they fail to address the future role of the PU, as if the PU were a lost puppy in need of a home. These assertions once again contradict the February 2013 Gibson memo: the PU does not owe its existence to the JAB; it is an independent entity both in law and, since it established its new business rules in 2014, in practice as well.

Benefits	Challenges
Option 1: Status Quo	
<ul style="list-style-type: none"> • Process in Place • Continue Collaborative Process • Continue Tribal Engagement 	<ul style="list-style-type: none"> • No Identified Funding • Does Not Address Future Role of Planning Unit
Option 2: Go It Alone	
<ul style="list-style-type: none"> • Less Meetings • Save Administration Costs 	<ul style="list-style-type: none"> • No Collaboration • No Identified Funding • May Reduce Outside Funding Opportunities • Less Efficient Resource Management • Potential for Work Not to Get Done • Does Not Address Future Role of Planning Unit
Option 3: Fully Transition to Phase 3	
<ul style="list-style-type: none"> • Consistent with 2007 Detailed Implementation Plan • Continues Tribal Engagement • Formalizes Role of Planning Unit as Identified by County Council 	<ul style="list-style-type: none"> • No Identified Funding • Need to Revise Existing or Establish New MOAs to Reflect Changes
WRIA 1 Joint Board-WRIA 1 Salmon Recovery Board, March 19, 2015	

By far the largest fail in the entire effort can be found by returning to the supposed justification for conducting the exercise in the first place: the unquestionable fact that the JAB was running out of money. Examine the challenges listed above for all three options, and note that in each of them there is “No Identified Funding.” In other words, even the staff teams preferred option, number 3, fails to achieve the primary goal that drove the effort in the first place. So, why bother creating a new entity if it fails to solve the primary problem that prompted its consideration? No legitimate answer to this question, which was asked during the council’s deliberations by at least one PU member, was ever provided.

What was the staff team’s suggestion for the future role of the PU? That it be disbanded to become an advisory committee (as shown in the org chart below; see arrow pointing to box on far left, with link to county council) just as the staff team had been asserting since at least February 2009, and the PU had explicitly rejected in 2009 and again in 2015:

Exhibit A - Integrated Implementation Structure DRAFT



One further note regarding this structure: it's upside down. The flow of the process, ever since the staff team and JAB usurped the PU's lawful role in 2009, has been like a waterfall, from the staff team down to the councils, who find themselves overwhelmed with the sheer mass of material the staff team floods them with.

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Desperate times call for ... stuff and nonsense:

Most PU members were well aware of the implications for the PU of the language and org chart of the proposed new interlocal. As the process of shopping the interlocal around to various councils continued, PU members raised ever more pointed questions about the legality and propriety of the interlocal agreement's exclusion of the PU from any meaningful role in the watershed management project. The concerns came to a head at the October 25 2015 regular PU meeting, where a PUD staff person repeatedly misspoke to the PU, as thoroughly documented in [Appendix 6](#). The motive appears to have been to deter the PU from pursuing its criticisms of the interlocal and to influence the outcome of a vote at said PU meeting. The errors included the following:

That the Watershed Planning Act and the Salmon Recovery Act (RCW 77.85) list who can participate in interlocal agreements, and the PU is not included. Fact: there is NOTHING in either statute that stipulates who can be a party to any interlocal agreements established pursuant to either of those acts.

Further, her claim that ... the PU ... can't be named in an ILA because it's not part of the RCWs that create ILAs." is also false. Whether the PU is a public agency is a matter for municipal law mavens to debate, but it is clear that public agencies have entered into interlocal agreements with private entities, as the City of Bellingham did in 1992 with the Van Wyck Water Association (see [Appendix 6](#)).

She also claimed that the PU cannot manage government grants, which must be news to the legislature, which specifically granted planning units the authority to apply for and receive grants.

Worst of all is the misleading claim that "It [the interlocal agreement] doesn't change anything. It doesn't alter the fact that the PU has a place in the process." That claim is wrong on several counts.

First, the interlocal does "change things" by giving all control of adaptive management to the new version of the joint board, in an attempt to ensure that the process remains forever in "implementation" mode, regardless of the amount of planning engaged in (such as Objective 3 of the 2010 LNS) and thus out of the hands of the PU.

Here are excerpts from the interlocal that demonstrate that fact:

36 The primary functions of the Board are to

37 1) Facilitate implementation and adaptive management of the *WRIA 1 Watershed*
38 *Management Plan-Phase 1* as currently constituted or subsequently amended;

Interlocal agreement, page 2, and

7 3) Coordinate planning, implementation, monitoring and adaptive management of ecosystem
8 recovery actions in WRIA 1 consistent with agreed local goals and objectives, and serve

Interlocal agreement, page 3

Source: https://drive.google.com/file/d/1kRnMMniD6i_D2polz7ZIphkby6SUwgOI/view

Second, the org chart accompanying the text of the interlocal established the PU's role as advisory to the county council, so the PU would be out of way of the joint board and staff team once and for all.

Finally, however, in effect the interlocal does NOT change some things, as it leaves the PU isolated from the watershed management project, all dressed up with its statutory authority, but with no place to exercise it.

So what? The effect of the false statements documented above was that the PU dropped further action on the interlocal agreement. After another year, a few more iterations of its text, and more council schmoozing by the staff team, the interlocal was approved in late 2016.

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Government participation in the Planning Unit dwindles over time:

Federal: After visiting one or two PU meetings in 2013 as it just began restarting, an EPA official who was invited to participate declined to do so. The federal seat at the table has remained vacant since 2005.

State: The state caucus representative stopped attending PU meetings in May of 2014, only to return in 2018 after the passage of ESSB 6091. State attendance fell off rapidly in 2019 and a state rep has been absent since June 2019.

Small Cities: The Small Cities caucus representative stopped attending PU meetings in mid-2015 after their attempt to lead the PU into formally disbanding failed. They returned to the PU table in 2018 in response to the passage of 6091. In early 2019 the Small Cities rep announced he was withdrawing from the PU once again. NOTE: Small Cities has been included in the Watershed Management Board's Local Government Caucus.

City of Bellingham: Bellingham, one of the IGs, stopped attending PU meetings in October of 2015 and has yet to return.

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Appendix 1: Documents A Working Knowledge of which is Necessary to Participate Effectively in the WRIA 1 Watershed Management Project

NOTE: Some links were broken when the WRIA 1 website crashed in 2018.

Part I: Legal, Structural, Process and Procedural Documents Issued Prior to Suspension of the WRIA 1 Planning Unit in 2009

Listed in chronological order, beginning with earliest.

The controlling statute: RCW 90.82, The Watershed Planning Act (formerly, the Watershed Management Act), aka ESHB 2514. <http://apps.leg.wa.gov/rcw/default.aspx?cite=90.82>

Purpose: RCW 90.82.005:

The purpose of this chapter is to develop a more thorough and cooperative method of determining what the current water resource situation is in each water resource inventory area of the state and to provide local citizens with the maximum possible input concerning their goals and objectives for water resource management and development.

It is necessary for the legislature to establish processes and policies that will result in providing state agencies with more specific guidance to manage the water resources of the state consistent with current law and direction provided by local entities and citizens through the process established in accordance with this chapter.

Memorandum of Agreement between Lummi Nation, Whatcom County, Bellingham, PUD

<https://drive.google.com/file/d/1miGO8U2QYgSNohWDrgV3QK3obbCP5tz/view>

Establishes “the local decision making group to develop and implement a watershed management plan that fulfills all the requirements (water quantity assessment) and options (water quality, instream flow, and habitat assessments) authorized by ESHB 2514.”

“The first task of the initiating governments will be to fully define the Planning Unit.”

“Decisions will be made by unanimous vote with each member of the initiating governments having one vote.”

Executed October 29 1998.

NOTE: The above three quotes, if taken out of context, might be construed to suggest that the signatories to the MOA believed that the IGs were the “...local decision making group to develop and implement a watershed management plan...” despite the Act providing that planning units, in which initiating governments can participate, are responsible for plan development, and that, by clear implication, the parties responsible for implementation would be identified in the plan.

WRIA 1 Watershed Management Project Structure and Function as set forth in a Memo from Initiating Governments dated March 18 1999 and executed March 25 1999

Sets forth how all entities involved in the Project, including the Planning Unit, will be formed. Includes the initial Public Education and Involvement Plan used (among other things) to perform outreach for Planning Unit caucus recruitment and formation, and the Caucus Formation and Function.

<https://drive.google.com/file/d/1tZ0CwIPu6sjMdF23jZIn2460yPbthz4W/view>

Excerpt from Page 2 of the Structure and Function memo:

“The Initiating Governments are committed to addressing ... long-standing water resource management issues. These governments have assembled a capable Staff Team that is action oriented and has learned the lessons of past water resource planning efforts. The Watershed Management [now, Planning] Act may provide the last opportunity for local decision-makers to plan and implement necessary water resource solutions. **Now is the time to trust, cooperate, and work together.**” [emphasis added]

WRIA 1 Watershed Management Project Planning Unit Process and Procedural Agreement approved December 22 1999

<https://drive.google.com/file/d/1ExJVjH2YxD0pWrgxjXwofhq3ftde62li/view>

The initial “business rules” of the Planning Unit. The most recent version approved in 2017:

<https://drive.google.com/file/d/1drmaB6zWuAPMLgLNAZn6tgKgghG5CENh/view>

County Council Resolution 99-050 Improvements to the WRIA 1 Watershed Management Project Decision Making Process approved October 26 1999

<http://documents.whatcomcounty.us/weblink8/0/doc/3274210/Page1.aspx?searchid=7c887388-09aa-40c4-8078-3be52cb23f77>

Provides, among other things, that:

“... policy changes negotiated by the administrative decision-makers of the Initiating Governments will be brought back to the County Council and the respective councils of the other initiating governments, as agreed to during the creating of the Memorandum of Agreement, for approval.

... the County Executive is hereby directed to identify by way of an interlocal agreement a financial administrative process for the WRIA 1 Watershed Management Project that is jointly administered by the five Initiating Governments.

... upon mutual acceptance by the five Initiating Governments of a joint financial administrative process, subsequent approvals of budgets for the WRIA 1 Watershed Management Project by the County will include the transfer of funds to and expenditure authority from an account jointly administered by the five Initiating Governments.”

Hence, this document paved the way for the formation of the JAB.

WRIA 1 Joint Administrative Board Financial Management and Administrative Procedures (May 23 2000); WRIA 1 Administrative Decision-Makers and the Staff Team Roles and Operating Procedures (March 11, 1999); Interlocal Agreement Establishing WRIA 1 Joint Administrative Board executed January 14 2000.

<https://drive.google.com/file/d/1Qj3GzPjXxxsfDP4cEc3bc-V7FHnEBtn6/view?usp=sharing>

From the Interlocal:

Joint Administrative Board. There shall be established, or recognized hereby if already established, a joint administrative board in accordance with the terms of the written agreement of March 11, 1999, titled” “WRIA 1 Watershed Management Project Administrative Decision-Makers and the Staff Team Roles and Operating Procedures” (hereinafter referred to as “Operating Procedures”), said board being comprised of the Administrative Decision-Makers described therein, representing each of the five initiating governments. This board shall be designated as the “Watershed Management Project Joint Board.”

Operating Fund. Money received by the board from any source whatsoever shall be deposited in a fund with the Whatcom County Treasurer, said fund to be established by the board and designated as “Operating Fund of the Watershed Management Project Joint Board.”

Expenditure Authority. Expenditures from the operating fund shall be authorized in accordance with the procedures provided in the Operating Procedures, dated March 11, 1999. Expenditures of those funds received from the State of Washington or its political subdivisions shall be consistent with requirements adopted by the State of Washington governing the expenditures of such funds.

Contracting Authority. The board shall have authority to enter into contracts to carry out RCW 90.82, and to pursue legal redress in the appropriate forum, if necessary, to enforce performance, and/or receive the benefits of such contracts. Decisions of the board with regard to the same shall be made in accordance with the Operating Procedures referred to elsewhere herein.

Staff Team Meeting Summary of February 25 2009 indicates Staff Team planned the termination of the Planning Unit well in advance of proposing to do so, and without notice to the Planning Unit members:

<http://wria1project.whatcomcounty.org/uploads/PDF/Meeting%20Materials/Staff%20Team/WRIA%201%20Staff%20Team%20Meeting%20Summary%2002-25-09.pdf>

[NOTE: this link is not available since the crash of the original Project website.]

County Council Resolution 2013-025 Recognizing the Role of the WRIA 1 Planning Unit to Assist the Whatcom County Council Regarding Water Resources approved July 23 2013

<http://documents.whatcomcounty.us/weblink8/0/doc/3186144/Page1.aspx?searchid=0ef97512-ad45-4ab6-9cd8-0703b0ca4b63>

Part I A: Legal, Structural, Process and Procedural Documents Issued After Suspension of the WRIA 1 Planning Unit in 2009

2009 GOVERNANCE STRUCTURE FOR IMPLEMENTING WRIA 1 PROGRAMS

https://drive.google.com/file/d/1Ycxvtua8fbjJ9doOEtKz2In_ObqCGe0y/view

This document was explicitly rejected by the WRIA 1 Planning Unit on June 30 2009

This document proposes replacement of the Planning Unit with a “WRIA 1 Watershed Panel” without any review and approval authority over updates to or implementation of the WRIA 1 Watershed Management Plan-Phase I.

Key Excerpts from Executive Summary:

“In 2007, the WRIA 1 Joint Board was presented a three-phased governance structure for implementing WRIA 1 programs. Achieving identified milestones marked the progression from one phase to the next. With the milestones nearing completion, it is time to consider advancing to the next phase of implementation.

The Phase 2 structure in the 2007 report was reviewed to explore an alternative organizational structure for implementing WRIA 1 Watershed Management and Salmon Recovery Programs. The outcome of the review is reflected in the organizational structure presented as Figure 1 in this document. It is a structure that can be implemented at the direction of the WRIA 1 Joint Board and WRIA 1 Salmon Recovery Board, will not require changes to the existing Memorandum of Agreements that established the policy boards, retains the government to government relationship, and more effectively involves stakeholders in the direct implementation of actions associated with the program planning documents.

The reasons for advancing program implementation to the next phase at this time are:

- to maximize available resources and improve efficiencies by eliminating unnecessary or duplicative process
 - to increase opportunities for stakeholder involvement directly in program implementation;
- and

19 to advance implementation of actions in the WRIA 1 Watershed Management Plan (WMP) and WRIA 1 Salmon Recovery Plan (SRP) that address coordination and integration between programs.

2016 INTERLOCAL AGREEMENT BETWEEN LUMMI NATION, NOOKSACK INDIAN TRIBE, WASHINGTON STATE DEPARTMENT OF FISH AND WILDLIFE, WHATCOM COUNTY, AND THE CITIES OF BELLINGHAM, BLAINE, EVERSON, FERNDALE, LYNDEN, NOOKSACK AND SUMAS, AND PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY

Establishing the WRIA 1 Watershed Management Board

https://drive.google.com/file/d/1kRnMMniD6i_D2polz7ZIphkby6SUwgOI/view

Excerpt:

The primary functions of the Board are to:

1) Facilitate implementation and adaptive management of the WRIA 1 Watershed Management Plan-Phase 1, as currently constituted or subsequently amended;
[etc.]

Part II: Substantive Planning Documents Approved by WRIA 1 Planning Unit

The key elements of the 2005 WRIA 1 Watershed Management Plan, Phase 1 (2005 WMP):

March 27 2000 General Scope of Work (Appendix B, 2005 WMP)

<https://drive.google.com/file/d/1bc59P44ua6Masyq7iHqgm0rTyQi1VvAd/view>

Note Section 2.7, Process Flow Control Protocol, (Pages 12-14, Lines 504 through 598) establishes the Adaptive Management element of the 2005 WMP, as acknowledged in Section 4 of the 2005 WMP, Page 8.

2005 WMP Executive Summary

<https://drive.google.com/file/d/1tP1rwLPLLeUoi8JEsiMosimfYxga496SQ/view>

2005 WMP Introduction

<https://drive.google.com/file/d/1Z4YWrQRfmRIVZTQP0Jp2TuKMxGnRb24D/view>

2005 WMP Section 3 WRIA 1 Watershed Action Plan to Address Key Issues

https://drive.google.com/file/d/1DtaPr2_oJuHajkOQ-NnGU7ScvIx7Zylu/view

2005 WMP Section 4 Governance and Implementation and Adaptive Management

<https://drive.google.com/file/d/1JYu-vNWJO9CGEI4kbDY779S4QalJCqWc/view>

2005 Instream Flow Selection and Adoption Action Plan, Version 6c (Appendix C, 2005 WMP)

<https://drive.google.com/file/d/1sPRAAsRexrACrk9tTKltOpKL7Qlrzy2W/view>

July 2007 Detailed Implementation Plan

https://drive.google.com/file/d/1pQ0r8B0b4ImUoJDv_i_XVvKGugZBAW0k/view

Part III: Substantive Planning Documents NOT APPROVED by WRIA 1 Planning Unit:

October 2010 Lower Nooksack Strategy

Approved by Joint Administrative Board without Planning Unit review and approval:

https://drive.google.com/file/d/1eErZa_KHg2_R8cNVCpas3A3x2xPSsflv/view

WRIA 1 Watershed Management Board 2018-2023 Work Plan Version dated July 10 2019

https://drive.google.com/file/d/1_EUz4C9fA_JlhgLM7G8vfr-L3YGSUOqJ/view

NOTE: a new version was adopted September 25 2019, renamed “Implementation Strategies.”

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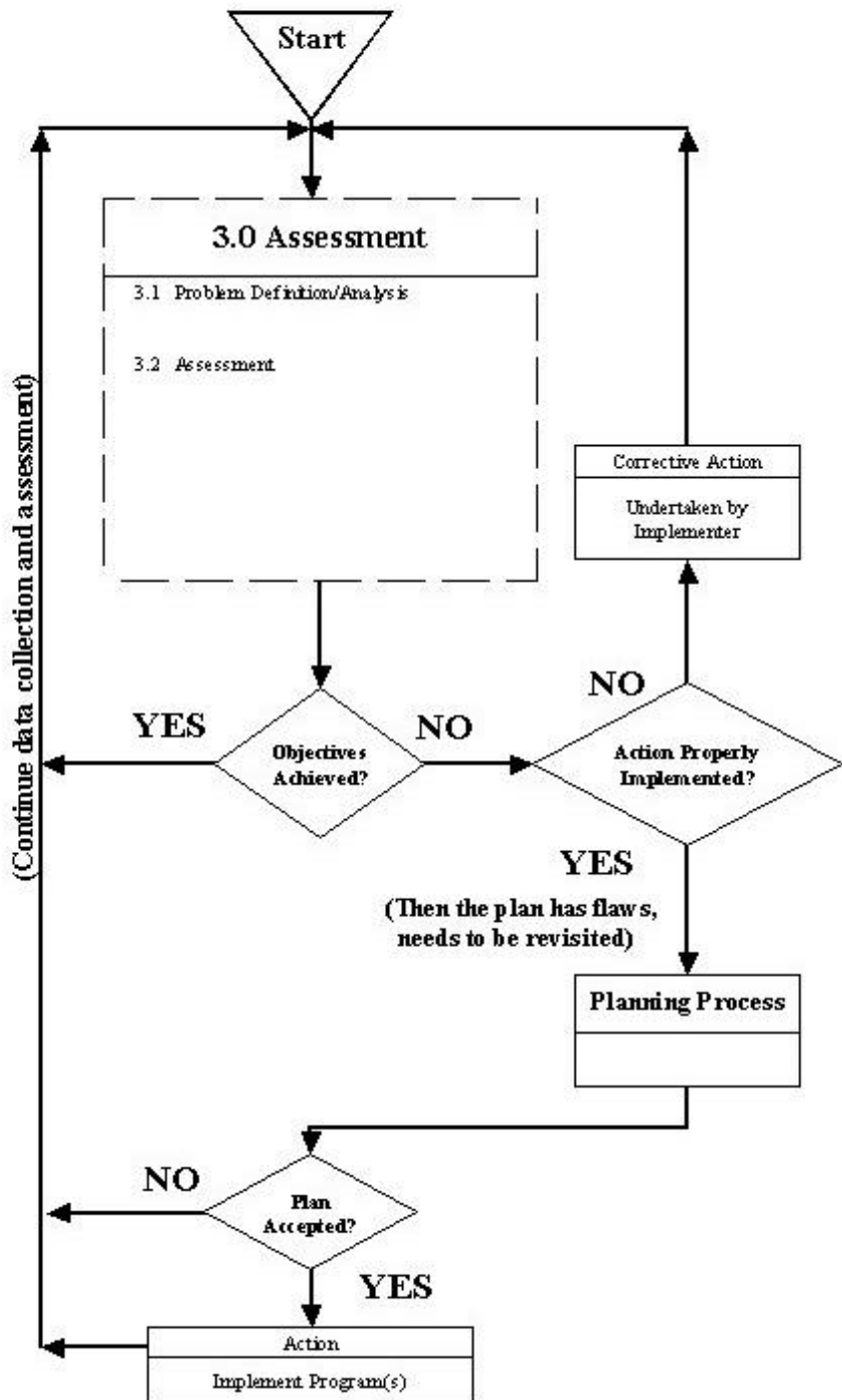
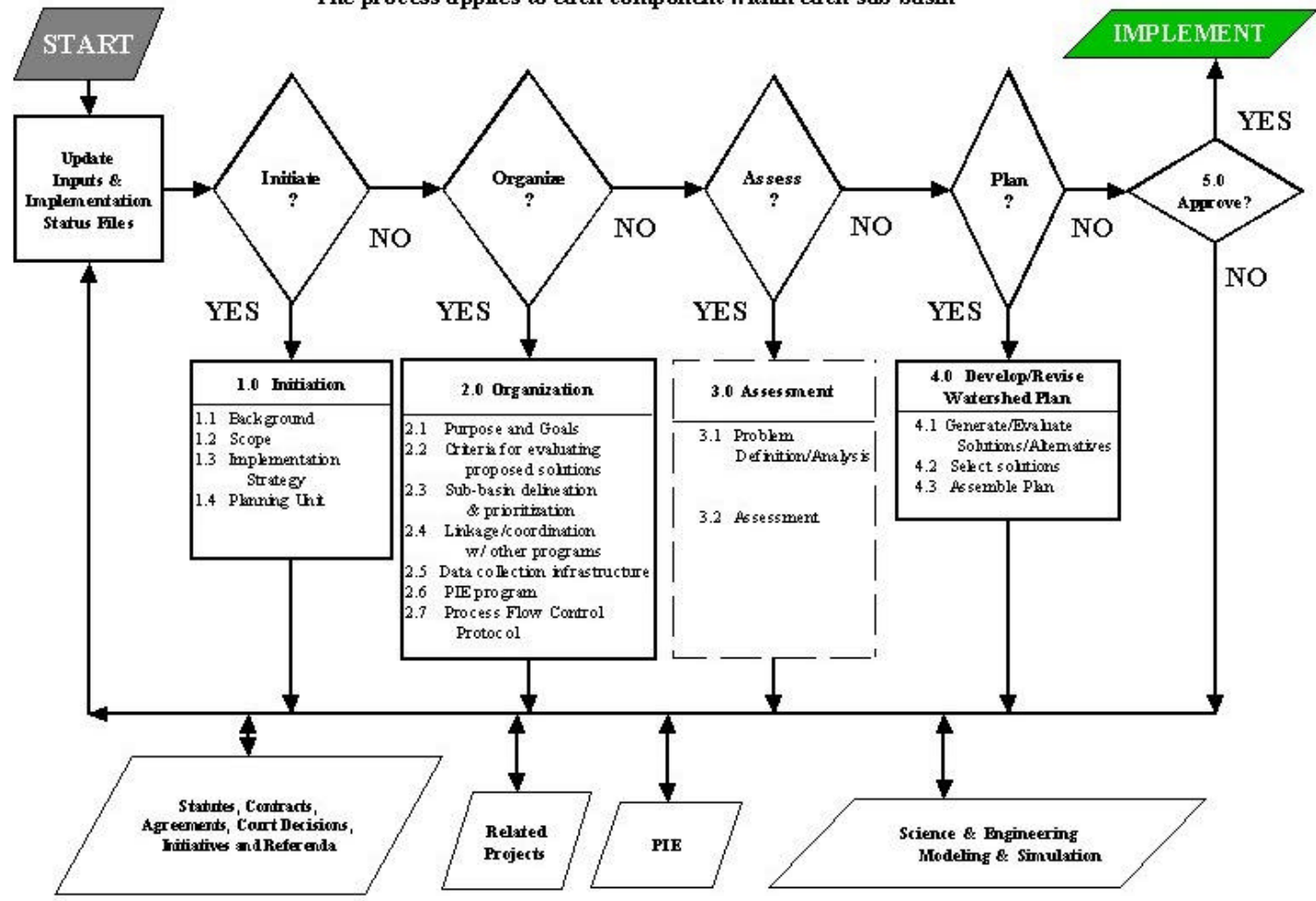


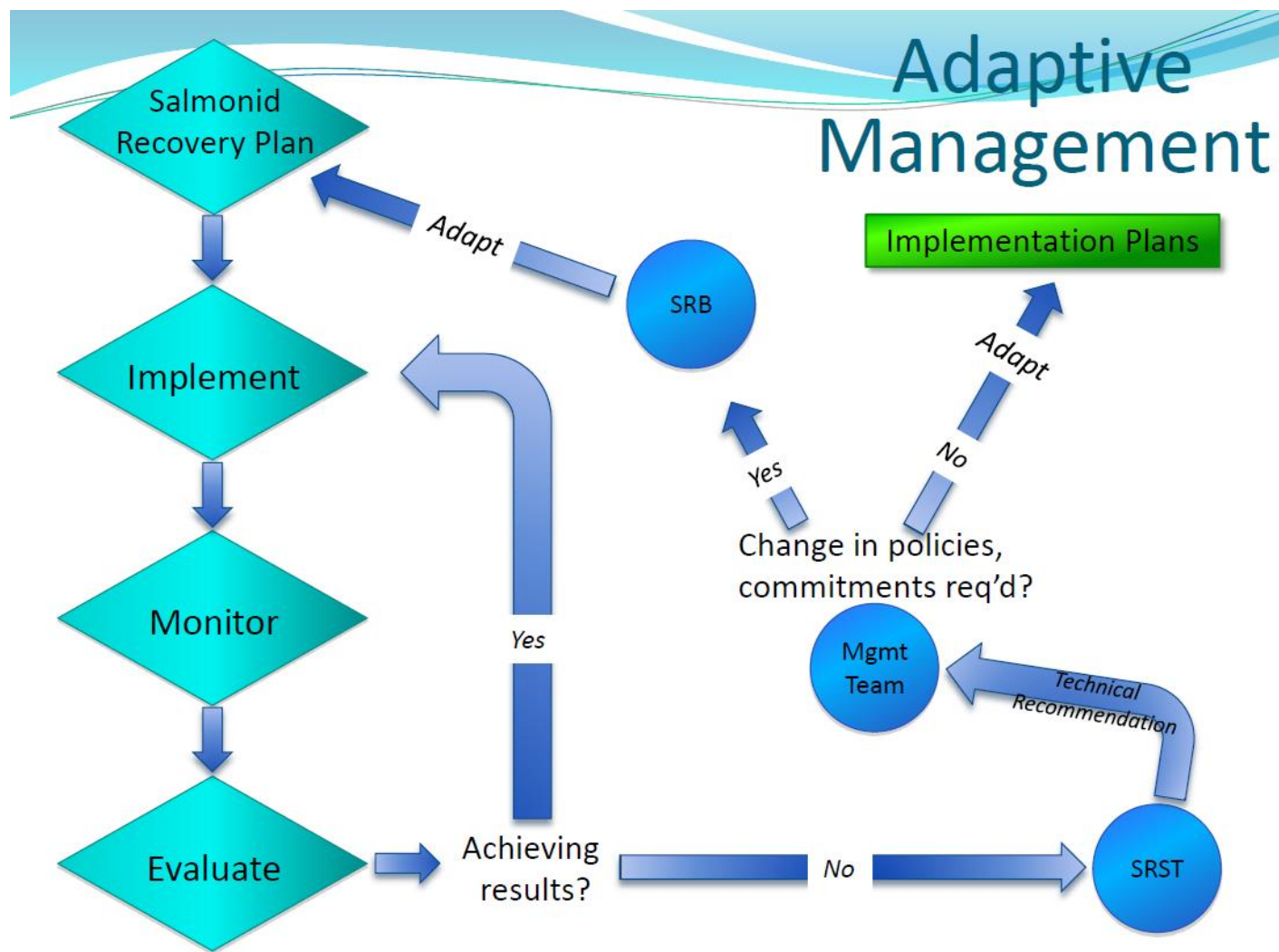
Figure 2: WRIA 1 Watershed Planning Process Flow Sequence V 1.0
The process applies to each component within each sub-basin



Note: processes with dashed borders are shared between planning and management

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1755 Appendix 4A: Adaptive Management logic model of the WRIA 1 Salmon Recovery Project,
 1756 presented to formal mtg of WRIA 1 salmon recovery decision makers by Treva Coe,
 1757 Nooksack Tribe employee:
 1758

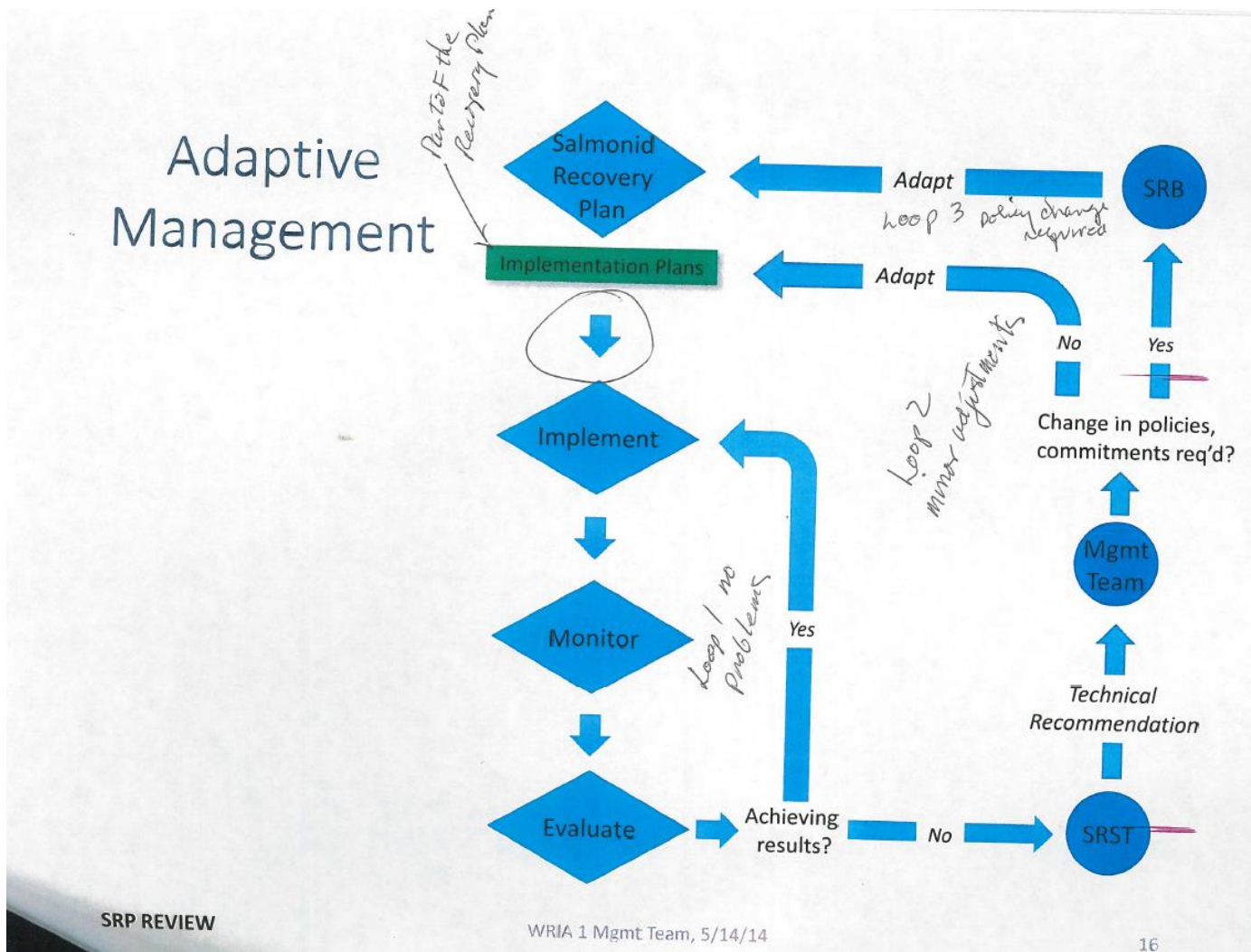


1759
 1760
 1761 **NOTE 1:** This flowchart displays an invalid adaptive management structure, in that it shows no pathway by
 1762 which information (activity reports, results reports, etc.) regarding activities undertaken in the
 1763 “Implementation Plans” rectangle can flow back to decision makers for evaluation and input to corrective
 1764 actions of the Salmon Recovery Plan, or for that matter, the implementation plan(s).
 1765

1766 **NOTE 2:** This flowchart uses symbols in a non-standard way; for example, the diamond shape is properly
 1767 used to denote a decision-point, while rectangles denote an activity or sets of related activities.
 1768

1769 [\[Return to Findings\]](#) [\[Return to ToC\]](#)
 1770
 1771

1772 Appendix 4B: Adaptive Management logic model of the WRIA 1 Salmon Recovery Project,
 1773 a version Alan Chapman sent in response to a query prompted by the comment labeled
 1774 NOTE 1 in the version posted above:
 1775
 1776



1777
 1778
 1779
 1780
 1781
 1782
 1783
 1784

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1785 Transcript of audio recording of state auditor's exit interview with JAB personnel:

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1787
1788 AUDIO CLIP #1:

1789 County Executive Louws: "... because the Whatcom County Council through the interlocal has
1790 given me legislative authority to make decisions, and if there's legislative authority then it ends up being
1791 under the Open Public Meeting Act and there's no argument at all ... "

1792 SAO staff: "There just can't be any decisions made behind closed doors."

1793 Louws: "That's correct."

1794

1795 AUDIO CLIP #2:

1796 Louws: "And just for your information I asked Public Works to take a look at all the rest of
1797 the interlocals we have (laughs) because we have literally dozens of them, and make sure that we aren't
1798 falling outside of the cracks on those also, so ... and I think our advisory committees we're fine on but if
1799 there's anything that either the council or I that are appointed to, particularly me, **if I'm put into a position**
1800 **on one of these boards that I have a legislative authority on**, I think it's my understanding that it has to
1801 be an open public meeting act."

1802 Jon Hutchings [current county Public Works Director, then Bellingham assistant Public Works
1803 Director]: "So the underlying question I have then has to do with what constitutes a quorum. And we need
1804 to go back and make sure we fully understand that and whether or not we can even approve a budget then
1805 for 2013 and 14 next week because we're not going to have, it's very unlikely that Bob's going to show
1806 up."

1807 Louws: "Well, if we do need that John I will ... I'll personally give Bob [Kelly, then chair of the
1808 Nooksack Indian Tribe] a call and say "Hey, you know what, we, to clean up what's going on on this and
1809 you guys are party to, we at least need you to show up at a couple of meetings, so that we can change the
1810 interlocal so ... or allow you to bow out of it ... and we're going to need your vote, we're going to need to
1811 have you there a couple of times to make that happen. Like I say if they aren't willing to do that we may
1812 have \$400,000 that's going to sit there in perpetuity because we aren't going to be able to unwind it."

1813 Hutchings: "So we should have that heart to heart discussion at some point ... "

1814 Louws: "We will..."

1815 Auditor staff: "That's outside of this..."

1816 County Public Works Direction Frank Abart: "Can you be present in a quorum via telephone? I've
1817 seen it done on the public works board ... like when I was on the public works board we had people from
1818 Spokane and other areas ... they're on the telephone there in the middle of the table, they're still voting. Is
1819 that an acceptable way to get somebody here that doesn't want to show up?"

1820 Auditor: "You can have attendance by telephone ..."

1821 Abart: "...as an option ..."

1822 Auditor staff: "... and still be open to the public and everyone be able to attend. Anybody else
1823 have anything more?"

1824 Audience: "I'm going to ask him about the Planning Unit..."

1825 Louws: "Do you understand what I'm asking for?"

1826 Auditor Two: "I do."

1827 Abart: "And maybe I'm thinking, just put an asterisk by his name and mine, our signature, and put
1828 a statement down there that we're representing administrative management not necessarily representing the
1829 board."

1830

1831

1832

1833

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1835

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1838

1839 Summary: A PUD representative to the WRIA 1 Planning Unit (PU) made several serious
1840 misrepresentations regarding the nature of and restrictions on development of interlocal
1841 agreements. These misrepresentations appear to have influenced the outcome of a PU vote
1842 regarding the interlocal agreement that established the Watershed Management Board. Because
1843 the person in question claimed expertise in the matter, the misrepresentations may fall into the
1844 categories of misfeasance or even malfeasance.

1845

1846 WRIA 1 Planning Unit (PU) meeting date: **October 28, 2015**

1847

1848 Agenda Topic: The proposed interlocal agreement to establish the new version of the Joint Board,
1849 eventually called the Watershed Management Board.

1850

1851 At the October 28, 2015, PU meeting, during a discussion of whether the PU could be included in the
1852 proposed Interlocal Agreement (ILA) that established the so-called watershed management board, Rebecca
1853 Schlotterbach, representing the PUD, stated the following (an excerpt of transcript of official audio
1854 recording of the PU meeting):

1855

1856 **Rebecca Schlotterbach**, begins @ min 40:50 into the meeting:

1857

1858 As the only initiating government body sitting here tonight ... and just so you know I have been a
1859 part of this for 15 years, I went back to the original PU meeting group and have sat not at the table but at
1860 every PU meeting from 2000 to 2005.

1861

1862 I just want you to understand what an ILA is. I think most of you people understand what an ILA is;
1863 it is a legal agreement between entities who need to do ... either do contracts together, or manage funding
1864 together. It has nothing to do with *process*.

1864

1865 So the ILA between the IGs was done so that they could do *business* together. They could manage
1866 contracts, they could do whatever they needed to do to business.

1866

1867 Same thing with Salmon Recovery board. ...

1867

1868 That's what an ILA is.

1868

1869 So, to put wording into an ILA that includes the PU is very ... it's really not appropriate, because
1870 PU members, many of them are not government agencies and cannot manage government funding or grant
1871 funding.

1871

1872 So I just wanted to be really clear what an ILA is, a way for government agencies to do business
1873 with each other. [emphasis added]

1873

1874 After various PU members discuss other aspects of the issue, the representative for the Water Districts
1875 Caucus asks a question of Rebecca Schlotterbach:

1876

1877 **Richard Bunel**: @ min 49:00:

1878

1879 ... Under 90.82 the PU is responsible for implementation of the watershed management plan, right?

1880

1881 So how does that reconcile if we're not in the ILA but it sounds like we should be, though, doesn't it?

1882

1883 **Rebecca Schlotterbach**: @ min 49:41: We can't be. The ILA is –

1884

1885 **Richard Bunel**: So the ILA is ... the policy board formed by the ILA is responsible for the implementation
1886 –
1887 **Rebecca Schlotterbach**: this agreement is between ... [moves mic] The ILA is between legal governments
1888 [listed some of them]; those are the people who are named in RCWs that can sign interlocal agreements. If
you look at the Salmon Recovery RCW and you look at the Watershed Planning RCW, those are the people

1888

who are named who can sign interlocal agreements to work together to manage the money and the grants. That's what this is all about. And if you go back and look at the integration process, what we're trying to do is move forward the fact that we're integrating the two boards together. It's a formalization of what we've already been doing. That's all this is. It doesn't change anything. It doesn't alter the fact that the PU has a place in the process. It just can't be named in an ILA because we're not part of the RCWs that create ILAs.

The statements Rebecca Schlotterbach utters contain various falsehoods.

First, there is NOTHING in either the Watershed Planning Act (RCW 90.82) or the Salmon Recovery Act (RCW 77.85) that stipulates who can be a party to any interlocal agreements established pursuant to either of those acts.

Further, her claim that "... the PU ... can't be named in an ILA because we're not part of the RCWs that create ILAs." is also false. Whether the PU is a public agency is a matter for municipal law mavens to debate, but public agencies have entered into interlocal agreements with private entities, as the City of Bellingham did in 1992 with the Van Wyck Water Association, as this caption indicates:

**INTERLOCAL AGREEMENT BETWEEN CITY OF BELLINGHAM
AND VAN WYCK WATER COOPERATIVE**

THIS AGREEMENT dated this _____ day of _____,
1992, entered into between the CITY OF BELLINGHAM, hereinafter
referred to as "City", and the VAN WYCK WATER COOPERATIVE, a
Washington corporation, hereinafter referred to as "Van Wyck".
The City and Van Wyck are sometimes referred to herein
individually as a "Party" and collectively as the "Parties".

It gets worse. In the first segment quoted above, she says: "So, to put wording into an ILA that includes the PU is very ... it's really not appropriate, because PU members, many of them are not government agencies and cannot manage government funding or grant funding."

Here is what a section of RCW 90.82, the Watershed Planning Act that enabled planning units, says about planning units and grants and the like:

RCW 90.82.040 WRIA planning units—Watershed planning grants—Eligibility criteria—
Administrative costs.

(1) Once a WRIA planning unit has been initiated under RCW 90.82.060 and a lead agency has been designated, it shall notify the department and may apply to the department for funding assistance for conducting the planning and implementation. Funds shall be provided from and to the extent of appropriations made by the legislature to the department expressly for this purpose.

(2)(a) Each planning unit that has complied with subsection (1) of this section is eligible to receive watershed planning grants in the following amounts for the first three phases of watershed planning and phase four watershed plan implementation:

(i) Initiating governments may apply for an initial organizing grant of up to fifty thousand dollars for a single WRIA or up to seventy-five thousand dollars for a multi-WRIA management area in accordance with RCW 90.82.060(4);

(ii)(A) A planning unit may apply for up to two hundred thousand dollars for each WRIA in the management area for conducting watershed assessments in accordance with RCW 90.82.070, except that a planning unit that chooses to conduct a detailed assessment or studies under (a)(ii)(B) of this subsection or whose initiating governments choose or have chosen to include an instream flow or water quality component in accordance with RCW 90.82.080 or 90.82.090 may apply for up to one hundred thousand additional dollars for each instream flow and up to one hundred thousand additional dollars for each water quality component included for each WRIA to conduct an assessment on that optional component and for each WRIA in which the assessments or studies under (a)(ii)(B) of this subsection are conducted.

1933
1934 There are numerous other sections of the statute that mention planning units applying for grants.

1935 In other words, the legislation provides that planning units can apply for and receive grants from the
1936 state. There is NOTHING in the statute that justifies the assertion that planning units may not apply for and
1937 receive grants of any kind. The interlocal agreement that formed the Joint Administrative Board, executed
1938 in January 2000 with the consent of the Planning Unit, provided for an administrative mechanism whereby
1939 the PU could apply for funds, as an entity, without the administrative bother of filling out applications and
1940 keeping books.

1941 Worst of all is Schlotterbach's misleading claim that "It [the interlocal agreement] doesn't change
1942 anything. It doesn't alter the fact that the PU has a place in the process." That claim is wrong on several
1943 counts.

1944 First, the interlocal does "change things" by giving all control of adaptive management to the new
1945 version of the joint board, in an attempt to ensure that the process remains forever in "implementation"
1946 mode, regardless of the amount of planning it engages in.

1947 Second, the org chart accompanying the text of the interlocal established the PU's role as a mere
1948 advisory body to the county council. Resolution 2013-025 that enabled the PU to act as advisory to the
1949 council also acknowledged the PU's statutory role under the Watershed Planning Act.

1950 Finally, however, we see a truth that covers a more important truth. In effect the interlocal does
1951 NOT change things, as it leaves the PU isolated from the watershed management project, all dressed up
1952 with its statutory authority, but with no place to exercise it.

1953
1954 Well, so what? What was the upshot of this act of serial misrepresentation? Simply this: according
1955 to the official meeting summary, a motion made by a PU member, to remind the Joint Administrative
1956 Board and lead agency (Whatcom County) of the statutory authority of PU when modifying the 2005
1957 WMP, failed. From the official the meeting summary:

1958 **Planning Unit Motions That Did Not Pass**

1959 **Motion** (Motion #4) by Linda Twitchell to send a letter to the Lead Agency and to the Joint Board asking
1960 that the new ILA include an attachment reminding the Joint Board and the Lead Agency of the statutory
1961 role of the Planning Unit in reviewing and updating the Watershed Management Plan. Motion seconded
1962 by Sylvia Goodwin.

1963 **Vote:**

- 1964 • 5 in favor (Environmental, Fishers, Land Development, NGWS, Port of Bellingham)
- 1965 • 1 opposed (Agriculture)
- 1966 • 5 abstain (Forestry, Private Well Owners, Public Utility District #1 of Whatcom County,
1967 Water Districts, Whatcom County)
- 1968 • 5 absent (City of Bellingham, Diking/Drainage, Small Cities, State Agency, Federal Agency)
- 1969 Motion fails

1970
1971
1972 Toward the end of that segment of the PU meeting, Karen Brown, then serving as representative for
1973 the Private Well Owners caucus, summed up the situation precisely: "... the Joint Board wants us to go
1974 away; to be quiet and go away."

1975
1976
1977 Upshot: the PU abandoned any further efforts to address its concerns regarding the interlocal, and
1978 about a year later the county council approved it.



Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2019-496

File ID:	AB2019-496	Version:	1	Status:	Agenda Ready
File Created:	09/24/2019	Entered by:	SMurdoch@co.whatcom.wa.us		
Department:	Health Department	File Type:	Discussion		
Assigned to:	Council Public Works & Health Committee	Final Action:			
Agenda Date:	10/08/2019	Enactment #:			

Primary Contact Email: bjjohnso@co.whatcom.wa.us <<mailto:bjjohnso@co.whatcom.wa.us>>

TITLE FOR AGENDA ITEM:

Discussion of the Whatcom County Strategic Plan to End Homelessness

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See Attachment

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Memorandum

TO: JACK LOUWS, COUNTY EXECUTIVE
FROM: Barbara Johnson-Vinna, Housing Specialist
DATE: September 23, 2019
RE: Whatcom County Strategic Plan to End Homelessness

Human Services staff from the Whatcom County Health Department will present the first draft of the 2019 Whatcom County Strategic Plan to End Homelessness to the Public Works and Health Committee on Tuesday, October 8, 2019.

Background and Purpose

The Washington State Department of Commerce, as mandated by legislation, is requiring all communities to submit an updated Local Plan to End Homelessness by December 2, 2019. Before submission to the state, the County Council must approve the plan. A first draft of the Whatcom County Local Plan update is attached for review. This document is "Phase 5" of the original plan, incorporating updates to reflect the evolution of the homeless housing system and its challenges as well as successes. The draft Local Plan has been created by the Health Department in conjunction with community organizations and members, and meets State and legislative criteria. The main priorities of this Local Plan update are outlined in the Executive Summary therein. The purpose of this presentation is to describe key components of the draft related to our local homeless crisis response system, and provide an opportunity for the County Council to offer feedback. A follow-up draft will be presented on November 19, 2019, to the County Council for final approval.

Recommendations

The Health Department will appreciate County Council input and questions up until October 30, 2019, at which time a final draft will be submitted. Approval for the final draft of the Whatcom County Strategic Plan to End Homelessness will be required of County Council prior to submission of the plan to Commerce by December 2, 2019.

Please call Barbara Johnson-Vinna at 6046 if there are any questions.



Whatcom County Local Homelessness Plan Update

Whatcom County Health Department

October 8, 2019

Whatcom County Council – Public Works and Health Committee



Whatcom County
HEALTH
Department



Background

History of Planning

Current system began organizing in 2005

- Last major update was in 2012

Guiding principals and values remain the same

- The solution to homelessness is permanent, stable housing
- Prioritize services for the most vulnerable
- Use evidence-based best practices while innovating new solutions tailored to local conditions; verify with data
- Housing restores dignity, saves lives, and strengthens community

Plan Overview

Requirements of Plan from Dept. Commerce

1. Identify and engage people experiencing homelessness
2. Prioritize people with the greatest needs
3. Operate a crisis response system that moves people to stable housing
4. Project the number of households served and number left unsheltered
5. Address racial disparities among people experiencing homelessness

Identified Needs

Leading Causes of Homelessness

1. Shortage of Affordable Housing
 - Eviction, Job Loss, Unemployment
2. Health Care and Social Service Needs
 - Mental Illness, Substance Abuse, Medical, Dev. Disabilities
3. Domestic Violence & Family Conflict
4. Re-Entry from Jails, Prisons, and other Institutes

What We Do Now

4 Foundational Pillars

- Case Management
- Inter-Agency Collaboration
- Quality Oversight and Assurance
- Whatcom Homeless Service Center

What We Do Now

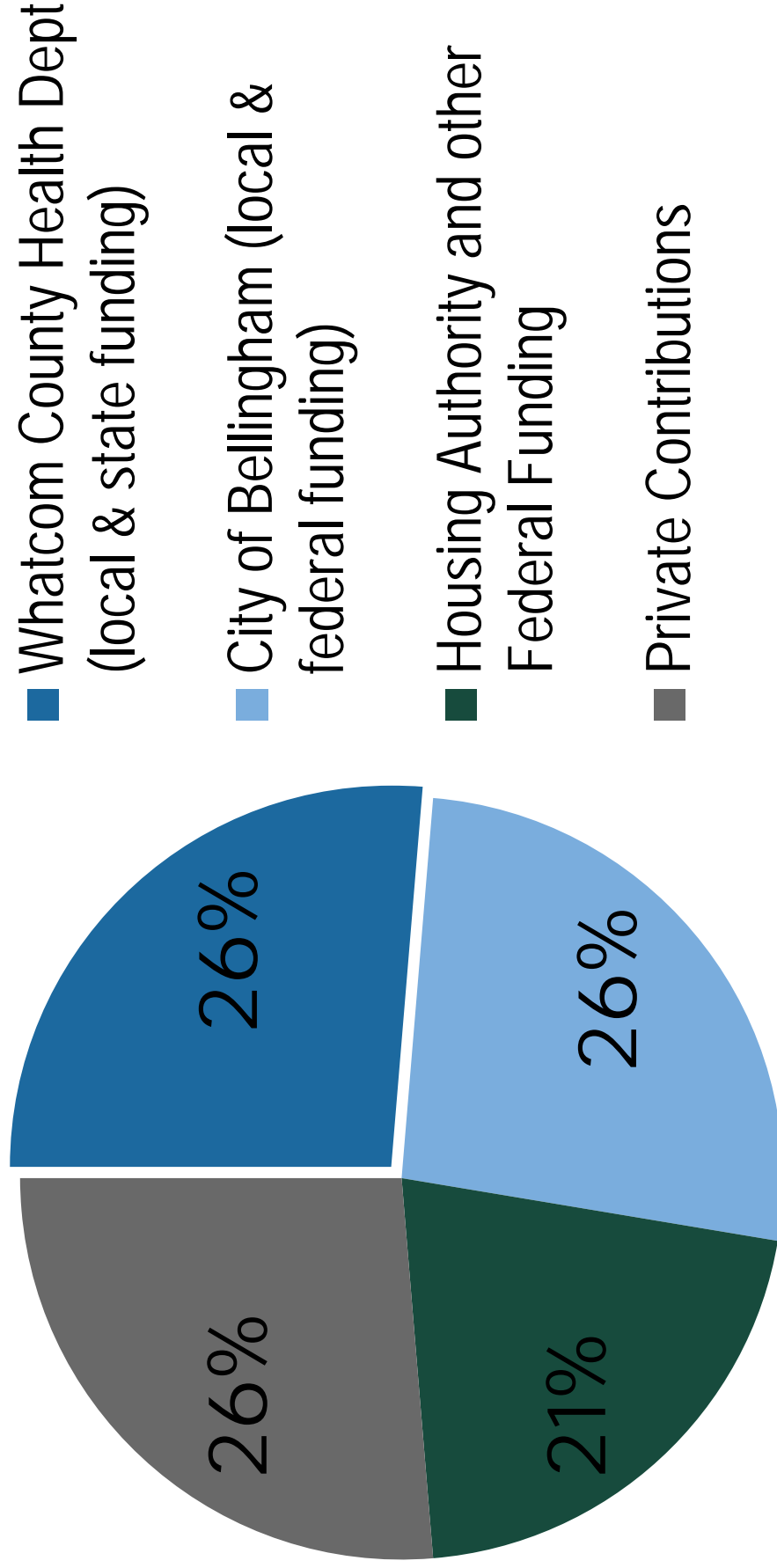
7 Local Strategies

- Coordinated Entry / Centralized Intakes
- Rapid Re-Housing
- Permanent Supportive Housing
- Increase Supply of Affordable Housing
- Prevention and Diversion
- Interim Housing
- Improve Economic Security

System Resources

350

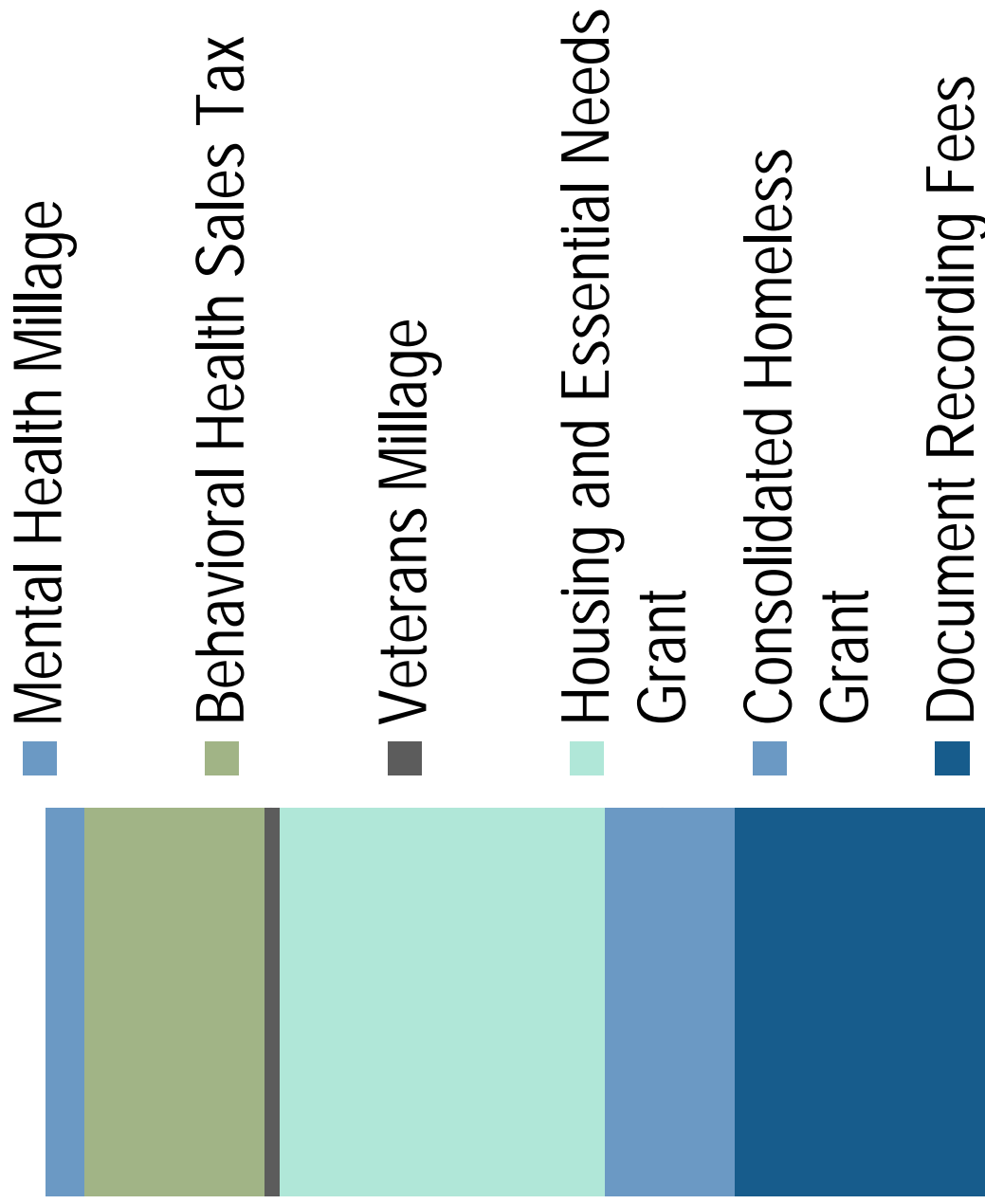
Annual Funding - \$19 million



System Resources

2019 Funding Composition for WCHD's Housing Program

\$5,053,546
Total



System Resources

Subsidized Housing – In System

Type	Beds for Adults or Solo Youths	Beds for Families	Total
Emergency Shelter	49	49	98
Transitional Housing	31	41	72
Rapid ReHousing	125	404	529
Permanent Rent Support	12	201	213
Permanent Supportive Housing	331	34	365
Total	548	729	1,277

System Resources

Recent Improvements or Additions

- Count of homeless individuals decreased 14% from 2018
- Increased number of units and added service capacity
- Improved relationships with landlords
- Development of diversion program at Homeless Svc Cntr
- Launch of coordinated care program (GRACE)
- Improved data collection and data use
- Stronger collaboration of service providers and community

Plan to End Homelessness

System Improvements Underway

Expand access to affordable housing

- Landlord Liaison, Roommate Café, Housing Lab, Supported Employment

Increase support for chronically homeless population

- Use Medicaid funding (Foundational Community Supports) to increase capacity of Permanent Supportive Housing

Improve referral process

- Better info from assessments, better coordination with partners

New Actions In Plan

Quickly Identify and Engage . . .

Provide more extensive training for frontline staff

- Behavioral health, trauma-informed care, motivational interviewing, etc.

Reduce unsheltered homelessness

- Add capacity and supports to emergency shelters
- Expand “outreach” at Ground Floor day center for Youth

New Actions In Plan

356

Prioritize Housing for Most Vulnerable

Update assessment tool to more accurately identify needs

New, collaborative effort to improve “fit” of housing placements and reduce repetition of system failures

New Actions In Plan

Continue to Operate an Effective and Efficient System to Quickly Move People into Permanent Housing

Invest in Landlord Liaison and Roommate Café programs

- Reduce time spent looking for homes
- Reduce returns to homelessness
- Share housing to support affordability

Refine Housing Pool Maintenance

- Spend less time searching for households
- Reduce false hope and the tendency to wait

Equity Analysis

358

Homelessness is not distributed evenly

- Much greater likelihood for Native Americans to be homeless
- Non-white households are twice as likely to be homeless
- LGBTQ identification overrepresented among homeless youths
- Only 7% of single parent homeless families led by male head of household
 - Nationally, 20% of single parent households have male parent

Equity Actions

Reduce Disparities in Homelessness

- Provide training for partner agency staff on equity and cultural competency
- Require contractual partners of the Health Department to submit plan on how they intend to work toward reducing disparities in at least one of the identified groups
- Reach out to leadership of groups that experience disparities in rates of homelessness

Forecast

360

Funding Required to Keep Up with Need

	Population Growth (annual %)	Rent Growth (annual %)	Predicted change in number of unsheltered HHs in 2024	Annual Funding to Offset Growth (includes inflation)
Scenario 1	0	0	-24	\$111,629
Scenario 2	0	3	-5	\$198,314
Scenario 3	1.5	3	+29	\$318,183
Scenario 4	1.5	5	+67	\$493,327
Scenario 5	1.5	8	+129	\$758,772

Summary

- Requirements from Commerce Met
- Local Strategies Remain in Place
 - Strengthened with New Programs
 - Increased Emphasis on Equity
- Expand Programs as Funding Allows

Next Steps

- Plan due to Commerce on 12/2
- Must be approved by Council
 - Final draft to council: Nov. 19
 - Last day to make changes: Oct. 30

Next Steps

Questions?

Comments?

Requests?



A HOME FOR EVERYONE

Strategic Plan to End Homelessness in Whatcom County

2019 Local Plan Update

Phase 5

Submitted by the Whatcom County Health Department



Whatcom County
HEALTH
Department



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Acknowledgements

This Local Plan Update is presented with appreciation to following local partners for their input and collaboration in the planning process:

- Bellingham Community Services Office/DSHS
- Bellingham/Whatcom Housing Authority
- Catholic Community Services
- Catholic Housing Services
- City of Bellingham
- Domestic Violence and Sexual Assault Services of Whatcom County
- East Whatcom Regional Resource Center
- Every resident of our community without a home of their own
- Homeless Voices
- HomesNOW! Residents and President
- Interfaith Coalition
- Lake Whatcom Residential and Treatment Center
- Lighthouse Mission Ministries
- Lydia Place
- Northwest Regional Council
- Northwest Youth Services
- Opportunity Council
- PeaceHealth St. Joseph Medical Center
- Pioneer Human Services
- Plan to End Homelessness Ad Hoc Committees
- Skagit County Public Health
- Small Cities Partnership of Whatcom County
- Sun Community Services
- Unity Care Northwest
- Washington State Department of Social and Health Services
- Whatcom Asset Building Coalition
- Whatcom County Coalition to End Homelessness
- Whatcom County Council
- Whatcom County Housing Advisory Committee
- Whatcom County Planning Department
- Whatcom County Steering Committee of the Coalition to End Homelessness
- Whatcom Homeless Service Center
- Windward High School Students

Recognition is also due to all local service providers and nonprofits responding to homelessness, and to volunteer heroes who work tirelessly on behalf of those who are without a home of their own.

This local plan update is dedicated to those who lost the battle and died while homeless.

Executive Summary

This plan describes Whatcom County's response to the complex issue of homelessness in our community. It explains how the strategies and actions required of an effective homeless crisis response will be used to meet the needs of Whatcom County.

Housing in Whatcom County

The most frequent and direct hardship that leads to homelessness is the lack of affordable and available housing. This challenge is often compounded by difficulty in accessing treatment for medical or behavioral health disabilities, domestic violence, and discrimination that further reduces housing stability. Whatcom County's housing programs provide financial, behavioral health, and other types of support services that successfully end homelessness and create lasting stability for participants, and they provide significant benefits to the broader community as well. To overcome anticipated rent growth in Whatcom County however, commensurate increases in funding will be necessary to prevent a corresponding increase in homelessness.

Community Oriented Approach

A Home for Everyone was created with input from a wide range of community stakeholders that includes elected officials, service providers, and those with the lived experience of homelessness. It calls for continuation of our balanced approach that seeks to make homelessness a rare, brief, and non-repeated experience. Services will generally be prioritized for households who are most likely to suffer the greatest harm as a result of homelessness and who are the least able to resolve their housing crisis unassisted. At the same time, some resources will be reserved to divert households from losing housing in an effort to avoid the trauma of homelessness. Every intervention aims to move people towards safe and stable housing.

Objectives from the Washington State Department of Commerce

In support of the goal of reducing and ending homelessness, five objectives, complete with specific actions, are included in this strategic plan:

- To quickly identify and engage people experiencing homelessness
- Prioritization of housing for people with the greatest needs
- Operation of an effective and efficient homeless crisis response system that swiftly moves people into stable permanent housing
- Project the fully implemented plan's impact on the number of households housed and the number of households left unsheltered, assuming existing resources and state policies
- Addressing racial disparities among people experiencing homelessness in Whatcom County

What We Need

A full continuum of services is vital to overcome the common and unique barriers to household stability. The system must include outreach programs that engage with unsheltered households and provide interim housing shelters that can transition people into permanent housing. We need rapid re-housing that gets people back into stable housing and we need skilled case managers to link them with the financial, medical, and social resources that will keep them housed. We must dedicate affordable housing for people with constrained incomes and permanent housing programs that welcome and support people with disabilities. And we need ready assistance to help those at risk as they face eviction or the threat of domestic violence.

Progress Made

Despite the rising costs of housing and healthcare, great strides have been made toward ending homelessness in Whatcom County in recent years. The annual census of people experiencing homelessness found a 14% decrease in the number of individuals from 2018 to 2019. Program capacity of supportive, affordable, and accessible housing units increased. New diversion programs and a landlord liaison position helped people find and maintain housing by building relationships and applying existing resources. A new comprehensive day center is connecting homeless youths with what they need to get back on their feet. The community's hardest-to-serve residents are enrolled in a new countywide coordinated care and engagement program. New buildings for permanent supportive housing have been constructed to serve people with experiencing chronic homelessness while challenged with disabilities. Private citizens and faith-based institutions improved their responsiveness and expanded upon their already generous donations of time and resources. And the partnerships between government and not-for-profit housing agencies continue to strengthen and create opportunities for greater impact.

Ending Homelessness in Whatcom County

A Home for Everyone calls for the development of new and promising programs, and for the fine-tuning and coordination of the nationally recognized best practices already in place. Better integrated data and performance management, as well as broader partnerships and increased emphasis on equity, make *A Home for Everyone* a plan that will bring us closer to realizing our goal of ending homelessness for every person in Whatcom County. The objectives of this plan include quick identification and prioritization of those with the greatest needs, operating an efficient system that moves people to permanent housing, quantifying and communicating the gap between the supply and needs for homeless housing, and decreasing the disparities experienced by groups that face discrimination. This plan serves as a public blueprint for ending homelessness in Whatcom County. Dedication and collaboration from government officials, community organizations, and an engaged public can turn *A Home For Everyone's* vision into a reality for Whatcom County.

Introduction

History of Planning

Background

This 2019 Local Plan is a significant update to the 2012 Whatcom County 10-Year Plan to End Homelessness that includes both local priorities and state mandated objectives. Local Plan Updates such as this are required by Washington State legislation for counties receiving state funding at a minimum of once every five years, with briefer updates annually.

The purpose is to provide information about homelessness, review progress of reducing and ending homelessness locally, and to present a revised strategic plan. This overview of activities and performance encompasses the years from 2012 and into 2019, and demonstrates a commitment to strategic short, medium, and long term solutions that require participation from multiple sectors of the community. Although this Plan includes components related to other systemic issues that contribute to homelessness, its primary focus is the homeless crisis response system in Whatcom County. Importantly, this plan is limited to the areas and activities that can be reasonably influenced by the Whatcom County Health Department, its primary author. Although the network of contracted agencies that have formal relationships with the health department has grown, it still accounts for a minority of the work and funding behind the broader efforts to end homelessness, develop affordable housing, increase access to essential behavioral health supports, and provide social services for the county's most vulnerable residents. The health department recognizes and appreciates that there are many agencies and organizations working towards similar goals, but differences in approach, funding, and missions often lead to different strategies and impede close coordination.

Local Plans serve as blueprints that guide decisions about how resources will be prioritized to reduce and end homelessness. Informed by a wide range of community participants, including those with lived experience of homelessness, formal and informal organizations, government entities and nonprofit agencies, Local Plans offer strategies and activities that provide local solutions to homelessness. Deliberate collaboration and alignment among willing partners ensures effective and efficient use of resources supporting those most vulnerable to homelessness.

For the purposes of this Local Plan Update, we have set objectives and targets, revisited the strategies, explored new solutions, and collaborated with community partners in our efforts to reduce and end homelessness for everyone in Whatcom County.

This 2019 Update to our original 10 Year Plan to End Homelessness summarizes the earnest efforts, achievements, setbacks, and challenges, as we move forward with our persistent vision of *A Home for Everyone* in Whatcom County.

A Phased Approach

The following summary describes the primary impacts of Phases 1 through 4 of our Local Plan Updates:

Phase 1, 2005:

- The County's Homeless Coalition, Whatcom County Housing Advisory Committee, and other key stakeholders identified major homeless housing and prevention gaps and priorities for funding.
- Key concepts and strategies emerged as necessary components of all future Plans – Housing First, Housing Affordability, Serving All Homeless Populations, Single Point of Entry, Street Youth, and Ending Homelessness as we know it.

Phase 2, 2006:

- The County designed a three-year pilot project to incorporate the priorities and approaches identified in Phase I. It was submitted as an application for Washington State Department of Commerce's first round of the Homeless Grant Assistance Program (HGAP) and resulted in a \$1.4 million grant to establish the Whatcom Homeless Service Center.

Phase 3, 2008:

- A new Plan Update transformed the housing community from a system that managed homelessness to one focused on ending homelessness.

Phase 4, 2012:

- Emerging priorities included increased focus on ending Veteran homelessness, quicker response to people who are medically fragile, and the provision of needed resources such as a surplus furniture bank, advocacy to assist with obtaining identification documents, and access to services in the annual Project Homeless Connect.

Phase 5, 2016-2019:

- In late 2016, planning began for an Update due at the end of 2018. The Steering Committee for the Whatcom County Coalition to End Homelessness advised on plan components throughout 2017 and into 2018. The vision, guiding principles, core values, goals, and strategies of the Plan were reviewed.
- In December of 2018, Commerce published new guidelines for local plans with a new due date of December 1, 2019. The guidelines were revised in March 2019 and then again in June of 2019. This plan adheres to the guidelines, and incorporates additional elements necessary to best reconcile our local strengths, challenges, and strategies into the Update.

Community Process of Plan Development

Since 2017, housing specialists with the Whatcom County Health Department began reaching out to seek community input specifically for this update. Focus groups, meetings, interviews, and community forums included a broad range of stakeholders:

- Policy makers
- Housing partners
- Funding partners
- Medical professionals
- Vocational specialists
- School district staff
- Planning staff
- People with lived experience
- Concerned residents and members of the public

Our Vision: A home for everyone.

Guiding Principles

The housing community's guiding principles date to 2005, when planning sessions for our first strategic plan generated a list of consensus principles that continue to hold true today. These principles shaped the development of all phases of the Plan: how we write policies, the methods of service delivery, how we talk about our work, and the way we interact and engage with people seeking services.

- Housing is a basic human right
- Housing saves lives
- Housing restores dignity and instills hope
- Failures across multiple systems contribute to the prevalence of homelessness
- Homelessness is expensive; investments in strategies that work and are sustainable are fiscally responsible
- Prevention of homelessness is a primary intervention

- Communicating our work and using consistent messages will increase community support and produce better results

Our Core Values

The core values identified in earlier Plans continue to represent the position of housing partners and others in the community:

- We believe that it is unacceptable for any resident of our community to be homeless.
- Stable housing is the foundation upon which people build and improve their lives – the foundation for good health, for positive educational outcomes, and for reaching their economic potentials.
- Therefore, we maintain agreement to strive to end homelessness for all. We are committed to seek long term solutions to homelessness in Whatcom County.

Homelessness in Whatcom County

This section describes the community-wide challenges facing Whatcom County residents and provides data that explains the particular barriers faced by people experiencing homelessness locally.

Whatcom County's Housing Stability Needs

It would be difficult to overstate the severe need for housing in Whatcom County. In Bellingham alone (Whatcom County's largest city and home to about half of the population), planners have estimated that there is a need for an additional 11,000 affordable housing units. Although not as precisely quantified, this need is prevalent across all of Whatcom County's populated areas, and the housing shortage hits the community's most vulnerable residents the hardest. Specifically, people with the lowest incomes, highest housing barriers, or with ongoing health needs are those most likely to struggle with housing stability, to become homeless, and to enter the homeless crisis response system.¹

Western Washington University's Center for Economic and Business Research in 2019 found that Homelessness and Housing Affordability were the first and second most highly rated challenges facing the City of Bellingham in a survey completed by 1,295 residents.² Although a comparable study was not completed for all of Whatcom County, a database of households seeking services in Whatcom County suggests that these issues are not unique to Bellingham residents. In July of 2019, there were 123 homeless households signed up and waiting for housing services who reported their last stable address had been a place in Whatcom County outside of Bellingham. Of all the households who had most recently been housed in Whatcom County, 62% were from Bellingham and 38% were from elsewhere in Whatcom County. Additionally, many who list their last address as "Bellingham" may not technically live within city limits, such as the neighborhoods of Sudden Valley, Alderwood, Geneva, Tweed Twenty, Lake Samish, and elsewhere; potentially, half of the Whatcom County residents who seek services here did not live within Bellingham's city limits. Regarding affordability in Whatcom County, Zillow reports that rate of rent increase from July 2018 through June 2019 was greater for Whatcom County as a whole than it was for the City of Bellingham (15.1% vs 14.5%). All of this suggests that our housing crisis is not a problem created in or confined to the county's largest city, but is spread throughout western Whatcom County.

Affordability of Housing Units

Each individual who has experienced homelessness has a story that is theirs alone. But in those unique stories there are frequently shared components. The most common element that leads to homelessness in those stories is financial stress. This underlying economic hardship is a combination of high housing costs and low incomes, and often spirals out of control following an unexpected financial hardship like job loss, expensive medical bills, or even unanticipated automotive expenses.

¹ <https://www.cob.org/Documents/council/Issues/housing/Narrative%20A%20Why%20is%20housing%20expensive%206-28-19.pdf>

² <https://cbe.www.edu/files/2018%20City%20of%20Bellingham%20Residential%20Survey%20Executive%20Summary.pdf>

A national study completed in May of 2019 by the Consumer and Community Research Section of the Federal Reserve's Division of Consumer and Community Affairs found that 27% of survey respondents would need to sell something and 12% would simply be unable to pay an unexpected expense of \$400.³ To put this in local terms, at the rate identified in the survey (12%), the number of Whatcom County residents who would be unable to withstand a \$400 economic blow is over 27,000 people. In other words, there are tens of thousands of Whatcom County residents who are one mishap away from homelessness.

The terms "cost-burdened" and "severely cost-burdened" are used among service providers to describe households spending more than 30% or 50% of their gross income on housing costs. The 2017 American Community Study estimated that approximately 65% of Whatcom County's renter households pay more than 30% of their income in rent. A comprehensive study completed in 2018 identified an affordability inflection point at which the rate of homelessness increases at a quicker pace with subsequent rent increases.⁴ That is to say, the impact of rising cost burden, as shown in Figure 1, does not have a linear relationship with homelessness. The study compared area median income for metropolitan areas with its median cost of rent, and found that where median rent exceeded 32% of the median income, the rate of homelessness increased at an accelerated rate. That rate for Whatcom County was 28.7% in 2018.

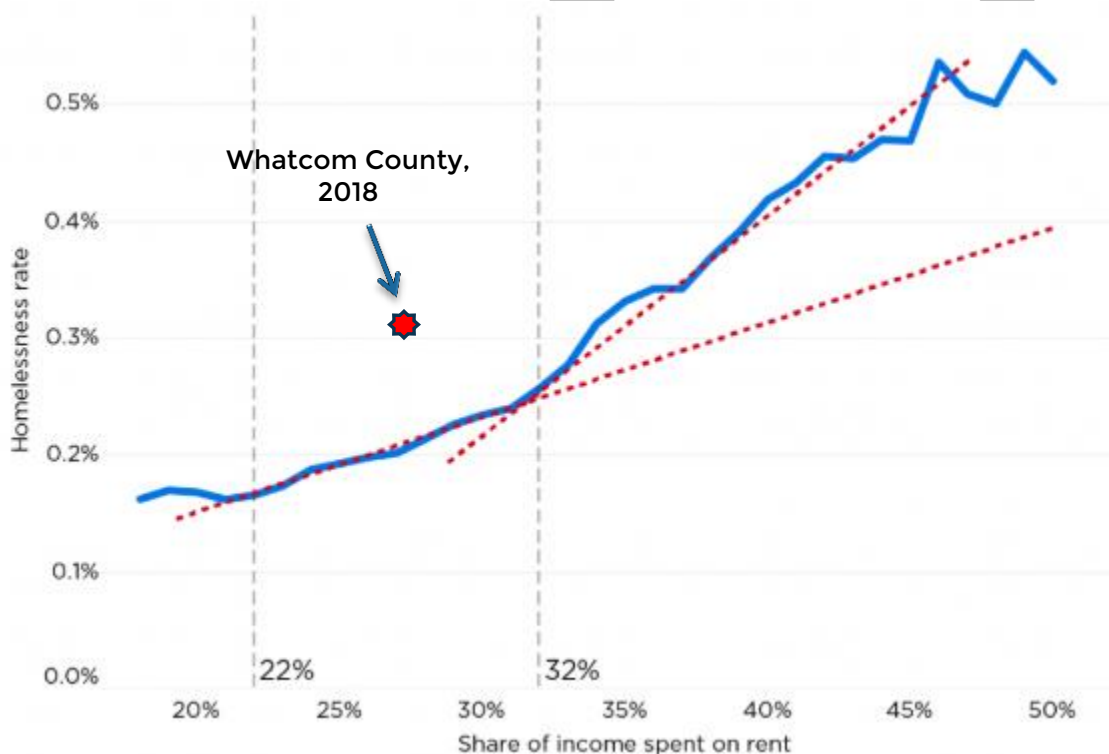


Figure 1: Homelessness rates increase more dramatically once a community's median rent exceeds 32% of its median income. This model was created using national income, rent, and Point In Time data, and shows the relationship between housing affordability and homelessness. The rate of homelessness in Whatcom County exceeds the model's prediction based on the amount of income spent on rent.

³ <https://www.federalreserve.gov/publications/2019-economic-well-being-of-us-households-in-2018-dealing-with-unexpected-expenses.htm>

⁴ Chris Glynn, Thomas H. Byrne and Dennis P Culhane. "Inflection Points in Community-level Homeless Rates" (2018)
Available at: http://works.bepress.com/dennis_culhane/228/

In July of 2018, Zillow reported Whatcom County's median rent index had reached \$1,543 per month. The median household income in Whatcom County in 2018, as estimated by the Washington State Office of Financial Management was \$64,681.⁵ This computes to a household that earns the median income spending 28.7% of their income for a median-priced rental. At the time of writing (using July 2019 figures), Zillow estimates the county-wide median rent increased by 6.4% from a year earlier.⁶ The homelessness rate, as measured with Point In Time figures, is just over 0.3%. The model predicts that for an area with a median rent that is 29% of the median household income, the rate of homelessness would be below 0.25%. The rate of homelessness in Whatcom County is higher than the model estimates, but it is worth noting that homelessness is more concentrated in certain areas of the country, and is much more prevalent on the West Coast. While rent is certainly a contributing factor, this suggests that it is not the only factor to influence the rate of homelessness in Whatcom County.

Availability of Rental Units

The rental vacancy rate in Whatcom County was measured by the University of Washington's Runstad Department of Real Estate at 0.4% in the spring of 2019.⁷ Whatcom County's rental vacancy rate has not been above 2% since 2013, which is below the state average and well below the 7% that is often considered a healthy, "natural" rate by the Joint Center for Housing Studies at Harvard University.⁸ Low vacancy rates often drive increases in rents, and also make it more difficult for individuals who would benefit from rental subsidies to remain competitive against conventionally funded tenants. Although measures have been taken to outlaw discrimination against potential tenants with vouchers both locally and at the state level, there have been reports from individuals in Whatcom County who believe discrimination is still taking place. The competitive nature of securing a unit has created an environment that is difficult for households with poor credit or the inability to pay large move-in costs.

The rental market remains constrained in part because of the high cost of purchasing a home. For households currently occupying rentals, the ability to purchase a home and create a rental vacancy has become more and more difficult. The Runstad Department of Real Estate measures housing affordability as a function of median home prices and median household incomes for each county. Using this index, Whatcom County was identified as the 5th worst of Washington State's 39 counties for affordability and 6th worst for first time homebuyers in the second quarter of 2019 for county residents to purchase locally.⁹

Population Growth

From April 1, 2010 through April 1, 2018, the natural population increase (births in excess of deaths) has accounted for about 29% of growth, while migration from outside of Whatcom County has constituted the other 71%.¹⁰ In the five years following 2013, the population of Whatcom County grew by 19,578 people, and the average household size has been 2.48 persons per household (American Community Survey, 2013-2017). Over that period of time, the number of housing units increased by only 5,457 units. Given the average household size (one unit needed per 2.48 people), this created a deficit of 2,437 housing units. This has contributed to a housing shortage and increased the challenge of housing in Whatcom County, especially for the local households who are competing with newer residents for the scarce units- some of which are moving from areas with higher average incomes and/or selling homes in higher-valued areas and are less sensitive to rising costs.

⁵https://www.ofm.wa.gov/sites/default/files/public/dataresearch/economy/median_household_income_estimates.pdf

⁶ <https://www.zillow.com/research/local-market-reports/>

⁷ <http://realestate.washington.edu/wp-content/uploads/2019/06/2019SpringApartmentMarketReport.pdf>

⁸ <http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/w07-7.pdf>

⁹ <http://realestate.washington.edu/research/wcwr/housing-reports/>

¹⁰ https://www.ofm.wa.gov/sites/default/files/public/dataresearch/pop/april1/ofm_april1_poptrends.pdf

Health Services for Housing Stability

Behavioral health disorders, including mental illness and the proliferation of opiate and methamphetamine abuse, are contributing factors that lead some to become homeless. Although mental illness and substance abuse rates have remained relatively steady and are not the leading causes of homelessness, a shortage of treatment options for those struggling with substance use disorder and/or poor mental health is an enormous challenge for people experiencing homelessness. The issue is further complicated by property damage (contamination) that occurs when methamphetamine is used within rental units. Both publically and privately owned rentals have been damaged in this way, and the result is often loss of housing for the tenant and the withdrawal of that housing unit (or units) from our housing system. The Bellingham Housing Authority reports that the average cost for an environmental clean-up following the identification of methamphetamine contamination is approximately \$15,000 in addition to the several months of forgone rent collections. They have decontaminated and rebuilt a total of 21 units in just the two years leading up to September 2019. This issue is not unique to Bellingham Housing Authority properties however, and a stakeholders' meeting will be convened in 2020 to address this issue in a way that addresses the individuals' needs, complies with fair housing laws, and supports landlords in their effort to preserve local housing opportunities.

A new coordinated care program in Whatcom County, *Ground-level Response And Coordinated Engagement* (GRACE), has brought providers together to rally in support of those with the most complex situations. Strengthening partnerships between housing and behavioral health providers is contributing to a reduction in untreated behavioral health disorders, largely through improved accessibility. Expansion of permanent supportive housing programs, including a brand new facility purpose-built at the end of 2018 for those who have experienced chronic homelessness have also helped to house those with multiple barriers to housing. The permanent supportive housing model has shown that individuals afflicted with behavioral health disorders can be successful and retain housing when given the proper supports. Despite expansions of permanent supportive housing programs and behavioral health services in recent years, there is still a severe shortage of purpose-built housing and associated services for those with chronic behavioral health needs. Planning is currently underway by the Lighthouse Mission Ministries, the Whatcom Homeless Service Center, and PeaceHealth St. Joseph Medical Center, to increase capacity for medical respite care offered at the Mission, which currently offers two beds for medical respite care. This will address a critical need in the community to provide medical respite care for those experiencing homelessness with serious medical problems. There is also an identified need for an urban rest stop with health services for people who are homeless. This issue is in the planning stage, but has been approved in the 5-year strategic plan of Unity Care NW.

In 2013, the Affordable Care and Patient Protection Act's began reducing the number of uninsured Washingtonians. When the last update to this plan was released in 2012, the uninsured rate was at about 14% statewide. By 2017 the rate had decreased to just 5.5%. The decrease was seen across all age groups, all race/ethnic groups, and for both male and female sexes.¹¹ The persistent disparities seen along racial and ethnic lines closely resemble those seen in Whatcom County's homelessness, with people of Hispanic origin and American Indian/Alaska Native populations three to four times as likely to be uninsured.

Local Homelessness Data

Collecting complete data about people experiencing homelessness is challenging. Many individuals and families are difficult to locate because they have no predictable residence, while others actively avoid being located. Many are reluctant to share personal information with people who have not earned their trust, and some go to great lengths to blend in. For these reasons, quantitative data about homelessness should be used as general indicators of trends, not as definitive facts, and generally we should assume true numbers to be greater than reports can count.

¹¹ <https://www.ofm.wa.gov/sites/default/files/public/dataresearch/researchbriefs/brief089.pdf>

Point In Time Count

At the time of writing, the most recent Point In Time Count was conducted on January 24th, 2019. Volunteers surveyed 514 households who had spent the previous night either unsheltered or sheltered in interim housing. The number of individuals counted (700) represents a 14% decrease from the 2018 count, and the consistency in counting methodology adds validity to the suggestion that the number decreased. This reduction is attributed to moderating rent growth, wage increases, a new 40-bed permanent supportive housing facility, and increased services for people experiencing homelessness. The Point In Time report, although likely an undercount of the homeless population, provides important demographic and descriptive information about people experiencing homelessness locally.

Sheltered and Unsheltered Homelessness

Sheltered homelessness is used to describe the living conditions for individuals or households staying in emergency shelters or in transitional housing programs.

Unsheltered homelessness is used to describe the living conditions for individuals or households who sleep in places not meant for human habitation, such as tents, doorways, abandoned buildings, vehicles, or other places outside.

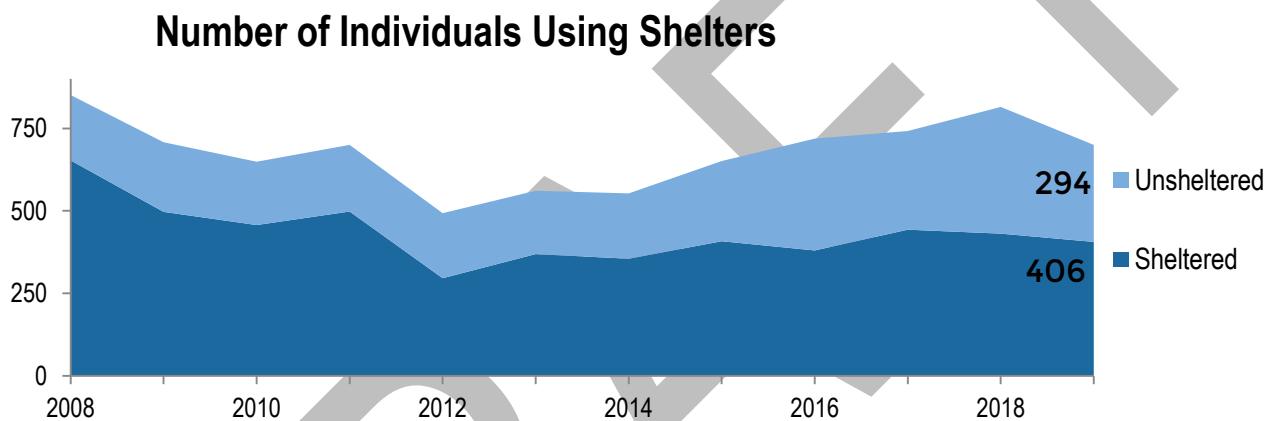


Figure 2: Whatcom County Point In Time Count of Sheltered and Unsheltered Individuals 2008-2019. There were 700 individuals counted in 2019.

Household Composition

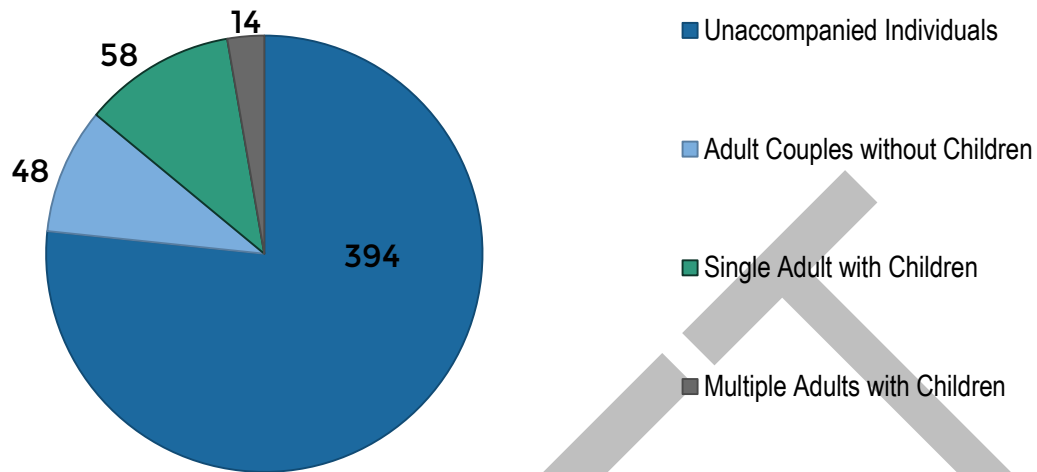


Figure 3: Whatcom County Point In Time Count household configurations 2019. There were 514 households counted.

Homeless Individuals by Age Group

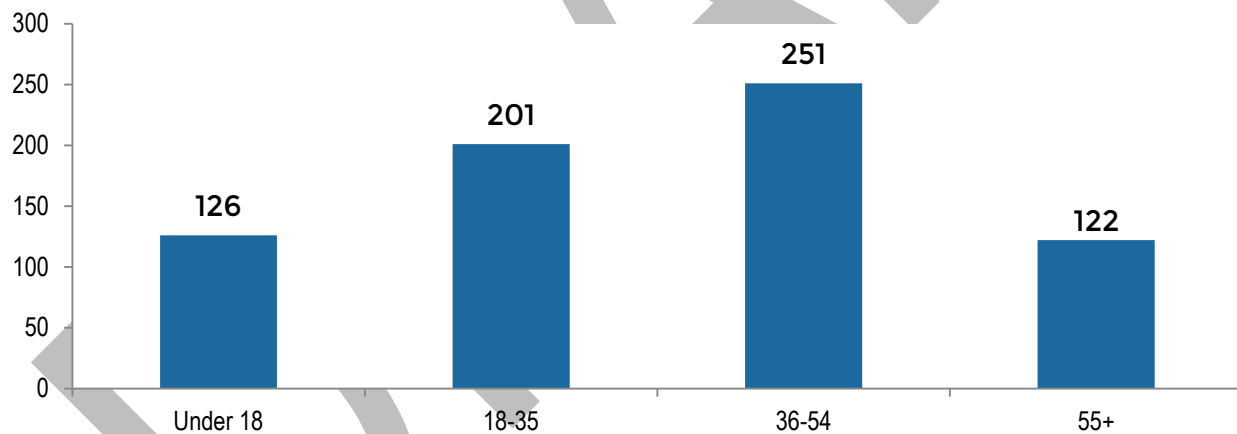


Figure 4: Whatcom County Point In Time Count ages of individuals experiencing homelessness 2019

Factors Leading to Homelessness (%)

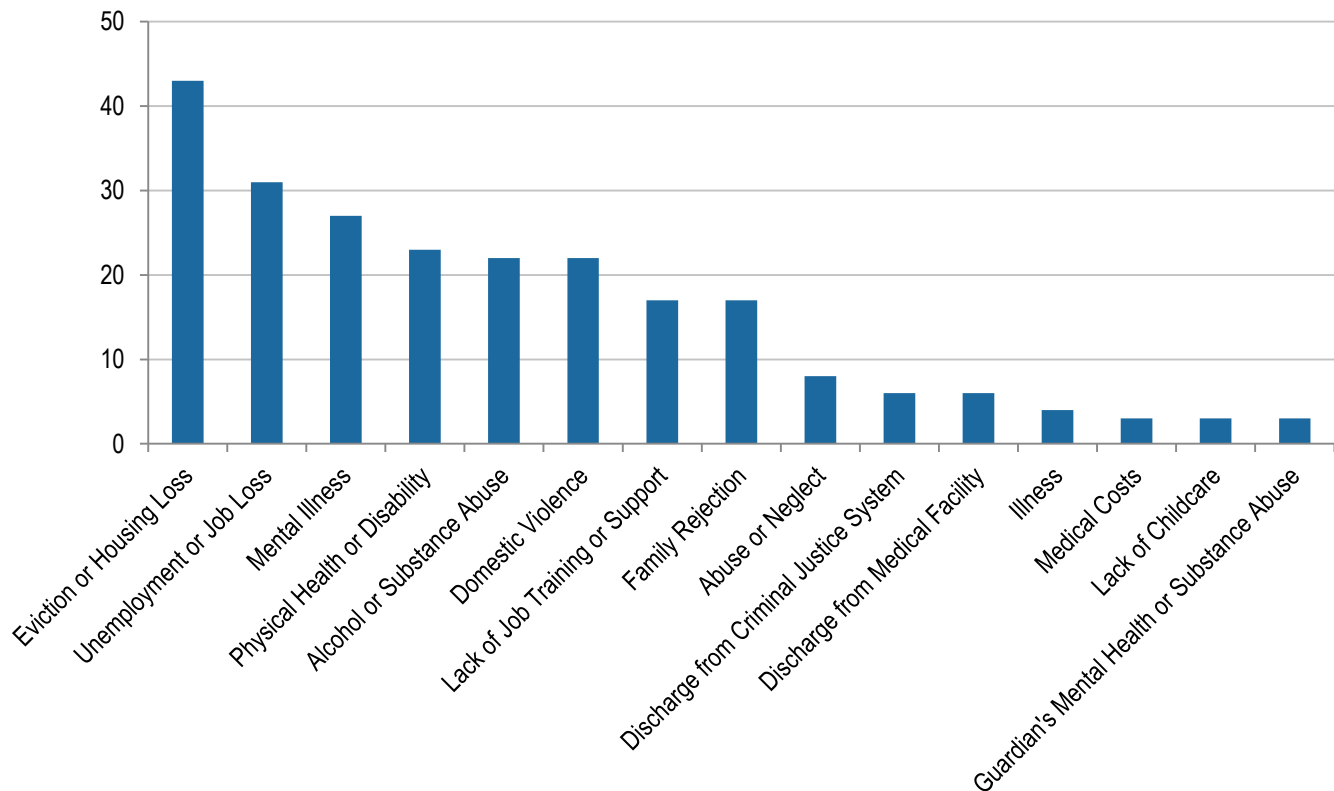


Figure 5: Whatcom County Point In Time Count self-identified factors that led to homelessness 2019 as reported by survey respondents.

The 2019 Whatcom County Point In Time Count identified 72 households that included children. The total number of individuals in these families was 207, and more than 80% of these families had only a single adult. The Count also revealed that 119 individuals experiencing homelessness were at least 55 years of age. The median age of all people was 37 years old, and 64% had their last stable housing within Whatcom County. In contrast to the common belief that people who experience homelessness are overwhelmingly men, almost half (47%) of individuals counted in the 2019 PIT identified themselves as female.

Local Housing Pool Data

The local *Housing Pool* is a database that holds household data, including housing history and eligibility considerations, and is used to determine which households will be selected to fill program openings when requested by participating housing partners. Households in the pool have been assessed to determine their level of need and their barriers to stable housing. The eligibility often hinges on a combination of income, household composition, duration of homelessness, veteran status, and/or the presence of a documented disability, in accordance with funding requirements. The level of need attempts to understand the consequences and likelihood of harm with continued homelessness for the individual. When partner agencies have openings in their programs they contact the Whatcom Homeless Service Center to request a referral. The Whatcom Homeless Service Center then uses data from the Housing Pool database to refer an eligible household for that program's opening. When more than one individual or family is eligible, they refer in order of greatest need. More details about the referral process are available in the Central Point of Entry strategy on page 28.

There are several ways that households are removed from the pool. The best outcome is when a household either self-resolves (finds housing on their own) or is matched to a program vacancy and moves directly into permanent housing or into a supportive transitional program that will likely lead to permanent stability. Another way removal from the pool occurs is through loss of contact. For a household to stay in the pool there must be ongoing verification that the household is still seeking services, remains income eligible, is still experiencing homelessness, and continues to reside in Whatcom County. Periodically, the households that have left the county, have found housing independently, have increased income and lost eligibility, technically stopped being considered homeless due to prolonged institutionalization, lost interest in services, or cannot otherwise be located are removed from the pool. Sudden drops in the number of households in the pool are usually explained either by this process, or when a new facility opens and many are housed in a short period of time.

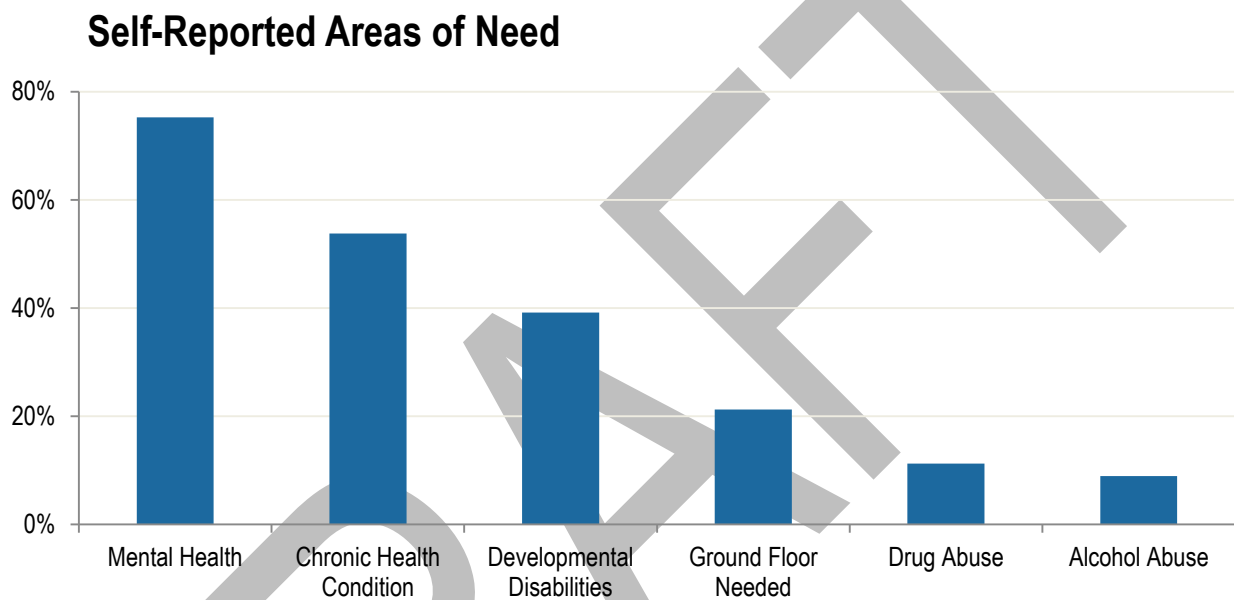


Figure 6: Prevalence of self-identified needs and barriers to stable housing for households in the housing pool at Intake (January – June 2019)

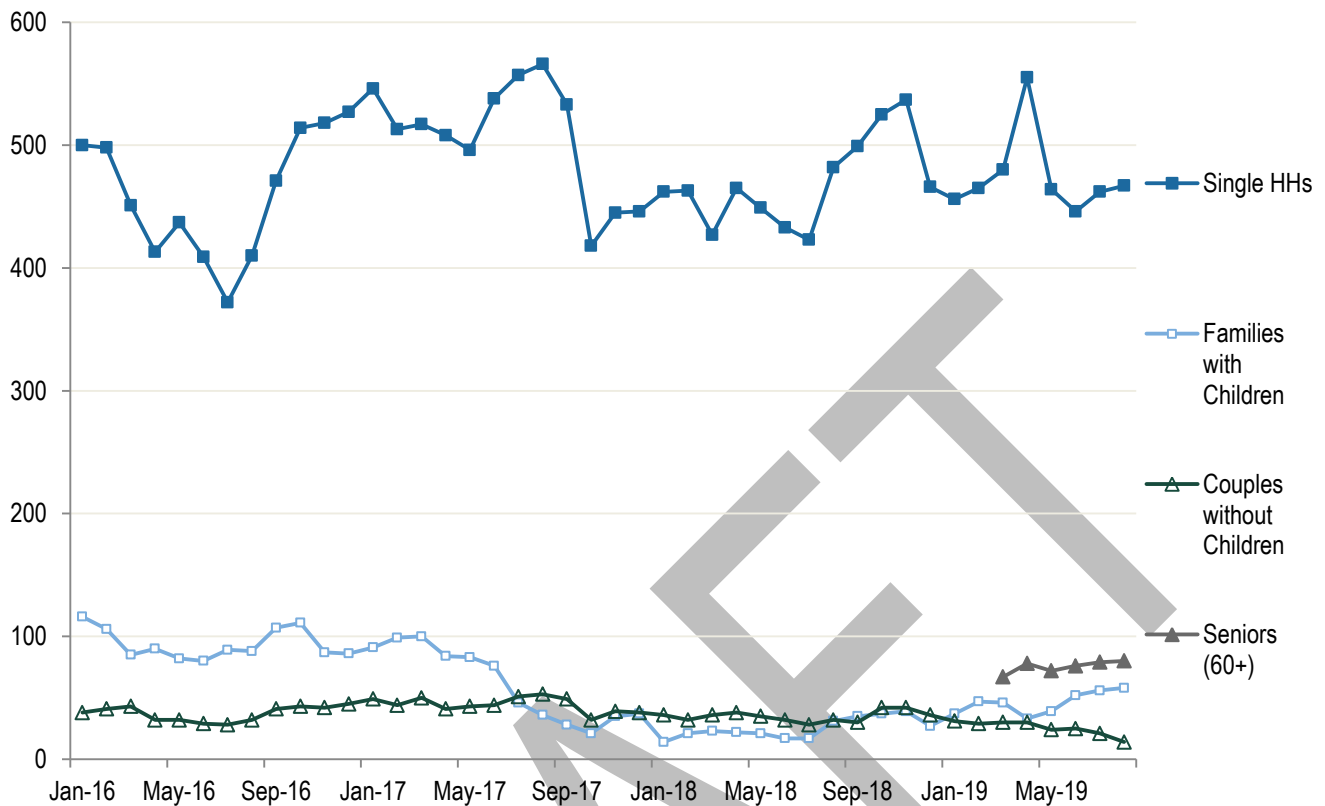


Figure 7: Number of households in the housing pool who are waiting for placement (Jan '16 - Aug '19). The number of families with children (and adult couples without children) almost reached functional zero in 2018, but rebounded slightly as vouchers from HUD were exhausted.

Households on the housing pool list are grouped into categories corresponding to the type of intervention most likely to fit their needs. At the time of writing, August 2019, there were 236 households waiting for placement in Rapid Re-Housing programs, 259 waiting for placement in Permanent Supportive Housing Programs, and another 42 households in need of move-in or deposit assistance. More information about these program types is available in this plan's section on local strategies.

Office of Superintendent of Public Instruction

Each year school districts in Washington State report information about homelessness among their students to the Office of the Superintendent of Public Instruction (OSPI). OSPI makes this data available for the public.^{12,13} Although OSPI's definition of homelessness differs from the federal definition used for the Point In Time Count (more than half of their reported students are "doubled up"), the information they provide adds depth to our understanding of homelessness in Whatcom County. Across the county's seven school districts, a total of 966 students (3.1%) were identified as having experienced a housing crisis during the 2017-2018 school year. This ratio is significantly higher than what is seen in the Point In Time Count, albeit with use of a different definition. The largest district in the county, Bellingham School District, accounts for about 42% of the county's students but has about 53% of the students experiencing housing instability. The Mount Baker School District, though much

¹² <http://www.k12.wa.us/HomelessEd/Data.aspx>

¹³ The sum of these numbers does not equal 100% because the sensitive nature of the topic requires that school districts not report numbers that could lead to personal identification of students. The numbers for groups that make up smaller, more identifiable populations are not reported when fewer than 10 students of a specific race within a school district are homeless. In effect, this leads to an undercounting of Asian, Black, Multiracial, and Native American students.

smaller, has a matching rate of instability among its students at 3.9%, which speaks to the presence of rural housing needs as well as the urban needs.

	Bellingham	Blaine	Ferndale	Lynden	Meridian	Mount Baker	Nooksack	Total
Total Enrollment 2017-18	12,923	2,514	5,287	4,081	1,970	2,066	2,001	30,842
Students that Experienced Housing Crisis	509	79	120	81	31	81	65	966
Percent of Students that Experienced Housing Crisis	3.9%	3.1%	2.3%	2.0%	1.6%	3.9%	3.2%	3.1%

The OSPI data also is broken out by other characteristics of the students, which allows us to see elevated rates of instability within certain groups. In particular, the data show non-white students and students with limited English proficiency experiencing particularly high rates of housing instability. Although Whatcom County's Hispanic population accounts for only 9.1% of Whatcom County residents, Hispanic school children make up 31.2% of students who experienced a housing crisis during the school year.¹⁴ The table below shows these trends among other racial minority groups as well.

Race	Percent of Homeless Student Population (n=966)	Percent of Community Population (n=225,685)	Homelessness Probability Differences by Race
Native American	4.2%	3.1%	135%
Asian	Too few to report	4.1%	n/a
Black	1.9%	1.0%	190%
Hispanic	31.2%	9.1%	343%
Multiracial	7.0%	4.2%	166%
White (non-Hispanic)	50.5%	79.8%	63%

A Community Wide Response to Homelessness

This report is a product primarily of the Whatcom County Health Department, but the vision and strategies were created jointly with stakeholders and require the contributions of an organized coalition of partners to make them possible. The wide mix of housing programs and services in Whatcom County would not be possible without significant efforts, energy, and funding from a large number of like-minded agencies and individuals.

Funding

The Whatcom County Health Department funds affordable housing, interim housing, supportive services, and permanent supportive housing with funding collected from a variety of source. The bulk of this funding, as seen in Figure 7 below, comes in the form of document recording fees collected locally, and from state grants awarded by the Department of Commerce. The taxes and fees for these sources is collected specifically for housing programs and may not be used for any other purpose. Additional funding, which amounted to nearly \$1.2 million in 2019 was added to housing programs from sales and property taxes raised specifically to benefit local veterans and people with behavioral health disorders. With support of elected officials,

¹⁴ The OSPI definition of housing instability includes multiple families sharing a home. When comparing across cultural groups, it is important to consider that customs and traditions, especially as they pertain to shared housing, will impact these figures. At the same time, inequities and lack of opportunity are factors that decrease the access of disadvantaged populations to housing.

the health department was able to fund over \$5 million in services for people experiencing (or at risk of) homelessness in 2019.

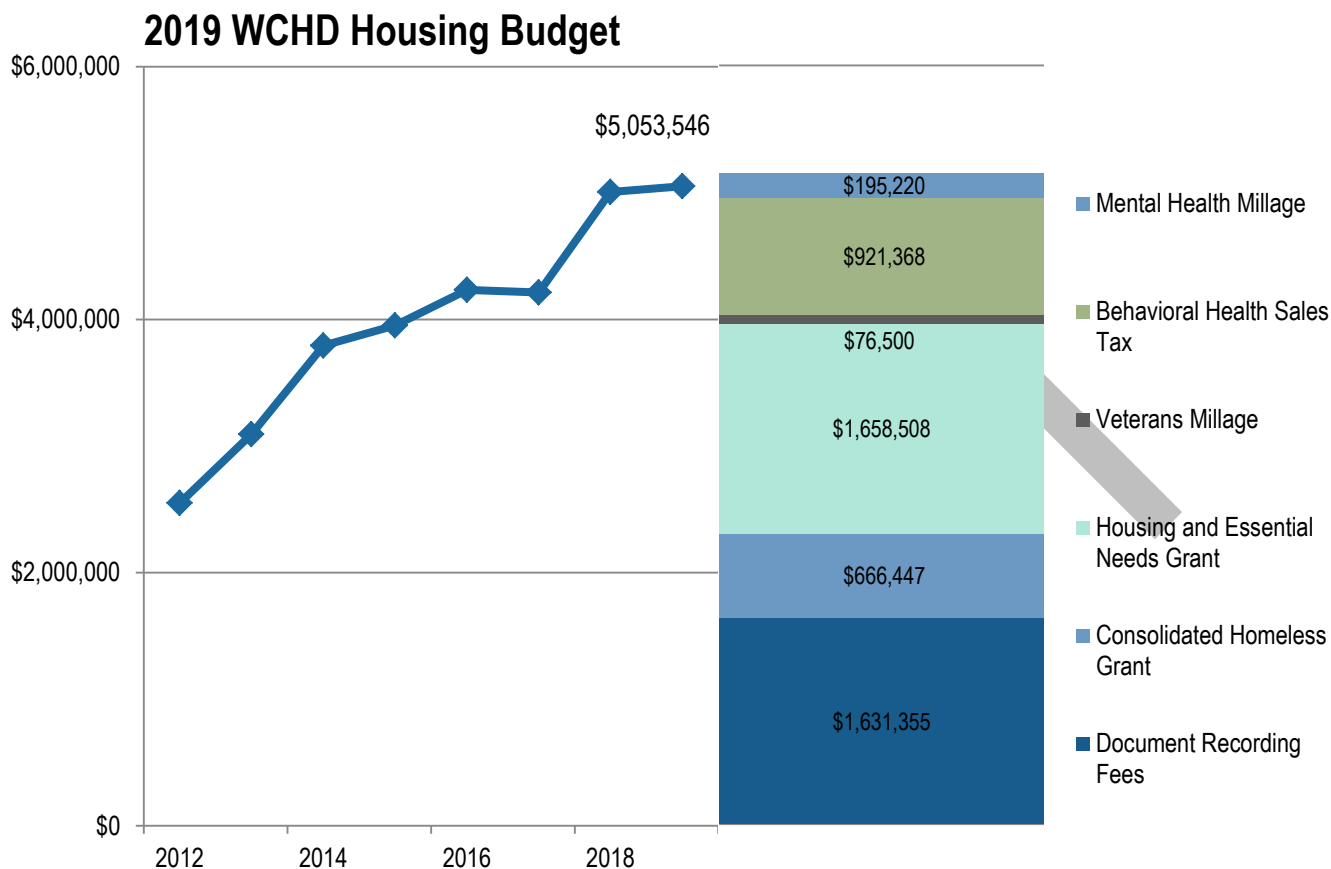


Figure 7: Expenditures of Housing Services Contracted by Whatcom County Health Department exceeded five million dollars in 2019 (left). The sources of revenues to pay 2019 contracts are shown at right.

Even with the addition of the veterans' and behavioral health dollars, the health department's funding accounts for less than 30% of spending on services for Whatcom County's homeless population. Non-profit agencies and other government agencies play a vital role in the sponsorship of homelessness and housing services. The City of Bellingham contributes generously in the affordable housing arena, and with services and resources for those experiencing homelessness within city limits. The 2018 renewal of the City of Bellingham's Housing Levy for an additional 10 years boosted the community by ensuring continuity of services and affordable housing projects that fill gaps in housing capacity. Through the Housing Levy, together with the City's entitlement funds from the federal Department of Housing and Urban Development, the City of Bellingham contributes over \$5 million annually to the county's housing programs. The City of Bellingham's Planning and Community Development Department and the Whatcom County Health Department work together closely and jointly fund many critical services.

In Washington State's Fiscal Year 2019, Whatcom County's non-profit and faith-based agencies reported that they had raised more than \$5 million in private contributions. These donations are raised largely through the hard work associated with creating and hosting fundraiser events, and with dedicated development specialists that help community members understand the importance and impact of giving to organizations that work on behalf our vulnerable neighbors.

Another key agency is the Whatcom County/Bellingham Housing Authority, which is responsible for the majority of federal funding distributed to Whatcom County's low-income rentals, and who also worked very hard to use a variety of resources to

construct new units that will be reserved for households with modest incomes and for formerly homeless households, too. Federal funding, in the form of vouchers issued by Whatcom County/Bellingham Housing Authority, and in grants issued directly to local non-profit organizations amounted to approximately \$4 million in the State Fiscal Year of 2019.

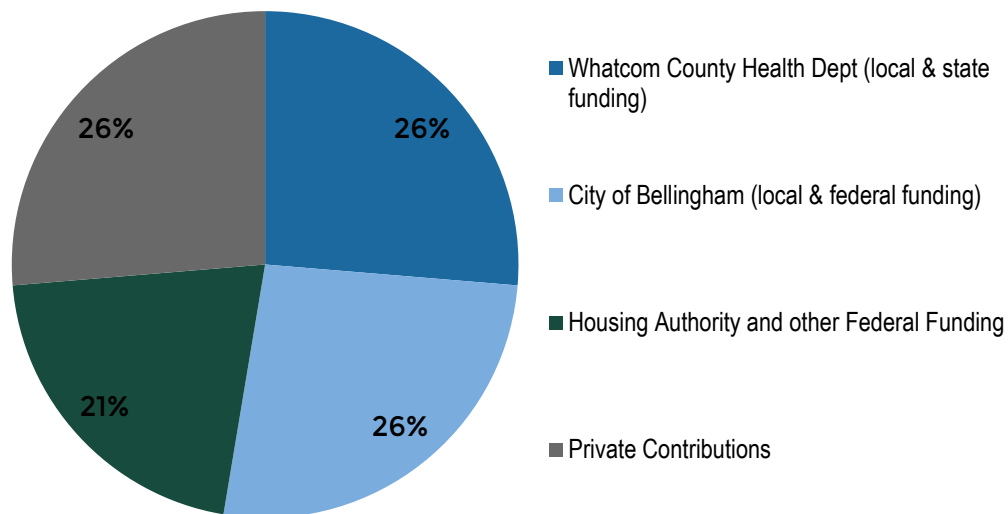


Figure 8: This graph shows the four leading categories of funding for housing programs in Whatcom County. It does not include in-kind or volunteer contributions.

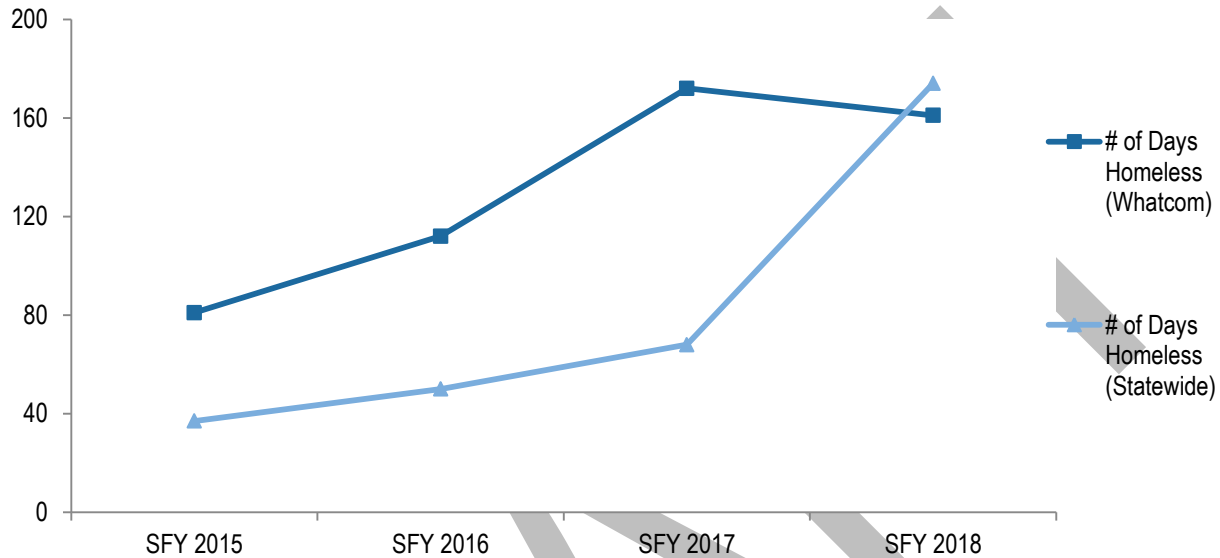
In addition to the main sources of state, local, and federal funding from the government and charitable donations from local residents, many foundations award grants to the county's hardworking non-profit agencies for specific programs or projects that serve people experiencing homelessness. All of these resources add value to the county's housing system.

Community Services Partners

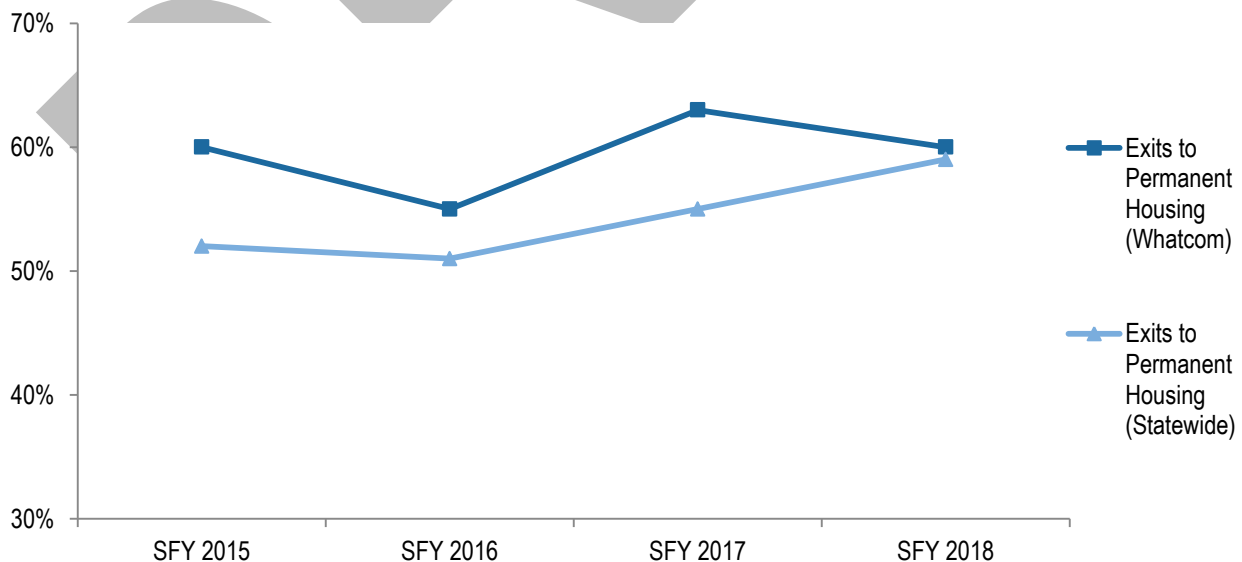
Whatcom County is fortunate to have many partner organizations that contribute towards ending homelessness. These agencies combine public funding with grants and/or private contributions to deliver a wide range of programs in response to our community's needs. Anti-poverty, legal support and other social service agencies provide invaluable support for people experiencing or at-risk of homelessness, as do a number of medical and behavioral health providers. The community's strong base of volunteers has given generously of time, money, material items, and compassion for the cause of homelessness. Our faith-based community has strengthened local efforts by filling gaps of public funding, some opening their doors to provide emergency and transitional housing for our residents. In early 2019 a local congregation completed extensive renovation of their basement to provide a comprehensive day center for youth. The Lighthouse Mission Ministries programs, funded solely by private donations, provides emergency shelter for an average of approximately 130 people per night, as well as a wide range of complementary services for their guests. There are two new grassroots efforts that were championed by local residents in the past year, some having a history of homelessness themselves. These projects include a safe camping site for those in recovery from alcohol and other drugs, and a safe storage program is being developed for those living unsheltered. Other contributing community members include the seven school districts of Whatcom County, as well as the local hospital and the Whatcom County Jail, which both connect homeless individuals with service providers prior to discharge. Partners provide essential housing support for homeless clients within the Mental Health Court and Drug Court programs, while others, such as Mercy Housing, have chosen to fill desirable senior housing units partially from the Whatcom Homeless Service Center's housing pool candidates.

Changes in Whatcom County Homeless System Performance

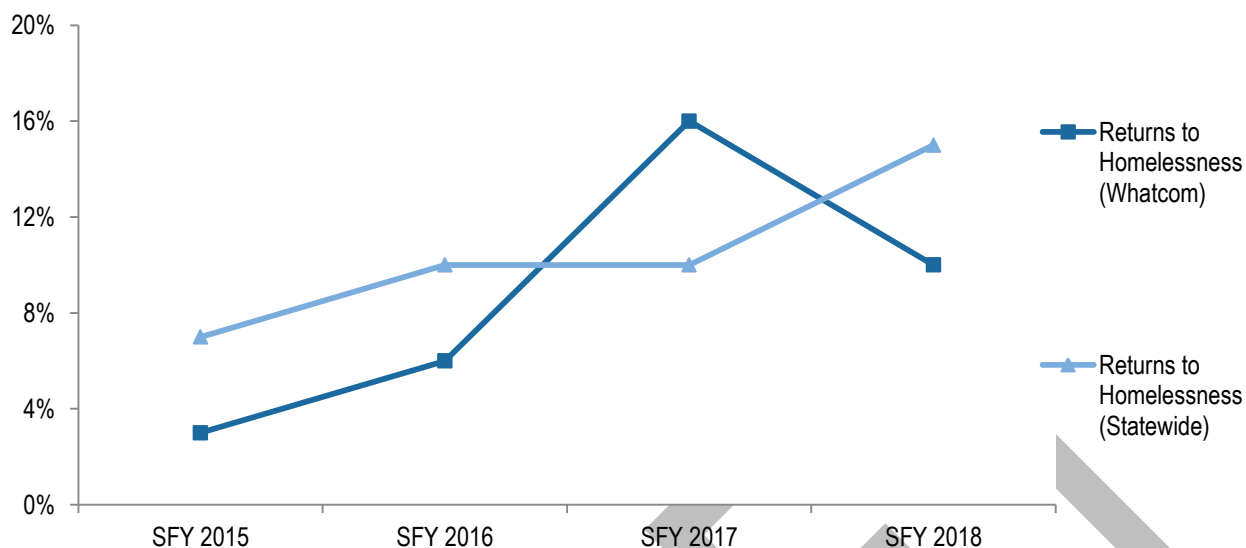
There are four system-wide measures that the Department of Commerce uses to track key indicators of each crisis response system. They include the length of time households spend homeless while working towards permanent housing, the percent of exits to permanent housing, the percent of households that return to homelessness within two years, and the percent of households that are entering into services who have recently spent times unsheltered.



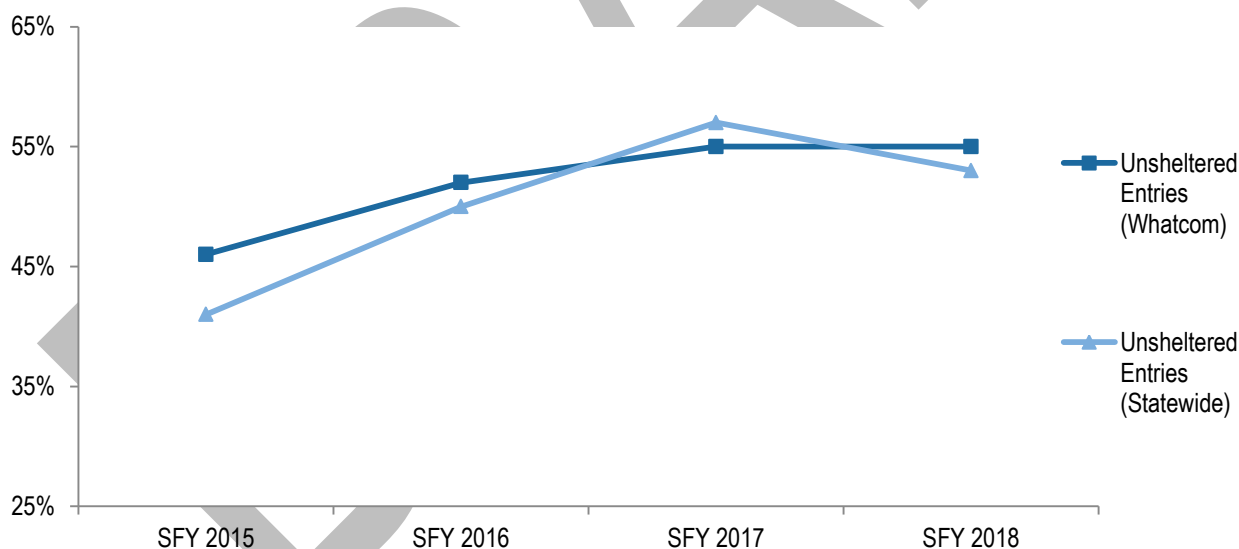
Length of Time Homeless: The median number of days people who are active in Emergency Shelter, Safe Haven, and Transitional Housing experience homelessness. This includes the length of time homeless in any Emergency Shelter, Safe Haven and Transitional Housing projects during the report period, and prior to the report period going back no further than October 1, 2012. If the person reports that homelessness started prior to project enrollment, the project date is essentially extended back in time to the date reported.



Exits to Permanent Housing: The percent of people who exited Emergency Shelter, Safe Haven, Transitional Housing, and Rapid Re-Housing projects to permanent housing destinations.



Returns to Homelessness: The percent of people in Street Outreach, Emergency Shelter, Safe Haven, Transitional Housing, and any permanent housing type projects who exited to permanent housing destinations two years prior to the reporting period.



Unsheltered Entries: The percent of people served who were unsheltered or had a recent history of unsheltered homelessness or were fleeing domestic violence.

The above data is reported in Washington State Department of Revenue County Report Cards and is derived from the statewide HMIS Database. To view updates or compare across counties, visit <https://public.tableau.com/profile/comhau#!/>.

Alignment of Local Context with Federal and State Plans

Homelessness is not unique to Whatcom County. Although there are a unique combination of advantages and disadvantages locally, the five leading causes of homelessness identified by the National Alliance to End Homelessness¹⁵ are all very important at the local level as well.

1. Lack of affordable housing
2. Insufficient income
3. Poor health
4. Domestic violence
5. Racism and discrimination

Alignment with other strategic plans (federal, state, and municipal) ensures that those working to end homelessness are striving to meet the same goals and objectives, and thus have an additive effect with this plan.

Federal and State Plans

The Washington State Department of Commerce guidelines require that Local Plans align with federal and state strategic plans to prevent and end homelessness. The current federal plan, *Home, Together*, was released by the United States Interagency Council on Homelessness (USICH) in July 2018, and covers fiscal years 2018-2022.¹⁶ The Washington State Department of Commerce's *State of Washington Homeless Housing Crisis Response System 2019-2024 Strategic Plan*¹⁷ was released Spring of 2019. Overlap between the goals, objectives and strategies of these two plans and our Local Strategic Plan for Whatcom County may be summarized by the following themes:

- The overarching goal is to end homelessness
- If homelessness occurs, it should be rare, brief, and a one-time experience
- A systemic response is needed by multiple partners from a wide range of sectors to end and reduce homelessness
- Equity must be addressed in strategic planning
- The voice of those with lived experience in homelessness is critical in seeking solutions for preventing and ending homelessness
- Affordable housing resources must be expanded to end homelessness
- Employment opportunities support housing stability and independence

Housing First

Housing First is an approach to connect households experiencing homelessness to permanent housing without preconditions to entry. Supportive services are offered to maximize housing stability and prevent returns to homelessness as opposed to mandating treatment prior to entry.

Housing First emerged as an alternative to the linear approach in which people experiencing homelessness were required to first participate in and graduate from short-term residential and treatment programs before obtaining permanent housing. In the linear approach, permanent housing was offered only after a person experiencing homelessness could demonstrate that they were "ready" for housing. By contrast, *Housing First* is premised on the following principles:

- Homelessness is a housing crisis and can be addressed through the provision of safe housing.
- All people experiencing homelessness, regardless of their housing history, can achieve stability in permanent housing. Some may need very little support while others may need more intensive and long-term supports. These supports must be available to all who wish to participate.
- Everyone is "housing ready;" sobriety, compliance in treatment, or expunged criminal histories are not necessary to succeed in housing.
- Many experience improvements in quality of life, in health, mental health, substance use, and employment, as a result of achieving housing.
- People experiencing homelessness have the right to self-determination and should be treated with dignity and respect.
- The exact configuration of housing and services depends upon the needs and preferences of the population.

¹⁵ <https://endhomelessness.org/homelessness-in-america/what-causes-homelessness/>

¹⁶ https://www.usich.gov/resources/uploads/asset_library/Home-Together-Federal-Strategic-Plan-to-Prevent-and-End-Homelessness.pdf

¹⁷ <http://www.commerce.wa.gov/wp-content/uploads/2018/02/hau-strategic-plan-2018.pdf>

- Systems should be held accountable through performance standards
- Embrace a Housing First approach that offers behavioral health services but does not require preconditions to housing

Local Plans

Consistency between the Local Plan Update with other local strategic plans builds community momentum to identify and implement solutions for homelessness locally. The City of Bellingham's Consolidated Plan¹⁸, the Whatcom County Comprehensive Plan¹⁹, and the Community Health Improvement Plan²⁰ of the Whatcom County Health Department all address local housing needs. These local planning efforts identify similar key challenges:

- Whatcom County has a need for additional affordable housing of a wide range from standard type units to innovative solutions for people with special needs
- Health and housing are inextricably related; substandard housing and homelessness leads to poor health outcomes and vice versa.
- We need to preserve our existing housing stock and address expiring tax credit project that risk becoming unaffordable
- All over Whatcom County, many people are paying more for housing than they can afford

While our Local Strategic Plan to End Homelessness focuses on the explicit goal of ending homelessness, each of the above strategic plans encompass the vision that Whatcom County is able to offer all residents safe, healthy, and affordable homes. It is essential that we share a common understanding of why homelessness exists in Whatcom County, and have a shared map to guide us in engaging in proven strategies and solutions to implement in our community.

Foundational Pillars and Locally-Identified Strategies

Four essential pillars of our homeless housing system that are woven into some or all of the seven strategies of this plan are described below.

Pillar 1: Collaboration

Collaboration is a crucial component of the strategies listed below. This plan cannot be successful without broad support across sectors. We need strong leadership and shared vision to break down silos and organize our resources. Homelessness is rarely caused by a single barrier to housing, and for most people and families, permanent housing will require a few types of support before becoming truly sustainable. The scale of our challenge demands that we approach our solutions with all hands on deck. We must develop public, private, and non-profit partnerships and investments with citizens, including people who have had firsthand experience with homelessness working alongside local public officials, businesses, nonprofits, faith-based organizations, charitable foundations, and volunteers. As we make progress toward our goal of ending homelessness, we should expect growing community interest in Plan efforts and the shared belief that it is unacceptable for anyone in our community to be without a home, and that we can truly end homelessness. Intentional communication about plans, progress, and opportunities will be important to foster alignment among the many actors involved in ending homelessness.

¹⁸ <https://www.cob.org/services/housing/Pages/consolidated-plan.aspx>

¹⁹ <http://whatcomcounty.us/1171/Current-Comprehensive-Plan>

²⁰ <https://wa-whatcomcounty.civicplus.com/2930/Community-Health-Improvement-Plan>

Highlight 1: DVSAS and Lydia Place

Since 2015, Domestic Violence and Sexual Assault Services (DVSAS) has partnered with Lydia Place, another local non-profit agency whose mission is to “disrupt the cycle of homelessness and promote sustained independence” for people living in Whatcom County. Through this partnership, Lydia Place Housing Case Managers visit the DVSAS Safe Housing Program shelters and meet with survivors one-on-one. They assist clients to better understand the local housing landscape and identify safe housing options that best fit the clients’ situations. Housing Case Managers work closely with DVSAS Safe Housing Advocates to help clients make and carry out plans that give them the best chance of achieving stability and independence upon leaving the Safe Housing Program. For some clients, this plan includes accessing supportive housing programs through the local Coordinated Entry System and the Bellingham Whatcom County Housing Authority. For others, it means increasing their income and finding an apartment to rent. For many, it means working to overcome debt, bad credit, poor or nonexistent rental history, or prior criminal convictions, all of which are barriers to becoming independent renters. Throughout this process, Lydia Place Housing Case Managers and DVSAS Safe Housing Advocates communicate frequently to make sure that updates are shared, paperwork is turned in, and mostly importantly, that clients are supported and empowered. In 2018, this partnership helped make it possible for 64% of clients to secure stable housing upon leaving the Safe Housing Program.

By DVSAS and Lydia Place forming this strategic partnership, both agencies have been able to provide expert services that align with their mission and strengths (survivor advocacy for DVSAS and housing case management for Lydia Place), ensuring that Safe Housing Program residents have access to the best level of care and support possible while on their journey to safety and permanent housing.

Highlight 2: Mental Health Court & Pioneer Human Service’s City Gate Apartments

Another successful cross-agency collaboration involving housing programs is the relationship between Pioneer Human Services, the agency that operates City Gate (a permanent supportive housing facility in Bellingham) and the two local Mental Health Court programs. Mental Health Court members have pending criminal charges and are diagnosed with a serious mental illness, usually schizophrenia or bipolar disorder. All are found to be “high risk and high need” as defined by the likelihood of committing further crimes and the relationship between their mental health symptoms and the criminal behavior. Most experience substance use issues either at the “severe” level or at a level that negatively impacts their mental health. Needless to say, access to stable housing is crucial for members’ recoveries and for their success in the Mental Health Court program. A history of homelessness is not uncommon among program participants.

Mental Health Court members are granted access for up to 6 of the 10 re-entry apartments set aside at City Gate for people involved in the criminal justice system. City Gate staff and the Mental Health Court program manager meet on a bi-weekly basis to consider referrals, review status and treatment plans of mutual clients, and explore long-term housing plans. Since Mental Health Court members usually have multiple service providers including mental health, substance use disorder treatment, housing case managers and others, the Mental Health Court program manager brings together all service providers in a coordinated plan. The entire treatment and on-site housing team provides weekly updates to the Mental Health Court program so the individual’s successes can be noted and celebrated at court.

Highlight 3: HSSP and Youths (OC, NWYS, Bellingham School District)

The Homeless Student Stability Program (HSSP) is a partnership between the Opportunity Council, Northwest Youth Services, and the Bellingham School District. This program is funded by grants from the Department of Commerce and Office of Superintendent of Public Instruction for the purpose of offering support for unaccompanied homeless students and homeless families. The objective is to improve educational outcomes for identified students by supporting housing stability. Case management and housing navigator services provide in-school support, connection to coordinated entry and housing services, and diversion.

Pillar 2: Quality Assurance

A benefit that we anticipate from growing public interest and cross-agency collaboration is collective accountability and responsibility. Given the broad array of strategies, it will be necessary to have a multi-tiered governance structure to oversee and guide Plan efforts, with managers, supervisors, and front-line staff engaged, coordinated, and working towards the same goals. An engaged public will ensure that this is done transparently and that it remains a top priority. To further guarantee that programs are implemented as intended and that the plan results in quality services, the Whatcom County Health Department will use the action plan detailed in the table below.

To assist organizations in coordinating service delivery, we need common standards and procedures while at the same time allowing for agencies to stay true to their missions. The common values and guiding vision needs to be shared and strategically communicated to the public as well as the participating partners that provide coordinated services. And it will be important that the work of this plan is reviewed by the very people it is intended to serve. Those who have been homeless in the past or continue to live without adequate housing need to have their voices heard as this plan and our programs change over time.

Pillar 3: Case Management

A third pillar that runs through the following strategies is high quality case management services for people experiencing homelessness, at risk of homelessness, or not yet stable in their new homes. Case management services may be needed infrequently or daily for households; briefly, for a month or two, or for a lifetime. Case managers throughout the housing system work diligently in increasingly complex systems to help individuals identify their strengths and overcome the barriers that led to homelessness. Clients are assisted with navigation of bureaucratic social services and medical systems, accessing legal counsel, managing difficult relationships, resolving landlord/tenant issues, and making ends meet in the face of economic disadvantages, among other roles case managers fulfill. Their more pragmatic support might involve taking clients to appointments or helping them to fill out paperwork, but they also must deal with behavioral health complications and cultural stigma that negatively impacts their clients. Case managers are most successful when they benefit from the support of system administrators, receive high quality training, have reasonably sized and appropriate caseloads, work in positive team-focused environments, and are recognized in a way that encourages them to stay in their jobs, build experience, increase skills over time.

The need for additional case management positions in our homeless housing system has long been recognized by funders and nonprofit housing providers. However, funding levels have been insufficient to fill this gap. Increased capacity of case management is critical to ensuring an adequate level of support for responding quickly to crisis situations, to providing ongoing support to help build trust and avoid crises, and relieving strain on current case managers with unreasonable caseloads. More case management resources would also allow case managers to spend more time with colleagues and make important connections across the network of social support service providers. Smaller caseloads and more experienced staff are expected to lead to a decrease in the time it takes households to establish permanent housing, and access essential resources and supportive services.

One area related to case management in which significant progress has been made is the increasingly intentional manner in which training has been provided locally and by state partners. A Community Training Committee comprised of Human Services and nonprofit staff came together in 2016 and began identifying the most critical training needs for direct service staff in homeless housing programs. In 2017, Whatcom County began assisting with the coordination of and funding for several key trainings. Maintaining this committee is a challenge due to limited staff capacity, yet efforts made to find quality trainers, who are vetted by Community Training Committee members and Human Services staff, have paid off as indicated by feedback forms collected at the events.

Quality Assurance Action Plan for Case Management				
Actions	Who	Frequency	Milestones	How to measure success?
Contract Monitoring	WCHD Housing and Fiscal Staff; City of Bellingham; partner agencies	Annually or biennially	Monitoring is conducted as per funder requirements	No findings issued to partner agencies
Robust training provided for housing partners	WCHD; Community Training Committee; partner agencies	Quarterly	Trainings offered for <ul style="list-style-type: none"> • Trauma-Informed Care • Harm Reduction • Motivational interviewing 	Zero grievances filed against service providers; housing staff reports that they consider themselves supported and prepared through available training
Survey WHSC partner agencies	WCHD	Annually	Partner agencies complete surveys and share needs and ideas about their work	Surveys completed by a majority of case managers within the coordinated entry system
Survey a random sampling of partner agency clients	WCHD	Annually	Clients complete surveys to share about their experience with case management	Surveys call attention to system-wide issues that highlight training or supportive needs

Pillar 4: Whatcom Homeless Service Center

The fourth pillar of support for the following strategies is the Whatcom Homeless Service Center (WHSC), based in the Opportunity Council, which fulfills a unique role in our local homeless housing system. The primary functions of the WHSC, in addition to operating the county's Coordinated Entry system (see Strategy 1), are explained below.

Leadership and expertise related to homelessness is provided by the WHSC county-wide. The WHSC Director serves in leadership roles as Chair for the Whatcom County Coalition to End Homelessness and the Steering Committee for the Coalition. The WHSC also has a responsibility for ensuring effective functioning of the homeless housing system in Whatcom County, working with government agencies at the local, state, and federal levels, to maintain a high-functioning system to the extent possible with available funding. The WHSC serves as a resource for the entire community on homelessness-related issues.

Data Management is provided by the WHSC, the center for our Homeless Management Information System (HMIS).. Our local Systems Administrator for HMIS has three primary roles: 1) providing ongoing support and consultation for all local users of HMIS; 2) offering assistance accessing data reports by partner agencies of HMIS; and 3) monitoring data quality. The WHSC also assists with coordination of the annual Point in Time Count (PIT) for Whatcom County, which culminates in a report prepared by the WHSC, providing an analysis of data from the most recent and previous PIT Counts.

Outreach provided by the WHSC Homeless Outreach Team (HOT) connects people experiencing homelessness with services. The HOT operates primarily in the City of Bellingham, which is the largest city in Whatcom County and the primary funder for the team. HOT's additional funding from the US Department of Veterans Affairs' SSVF (Supportive Service for Veteran Families) grant and the Substance Abuse Block Grant's Opioid Substance Use Disorder Program provide for modest outreach into the county and bring expertise and resources specifically to people with opiate use disorders. Outreach staff is available five days weekly and engages those new to homelessness, as well as those with a history of homelessness in the

community. Assistance is offered to connect people to community resources, such as the WHSC, shower facilities, medical care, employment, and income supports. HOT focuses mostly on unsheltered households and encampments, but also does weekly on-site outreach at the Lighthouse Mission to facilitate check-ins for Coordinated Entry, perform intakes, and to provide additional resources and referrals. The HOT also provides support for businesses and community members in working through issues related to homelessness.

Landlord liaison services were implemented in the WHSC in 2017 with funding from the City of Bellingham and the VA's SSVF grant. The landlord liaison's services are available to anyone, regardless of vulnerability or income, and include:

1. Recruit new landlords to participate in the homeless housing system by choosing to rent to households exiting homelessness. This helps to increase the number of units available to people seeking re-housing opportunities.
2. Maintain existing relationships through support, education, and mediation for tenant disputes. Communication and mediation from a third party is a positive influence on housing retention.
3. Assist households experiencing homelessness with housing search and application support through the Housing Lab program, a weekly drop-in client-driven service that utilizes advocates who help create custom plans to help attain housing. This service reduces the time it takes for people to find new housing options and can also reduce reliance on vouchers or rental assistance.

In addition to these three central services, the landlord liaison hosts a weekly Roommate Café for adults who are unable to afford living alone but need help finding good matches for roommates who are in similar positions. This assistance, in effect, creates arrangements that make housing affordable to people who would otherwise be unable to pay rent for a place of their own. The low-barrier, cost effective program is open to anyone experiencing homeless or housing instability and does not require participation in the Coordinated Entry system. A similar program, focused on the growing number of at-risk or homeless seniors, is the Generations Housing Program that helps seniors find roommates or host homes.

Distribution of rental assistance for some eligible households is available through the WHSC. A wide range of rental assistance resources are provided to the WHSC through the County and City of Bellingham, along with federal and state grants. The WHSC works with partner agencies including Catholic Community Services, Lake Whatcom Treatment and Residential Center, Lydia Place, Northwest Youth Services, Opportunity Council, and Pioneer Human Services to distribute rental assistance. Unfortunately, the need for these resources exceeds the amount of financial support available. Prioritization for households most in need of rental assistance is determined through the policies and procedures of our Coordinated Entry system. Use of a coordinated entry system is the first of seven strategies, which include or are best practices in resolving homelessness.

Evidence-Based Strategies

The strategies below reflect a plan of action focused on meeting our goal and objectives. Strategies are evidence-based practices: tried and true methods that have been proven to affect and sustain changes when implemented correctly. The seven strategies below were components of the last local plan in 2012, and they will continue to be refined in the future to include new approaches to homelessness and to meet evolving local needs.

Strategy 1: A Centralized Point of Entry

Whatcom County works closely with the Whatcom Homeless Services Center (WHSC) to operate a coordinated services approach for those seeking housing. The coordinated service protocol follows the Housing First approach, which has been

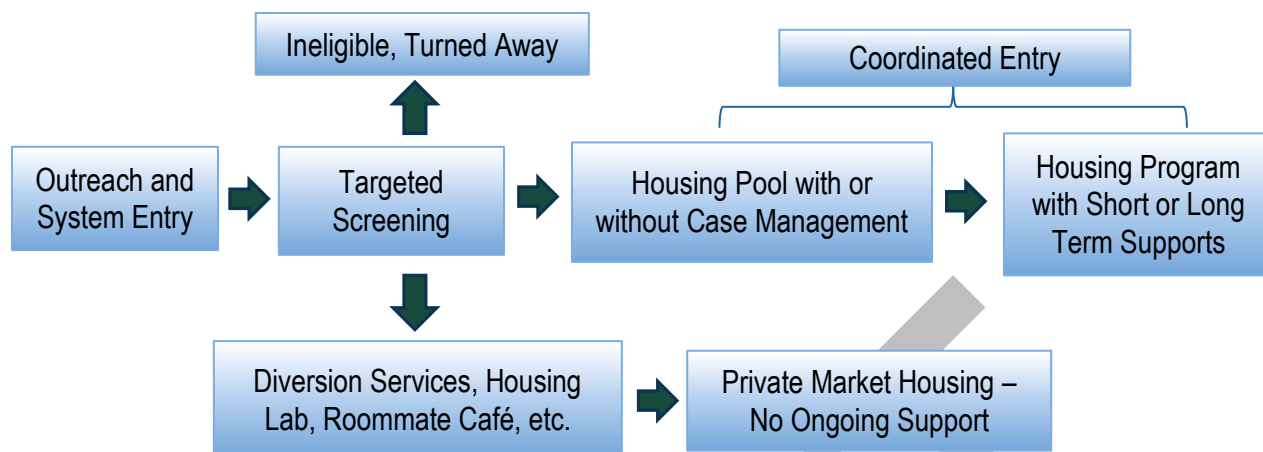
shown to improve mental health and quality of life while decreasing health services use and improving housing stability.²¹ In an effective and efficient crisis response system, people are quickly identified, assessed, and connected to housing and homeless assistance based on their needs and strengths. Standardized tools are used and consistent practices are utilized to maximize transparency and fair distribution of scarce resources. Participant choice is provided to the greatest extent possible. Within the array of coordinated services provided by the WHSC, the federal, state, and locally supported Coordinated Entry (CE) system is a process that aspires to help all people experiencing a housing crisis in a defined geographic area. CE also makes strong efforts to ensure that all have a fair and equal access to assistance, with that assistance prioritized for those with the greatest needs. WHSC is the CE lead agency, and provides referrals to partner agencies for individuals or households that best match the type of housing and supportive services they provide.

Prior to the introduction of the coordinated services approach, households seeking services needed to contact each agency independently and respond to information requests from each agency. This was a burdensome task, and often required people to relive trauma repeatedly as they spoke with the many intake professionals around the county. Now, a household can connect at the community resource center at the WHSC office and in effect, be connected with all of the housing services available from the entire network of Coordinated Entry agencies. Coordinated Entry evolves based on changing requirements from funders, community needs, resource availability, partner capacity, and emerging best practices. The Coordinated Entry lead for Whatcom County is the Whatcom Homeless Service Center (WHSC), a department of the Opportunity Council, which is a local not-for-profit organization based in Bellingham. A secondary entry point managed by Northwest Youth Services provides access for youth at a youth-specific provider location, and intakes are also completed by the Homeless Outreach Team specialists, at the DVSAS safe shelters with Lydia Place staff, at Opportunity Council's East Whatcom Regional Resource Center, and the Lake Whatcom Residential and Treatment Center. Partner agencies participating in our CE System in 2019 are listed on a chart found in the Appendix, along with the type of interventions offered and population(s) served. Partner agencies are nonprofits that specialize in serving Whatcom County residents with a history of homelessness.

One achievement of this strategy since 2012 includes local implementation of the statewide homeless services database, the Homelessness Management Information System (HMIS), with the majority of CE housing partners. Additionally, an updated and more thorough risk assessment tool, the Service Prioritization Decision Assistance Tool (SPDAT) was adopted in 2019.

The SPDAT scores those with highest level of vulnerability to be prioritized for housing and services. Community values also guide CE; families with children, veterans, seniors, and people experiencing chronic homelessness have been prioritized. Partner agencies providing case management and housing support receive referrals for the population they serve as program openings occur. There are hundreds of people awaiting housing on the Housing Pool (HP), and case management to assist those on the HP is limited to those who are most vulnerable.

²¹ Baxter AJ, Tweed EJ, Katikireddi SV, et al. J Epidemiology and Community Health 2019;73:379–387., <https://jech.bmj.com/content/jech/73/5/379.full.pdf>



This diagram shows the pathways for housing services through the Whatcom Homeless Service Center

In 2018, the most recent year for which we have complete data, there were 1,304 households that received some level of support at the Whatcom Homeless Service Center. These households included 2,281 individual people.

In the state fiscal year (SFY) of 2018 (July 2017-June 2018), there were 1,698 project entries logged in Whatcom County's HMIS database. This includes services that range from one-time homelessness prevention funding to medium term Rapid Re-Housing (RRH) or long-term Permanent Supportive Housing (PSH) programs. The average length of time homeless while enrolled in programs, but before receiving permanent housing, was 161 days, and 60% of program exits were to permanent housing situations. Of all the people served, 55% were unsheltered at their time of entry. Of the people who exited to permanent housing over the last two years, only 10% returned to homelessness.²²

Recently, new Coordinated Entry Guidelines have been released by the State Department of Commerce. CE systems statewide are also being evaluated by the Department of Commerce, and Whatcom County is awaiting a final evaluation report in response to the evaluation that took place in the summer of 2019.

Coordinated Entry Action Plan				
Actions	Who	Timeline	Milestones Prior to 2022	How to measure success?
Implementation of revised 2019 CE policies	WHSC Director and Manager; CE Partners	By end of 2019	n/a	Results of monitoring by Commerce; annual evaluations by WCHD
Establishment of CE Governance Committee	WHSC Director and Manager; WCHD Housing Program; Committee members	CE Governance Committee membership established by WHSC and approved by WCHD by September 30, 2019	CE Governance Committee will be formed and active with scheduled meeting	Records of meetings will be kept by WHSC

²² This data is updated annually by the Department of Commerce. Both current and historical data can be found here: <https://public.tableau.com/profile/comhau#!/vizhome/WashingtonStateHomelessSystemPerformanceCountyReportCardsSFY2018/ReportCard>

		2. WHSC will ensure Committee meets twice annually.	Committee will provide suggestions to improve coordinated entry	Changes incorporated into CE policies and procedures
Quarterly WHSC Partner Coordination Meetings	Coordinated by WCHD and WHSC Director and Manager; CE Partners	Beginning May, 2019	Improved system measures for partner agencies	County report cards

Strategy 2: Rapid Re-Housing

Rapid Re-Housing (RRH) helps families and individuals living outdoors, in emergency shelters, or in transitional housing to obtain permanent housing through a custom package of supportive services and time-limited financial assistance. Households will typically pay 30% of their income towards rent, and the sponsoring agency will cover the rest of the rent. The model has shown positive results by helping households exit homelessness permanently. A fundamental goal of RRH is to reduce the length of time households are homeless.

According to the United States Interagency Council on Homelessness, RRH moves people into permanent housing with costs that are significantly less than emergency shelter or transitional housing. The high rate of successful transitions that RRH provides and the absence of permanent subsidies are the key factors that make this such an economical approach. Because households enter leases directly with landlords, there is no obligation to relocate when rental assistance tapers off. This makes the transition to independence much easier for the household. The biggest challenge for RRH in Whatcom County is the lack of suitable units that are affordable to the households after the subsidies are discontinued. For households unable to acquire full time employment with adequate pay, or struggle to pay prior debts, keeping up on rent remains a challenge.

Core components of RRH include finding available units, financial assistance for rent and move-in costs, and case management and other supportive services that promote housing stability. This is colloquially referred to as a “find, pay, and stay” model. Services are always voluntary and respectful of people’s right to self-determination.

Who is served? RRH serves more people than any other intervention type. Eligible families and individuals can receive RRH if they can live independently and maintain a lease.

Partner agencies providing RRH in Whatcom County include Catholic Community Services, Lydia Place, Northwest Youth Services, and the Opportunity Council.

Number served, cost, and length of time served: The table below provides information on these measures from the last two State Fiscal Years.

Whatcom County Rapid Re-Housing Data for State Fiscal Years 2018 and 2019	SFY 2018	SFY 2019
Total Households served in RRH (service began or continued from previous year)	492	539
Total Households Entries in RRH (service began)	389	344

Households Entering from Unsheltered Homelessness	300 (77%)	235 (68%)
Households Entering from Sheltered Homelessness	71 (18%)	83 (24%)
Households Entering from Institutions	17 (4%)	22 (6%)
Total Exits from RRH	347	397
Exits to Permanent Housing	255 (73%)	261 (66%)
Exits to Sheltered Homelessness	12 (3%)	15 (4%)
Exits to Unsheltered Homelessness	11 (3%)	46 (12%)
Exits to Institutions	2 (1%)	2 (1%)
Exits to Unknown Destinations	48 (14%)	56 (14%)
This information is derived from data entered into the Homeless Management Information System by partners participating in Coordinated Entry in Whatcom County. Updates can be found online by accessing the Washington State Department of Commerce's Housing Assistance Unit dashboard: https://public.tableau.com/profile/comhau#!/ .		

Strategy 3: Permanent Supportive Housing

Permanent Supportive Housing (PSH) is a housing intervention based on the Housing First Model in which homes are provided for people who would otherwise be unlikely to maintain stable housing. PSH offers housing combined with supportive services for people with a history of chronic homelessness. In order to be considered as CH two requirements must be documented: First, that the individual has a disability. Secondly, the individual must have a documented history of homelessness for at least one year or on at least four occasions (which totaled at least 12 months) in the last three years. Deep subsidies may be provided for rental assistance. Although the experience of homelessness can lead to health problems or make existing physical and mental illnesses worse, PSH has been shown to improve physical and mental health and reduce the need for expensive treatment services. People's lives improve dramatically with PSH and the community benefits too. PSH is designed to meet the long term needs of homeless individuals and families who have been chronically homeless using the Housing First model, which does not require any preconditions to housing or participation in supportive services. PSH interventions in Whatcom County may be provided in a staffed "single-site" facility or in unstaffed "scattered site" units. The increase of PSH units in Whatcom County has been among our greatest assets developed since our last Local Plan Update in 2012.

Chronic Homelessness

Often the public face of homelessness, chronic homelessness involves either long-term (12+ months) or repeated periods of homelessness (totaling 12+ months over three years) as well as a disability. People experiencing chronic homelessness may be sheltered or unsheltered, and they are considered the least likely to self-resolve their experience of homelessness.

Chronic Homelessness was identified as a likely (though unverified) characteristic of 165 unaccompanied households during the January 2019 Point In Time Count. This represents more than a 50% increase in the three preceding years and highlights a need that is growing faster than resources. An exciting opportunity to use federal funds (Foundational Community Supports) to sponsor care for these households may play a critical role in reversing the trend of a growing population of chronically homeless individuals.

In January of 2019, the Whatcom County Point In Time Count identified 514 households experiencing homelessness. At the same time, an additional 350 formerly homeless households were enrolled in Whatcom County's permanent supportive housing programs, according to our Homeless Management Information System data. These 350 households included 530 household members who would likely have remained homeless were it not for the permanent supportive housing programs.

In the spring of 2019, when the most recent county-wide survey of housing resources was conducted, there were 365 project beds in permanent supportive housing projects for people with disabilities and another 213 beds for people without diagnosed disabilities. The total cost of administering these programs, including both the facilities and services, was approximately \$4,012,160. Looking at just the units dedicated for people with disabilities, and the fact that the more robust service need necessitates higher spending levels, it's not surprising that the price per unit is significantly higher. The total operating and service expenditures to house this population totaled \$3,661,247 in State Fiscal Year 2019, which amounts to just over \$10,000 per bed year.

A 2017 study conducted by RAND Corporation found that similar interventions (high intensive permanent supportive housing) in Los Angeles County provided net savings to their communities of approximately 20% while improving the lives of the individuals they housed. Cost savings were primarily attributed to fewer ER visits, fewer inpatient hospital stays, and reduced outpatient visits as well as decreased use of financial assistance for indigent adults.²³ If comparable savings are found in Whatcom County, the 365 beds dedicated to PSH would have generated positive economic externalities (social, legal, and medical) of approximately \$732,250 (\$2,000 per person) above the cost of providing the services. In other words, for every \$100 spent serving this population, \$120 of benefit is returned to the community.

The state and locally-funded Consolidated Homeless Grant's primary performance measure for PSH is the exits to or retention of permanent housing. The 2018 State Fiscal Year baseline for Whatcom County was a 93% retention rate, which is a remarkable percentage for those members of our community with lengthy histories of homelessness *and* a disability. The more intensive support provided for people in PSH may be a significant reason for the high percentage of retention of and exits to permanent housing for this subpopulation. In the 2019 State Fiscal Year, this retention rate increased to 97%, a reduction of more than 50% in the negative discharges and putting Whatcom County's rate above the state average of 95%. PSH has clearly seen success for some of our most vulnerable people in the community.

Strategy 4: Increase the Supply of Affordable Housing

Housing is considered affordable when rent or mortgage expenses account for no more than 30% of gross household income. People are considered *severely* cost burdened when they pay 50% or more of their gross income for housing. Transportation needs must be considered when providing affordable housing because it is critical for connecting people to jobs, schools, health care, and child care. Many of the more affordable places to live in Whatcom County require households to incur greater expenses associated with commuting, both financially and in terms of their time. One measure, the Housing and

²³ https://www.rand.org/content/dam/rand/pubs/research_reports/RR1600/RR1694/RAND_RR1694.pdf

Transportation Affordability Index, considers housing as affordable if the combined housing and transportation costs are less than 45% of household income.

Although eviction and housing loss are cited by a large number of Point In Time respondents as factors leading to homelessness, the rate is particularly high for single parent households with children. This group in particular appears to be strongly impacted by financial constraints exacerbated by high housing costs. When surveyed for the Point In Time count, single parent households reported below average rates of mental illness, substance abuse, and other disabilities compared to the general homeless population, but struggle to maintain housing nonetheless. One contributing factor is likely the high cost of childcare in Whatcom County, which was found to have among the least affordable childcare in Washington State.²⁴

Housing affordability is the product of two distinct factors: the price of rent, and the tenant's income and ability to pay. One way to shrink the gap between ability to pay and price of rent for many households is through rental assistance programs that subsidize some or all of the household's rental payments. The Bellingham Housing Authority uses funding from HUD to issue rental vouchers to eligible households to the greatest extent possible. Another source of federally funded rental assistance is to the HOME Consortium of Skagit, Whatcom, and Island Counties. This consortium allocates federal funds to the Opportunity Council for use outside of the City of Bellingham in Whatcom County, as well as locations in most of Skagit and Island Counties. The City of Bellingham also provides HOME-funded and local Housing Levy-funded rental assistance to the Opportunity Council, Lydia Place, and NWYS as part of or in addition to services contracts that support clients with case management.

The need for affordable housing is acknowledged by local officials in Whatcom County. In the first half of 2019, the permitting office at the City of Bellingham issued permits for 450 new units, which is on track to surpass the 785 permits issued in all of 2018 and 578 in 2017.²⁵ At the same time, the Small Cities Caucus of Whatcom County has formally expressed interest in using local Economic Development Investment funds to renew (and increase) funding for the *Homes Affordable For The Workforce* program. In 2018, City of Bellingham residents approved an initiative to renew and strengthen a tax levy that will provide a variety of housing-related supports for at least ten more years. The smaller cities of Whatcom County however have not found support for these types of programs and may need more support from county government to address the needs that exist in their communities too, albeit at a smaller scale. This need for affordable housing in rural areas of Whatcom County persists, and is addressed in the action plan that follows.

A number of local groups and agencies have organized to address the challenge of our affordability crisis. Not-for-profits, such as Whatcom Skagit Housing, Habitat for Humanity, and Kulshan Community Land Trust have contributed greatly to the construction and retention of housing affordability for aspiring homeowners. The Whatcom Housing Alliance, a broad alliance of public health, economic development, housing development, and private business owners is working to advance diversity and affordability throughout Whatcom County.

The City of Bellingham sponsors a down-payment assistance program for first time homebuyers with modest incomes and makes use of both federal HOME funding and local funding derived from their housing levy to support low-income renters. The City of Bellingham also funds a grant program through the Opportunity Council that offers health and safety repairs for residents of mobile home parks. This grant allows residents to retain their existing affordable housing, and the city is currently assessing potential planning, zoning, and funding strategies to further support mobile home parks over time.

²⁴ <https://childcareawarewa.org/wp-content/uploads/2019/05/2018-Affordability-Analysis-by-County-2019-04-08-FINAL.pdf>

²⁵ <https://www.cob.org/services/permits/Pages/activity.aspx>

Affordable Housing Action Plan				
Actions	Who	Timeline	Milestones Prior to 2022	How to measure success?
Prepare for expiration of federal affordable housing requirements at risk of losing affordability requirements	WCHD and community partners	By end of 2020	Plan developed to help households maintain tenancy or to relocate without entering homelessness	Households losing affordability protections do not become homeless as a result
Conduct needs assessment to measure the need for farmworker housing together with identified community partners that work with this community	WCHD and community partners	By end of 2020	Needs assessment complete and recommended interventions compiled	Strategy developed that will address housing needs of farmworkers in Whatcom County
Partner with organization(s) to conduct a needs assessment and explore the need for rural housing together with identified community partners, such as the Opportunity Council's East Whatcom Regional Resource Center	WCHD and community partners	By end of 2020	Needs assessment complete and recommended interventions compiled	Strategy developed that will address housing needs of residents in rural Whatcom County
Federal HOME Consortium funding contributes to affordable housing development or acquisition in Whatcom County	WCHD, Consortium partners, and local housing agency	By end of 2020	HOME Consortium funding is used to support down payments for first-time homebuyers or to provide rental assistance to low-income renters	An increased proportion of the Consortium funding is used to support rural or small city Whatcom households
Apply annually for a Community Development Block Grant from the Washington State Department of Commerce that support affordable housing in Whatcom County (outside of Bellingham city limits)	WCHD staff	Annually	A block grant is awarded for a project based in Whatcom County; Project increases supply of affordable housing in Whatcom County	Grant spending will be accompanied by reports that quantify number of households supported by the grant

Strategy 5: Homelessness Prevention and Diversion

Although the most urgent priority of our homeless housing system is to assist the most vulnerable who have lost their homes, some resources are used to divert and prevent certain households from ever becoming homeless or from returning to homelessness. Homelessness prevention and diversion are key components in an effective homeless crisis response system, as they can ultimately reduce the size of a community's homeless population.²⁶ According to the National Alliance on Ending Homelessness, prevention can help households avoid homelessness by preserving their current housing situation, while

²⁶ https://www.usich.gov/resources/uploads/asset_library/Prevention-Diversion-Rapid-Exit-July-2019.pdf

diversion assistance helps people seeking shelter by helping them identify alternatives and supportive services available.²⁷ The Substance Abuse and Mental Health Services Administration (SAMHSA) reports that research indicates prevention interventions are more cost effective than assisting people after homelessness occurs.²⁸ Examples in which these two interventions are offered by local housing partners are described below.

Diversion is typically used for families with children or seniors that need briefer and less intensive assistance. Short-term case management and services are offered to help the household identify available resources to find an affordable and safe home or maintain stability in the home where they currently reside. The diversion case manager uses practical methods to steer families away from homelessness, which may include advocacy with landlords, or negotiated agreements with an amiable relative that has housing available. Diversion is intended to be used as a first response in working with families experiencing housing instability.

The Opportunity Council reported in 2019 that a grant-funded diversion program they implemented from 2017-2018 had a 69% success rate in keeping households from being added to the Housing Pool, primarily by relying on their own resources and social support networks. The program served approximately 50 households per year and managed to divert more than half without any direct financial assistance. This diversion program, funded by the Seattle non-profit, Building Changes, through a 3-year nonrenewable grant, came to an end in the summer of 2019.²⁹ The 80% success rate for participant diversion from homelessness over the 3 years this program operated and relative low cost of administration firmly established it as an important program to maintain in our local continuum of care. The non-renewable grant was so successful that the Opportunity Council moved other funding from traditional homeless prevention to continue the important work of diversion into the future. While there will be a gap in funding that was formerly used to cover rent shortages formerly targeted with prevention funding, the impact and efficacy of diversion was deemed too valuable to let expire.

In 2019, the City of Bellingham began funding a new diversion program delivered by the Opportunity Council that assists seniors experiencing homelessness and families with children who are at risk of homelessness. This diversion program is intended to re-house households and support housing stability without relying on other more conventional, longer-term programs. The program offers flex funding, deposit assistance, and case management for as many as 72 households, including 36 households that include seniors, and 36 households that include children.

County funding from the Consolidated Homeless Grant (CHG) also began supporting a family diversion program in mid-2019, which primarily offers deposit assistance. Previously, CHG funding had been used for prevention. Other resources are used locally to provide additional prevention funding for veterans as follows:

- The Veteran's Assistance Fund (VAF) assists eligible veterans with eviction prevention using local veteran-specific funding
- A large federal grant awarded to the Whatcom Homeless Service Center, referred to as the Veterans Affairs' Supportive Services for Veteran Families (SSVF), also offers prevention resources for veterans.

The Whatcom Homeless Service Center reports that from 2011-18, a total of 735 total client households were served with the VAF and/or the SSVF program, including 328 households who were re-housed and 407 households who received homeless prevention services.

From a wider perspective, there are many other ways of preventing homelessness further upstream, such as an adequate supply of affordable housing, offering vocational and financial skills, and sufficient behavioral health services. For the

²⁷ <https://endhomelessness.org/ending-homelessness/solutions/crisis-response/>

²⁸ <https://www.samhsa.gov/homelessness-programs-resources/hpr-resources/housing-shelter>

²⁹ <https://buildingchanges.org/strategies/diversion>

purposes of an effective homeless crisis response system, however, interventions generally focus more narrowly on households who are already on the brink of experiencing homelessness.

Strategy 6: Interim Housing

Interim housing is the general term that describes both emergency shelters and transitional housing. Emergency shelters are usually easier to access and are intended for shorter durations than transitional housing, but there is a wide range of approaches to this type of shelter. For purposes of the Point In Time Count and official definitions used by HUD and the Department of Commerce, individuals staying in emergency shelters and transitional housing continue to be homeless until they're able to find a more permanent housing arrangement. Emergency shelters may operate on a night-by-night basis and require shelter users check in each evening. Most night-by-night shelters allow users to stay for as many nights as necessary. Other emergency shelters may limit stays to 90 days and encourage shelter users to find new housing resources as soon as possible. Transitional housing placements may last as long as two years before participants are required to move. When stays in transitional housing reach their limits, residents are required to move to a different residence, and therefore are still considered homeless while in transitional housing. For more detail about Whatcom County's interim housing, please refer to the appendix.

Interim housing resources are best used in support of the bigger goal of helping people get into permanent housing as quickly as possible. Time spent in emergency shelters or transitional housing units can be used to prepare individuals or families for independent or supported living. Often, those using interim housing shelters need time to connect with economic or medical services, resolve legal issues, and/or connect with other community supports. Because the current housing stock is unable to meet the demand for immediate housing for all, these interim programs are a resource for people waiting for longer term placements. However, because people served in these programs remain in a state of homelessness and because these programs are much more costly than rapid re-housing, precisely targeting people for these services is a must.

Significant changes have occurred in the need and availability of shelter beds in Whatcom County since the last Local Plan Update, and offering beds to the unsheltered homeless population remains an urgent priority for the community. The largest interim housing provider in Whatcom County is Lighthouse Mission Ministries (LMM), which houses approximately 250 people at any given time in various arrangements ranging from low-barrier night-by-night shelter, to residential interim housing options as part of longer-term programs. In the fall of 2016, LMM opened a low-barrier shelter, and increased their capacity to serve an additional 80 individuals beyond what already existed in the community. They have since been able to increase this number further, and have been willing partners with other agencies and organizations who have stepped up to help those experiencing homelessness, especially during the winter when local capacity to provide shelter is severely strained. LMM's primary facility that hosts shelter beds has an interim permit that will expire at the end of 2022, putting urgent pressure on the need to find permanent shelter facilities that offer adequate capacity, as well as space for hygiene facilities and other social and health services.

As shown in the appendix, LHM is one of a number of providers that participate in interim housing services, but the demand for shelters is far from being met in Whatcom County. The Point In Time Count of January 2019 identified nearly 300 individuals who were unsheltered in Whatcom County. And while it's true that some of these individuals do not wish to stay in shelters, it's also likely that there are many more unsheltered individuals in Whatcom County that were not counted. In 2018 a group of elected officials and community stakeholders attempted to identify a site for a permanent night-by-night shelter in Bellingham but was unable to find a location that met all of their criteria. Increasing the capacity of existing shelters and adding additional shelters for populations with special needs remain priorities for the local community. In the near-term, work is being

done to establish sites and develop policies for severe weather shelters that will operate on an as-needed basis when weather presents life-threatening conditions, and to add additional capacity throughout the winter months when those in need would otherwise be turned away when all available beds are expected to be filled.

The Consolidated Homeless Grant's performance measure for Interim Housing is the percent of exits to permanent housing. The SFY 2019 baseline is 38% for emergency shelters and 66% for transitional housing. The Whatcom County rates are 32% and 52% respectively, indicating room for improvement in our interim housing projects. The target is an increase of 5% for each intervention by June 30, 2020.

Strategy 7: Economic Security

While circumstances vary, the main reason people experience homelessness is because they cannot find housing they can afford. Loss of a job, medical bills, or other emergency expenses can lead to inability to pay the rent, then eviction, and eventually homelessness. For the past several years, during the annual Point In Time Count, household economic factors topped the list of reasons for homelessness; those being the inability to pay rent or mortgages, and job loss.

The good news is that while economic insecurity is a significant factor as a cause of homelessness for many, the strategy of *creating* economic security provides a way *out* of homelessness and supports people at risk of homelessness. Providing services to help people increase workforce skills, build assets and manage income, maximize their earning potential, accessing affordable housing, and avoid financial disruptions (such as large medical bills) are effective at preventing or ending homelessness for many.

In Whatcom County, economic security for those experiencing homelessness can be increased through a myriad of pathways. However, programs designed to connect people to employment need to respond to the concurrent needs of people who have been or still are homeless. Examples of this type of support offered in the community follow.

Income/Employment

Resources related to increasing income and employment or providing financial stability in Whatcom County includes:

Programs to Improve Economic Stability					
Focus Population	Vocational Training and/or Supported Employment	Food and Basic Needs	Financial Planning / Financial Literacy	Direct Financial Support (SSI / SSDI)	Physical and Behavioral Health Care for People Experiencing Homelessness
Youths (13-17)	1, 9	1	1		10, 11, 12
Youths (18-24)	1, 2, 3, 4, 5, 9	1, 2, 5	1, 2, 6, 7	5	10, 11, 12
Veterans	2, 3, 4, 5	2, 5	2, 6, 7	5, 13	10, 11, 12
Adults	2, 3, 4, 5	2, 5	2, 6, 7	5	10, 11, 12
Seniors	2, 3, 4, 5	2, 5	2, 6, 7	5	10, 11, 12
People with Disabilities	1, 2, 3, 4, 5, 10	1, 2, 5	2, 6, 7	5	10, 11, 12

1. Northwest Youth Services
2. Opportunity Council
3. WorkSource

4. Goodwill
5. Department of Social and Health Services
6. Whatcom Asset Building Coalition
7. Whatcom Dream
8. Department of Children, Youth, and Families
9. Job Corps
10. SeaMar
11. Unity Care NW
12. Compass Health
13. Whatcom County Health Department's Veterans Office

Health Management's Role in Financial Stability Economic security can also be strengthened with affordable health care by reducing costs and improving health and capacity for work. Two federally qualified community health centers serve a high number of those experiencing homelessness in Whatcom County.

- Unity Care Northwest offers a full range of health care services in Bellingham and Ferndale. Payment is based on a sliding fee scale for uninsured patients or with high deductibles and co-pays. Psychiatric care and mental health specialists are available, as well as health coaching, dental care, and general medical care.
- Sea Mar Community Health Center offers similar services, along with long term care services and Health Care for the Homeless. The Health Care for the Homeless program, available in Bellingham, includes case management, migrant outreach, shelter outreach, food vouchers, community voice mail, and bus and shower passes, among other services.

Economic Security Action Plan				
Actions	Who	Timeline	Milestones Prior to 2022	How to measure success?
Support federal, state, and local policies that contribute to the economic wellbeing of low-income populations and reduce homelessness; connect interested community members with the Washington Low Income Housing Alliance (WLIHA)	WCHD, interested community members, WLIHA	Continuous	Local priorities and ideas are included in new policy agendas	Whatcom County Coalition to End Homelessness meetings include time for policy suggestions at least once per year
Organize a resource fair that connects case management staff and other interested professionals to learn about various organizations working in Whatcom County to promote economic opportunities and stability	WCHD and community partners	Once every two years	Resource fair held in 2021	Number of attendees and number of participating organizations that table at the event

Statewide Goal and Objectives

Washington State is adopting the 2018 federal strategic goal to end homelessness and the federal criteria and benchmarks for ending homelessness for each subpopulation. This plan is required to include the five objectives that have been adopted by our state partner, the Department of Commerce. While the objectives and measures of success are mandatory components of the local plans, the methods by which we achieve success are created specifically for Whatcom County. This local methodology encompasses the actions, responsible parties, timeline, milestones prior to 2022, and how success will be measured in the charts under the following five objectives. The seven strategies of our local plan, included in an earlier section, support the accomplishment of these objectives.

Objective 1: Quickly identify and engage people experiencing homelessness under the state definition, and all unaccompanied youth under any federal definition, through outreach and coordination between every system that encounters people experiencing homelessness.

Measure of Success	Action	Responsible Parties	Timeline	Milestones Prior to 2022	How Success Will Be Measured
1.1 Street Outreach will increase the percentage of exits to positive outcome destinations to the level of the top performing 20 percent of homeless crisis response systems nationwide.	1.1a Increase training opportunities for outreach and day center staff in behavioral health care, community resources, trauma informed care, motivational interviewing, & harm reduction strategies, to give them tools to support people moving indoors.	1.1a WCHD; WHSC; Street Outreach staff; NWYS staff at Ground Floor.	1.1a 3-4 local trainings offered annually for outreach workers beginning in 2020	1.1a Trainings will occur according to timeline; all staff working in outreach will receive training in at least 3 areas listed by the end of each calendar year.	1.1a % exits to positive outcome destinations increase by 2% annually and by at least 5% between 1/1/20 and 6/30/22

Measure of Success	Action	Responsible Parties	Timeline	Milestones Prior to 2022	How Success Will Be Measured
	1.1b Increase use of emergency shelters by expanding the total capacity, improving accessibility, expanding choice, and improving quality of stay	1.1b WCHD; City of Bellingham; partner agencies providing shelter	1.1b Annual increase in # of shelter beds and in proportion of people who are homeless that stay in emergency shelters; and fewer people unsheltered	1.1b Reduction in proportion of unsheltered households by 2% annually and a minimum of 6% by 2022; provide more case management to increase availability of PSH	1.1b PIT annual report on sheltered/unsheltered; HMIS; Annual Report (# of ES units reported)
1.2 Compliance with state and federal Coordinated Entry Data Collection requirements in order to build and maintain active lists of people experiencing homelessness and to track the homelessness status, engagements and housing placements for each household.	1.2a Conduct annual evaluations of policies and make adjustments as necessary with guidance by Commerce; receive technical assistance by Commerce in continuing to build and maintain active lists as practice evolves	1.2a WCHD & WHSC; WA State Dept. of Commerce; providers using HMIS	1.2a Annual evaluations of CE by WCHD due in February; monitoring of CE by Commerce	1.2a Full compliance with contractual obligations and Commerce and HUD requirements	1.2a Data quality scores on County report cards show consistent improvement on annual basis
1.3 Increase share of individuals served who are entering services from unsheltered homelessness to at least 60%	1.3a Increase engagement of unsheltered population and collect data to capture transitions into shelters	1.3a WHSC, Street Outreach agencies, WCHD, shelter providers	1.3a Annual improvements	1.3a At least 60% will enter from unsheltered homelessness	1.3a County report cards; HMIS data

Measure of Success	Action	Responsible Parties	Timeline	Milestones Prior to 2022	How Success Will Be Measured
	1.3b Coordinated Entry system to hold meetings for Street Outreach and Referral Specialist staff to review progress of unsheltered receiving housing	1.3b WHSC, Street Outreach agencies, WCHD	1.3b Quarterly Meetings	1.3b At least 60% will enter from unsheltered homelessness	1.3b County report cards; HMIS data; partner data

Where we are now:

Program directors from Coordinated Entry partners have traditionally met on an as-needed basis to address system challenges as they are identified. Regular meetings with this team, as have been recently scheduled, are anticipated to improve coordination and make this system more efficient.

The table to the right shows the total number of people on the Housing Pool in January of each of the last five years. Although the number has generally decreased since a high 2017, it remains above a realistic number of who can be served in a reasonable time. Additional measures will be taken to reduce the number of people placed on the Housing Pool list who are unlikely to be served, thereby conveying a more realistic expectation among people in need of services.

According to Point In Time Counts, the ratio of unsheltered individuals has been increasing over time. The average percent of unsheltered individuals was 28% from 2008-2011, but rose to 44% from 2016-2019. Services for people experiencing unsheltered homelessness will be a priority. This includes both outreach efforts and the myriad of factors that can lead unsheltered individuals and households to choose to stay in shelters instead of alternative and less healthy arrangements. Although the drop from 2018's PIT to 2019's PIT count of unsheltered homelessness fell by 23%, continued attention and effort will be required to decrease the number further. Measuring the unsheltered population and the movement from unsheltered to sheltered locations is particularly challenging in our community because there are gulfs between data collected at the largest shelter (LMM's Drop-In Center), the Homeless Outreach Team (HOT) field staff, and the Homeless Management Information Systems.

While the HOT focuses their efforts on unsheltered individuals and households in the field, a day center for homeless youths provides drop-in services for the county's youths and young adults at a set location. The Ground Floor was developed by the First Congregational Church of Bellingham in partnership with Northwest Youth Services. This day center was extensively remodeled from an underused basement in 2018 and began operating in early 2019. The Ground Floor provides access to free laundry machines, free essential needs (hygiene items, clothing, food, etc.), private bathrooms and showers, study spaces, and quiet rooms for rest and regrouping. Staff is available to offer support, and to connect youth with other resources necessary to end homelessness. Ongoing operations of the Ground Floor are made possible by funding from the City of Bellingham. A further expansion of the hours, services, and resources currently offered at the Ground Floor as additional funding becomes available would have a positive impact on young people presently experiencing homelessness or at risk of becoming homeless.

Year	Average number of active households on Housing Pool (January)
2015	487
2016	659
2017	686
2018	512
2019	524

One area of renewed commitment has been to provide trauma-informed care and harm reduction for front-line staff to increase their skills when work with people who have experienced trauma or may struggle with behavioral health disorders. This is expected to improve outcomes for the unsheltered and/or isolated households in Whatcom County as a result of more positive interactions working with agency staff and better communication of needs. Funding has been set aside by the Whatcom County Health Department specifically for training community workers who work directly with individuals experiencing behavioral health disorders.

Number of Unsheltered Individuals

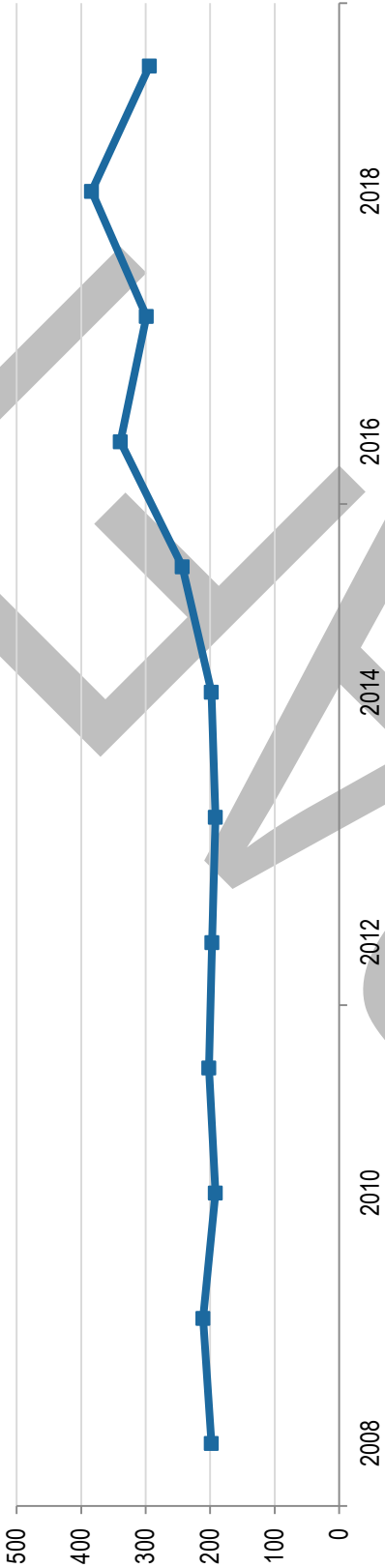


Figure 9: Number of individuals experiencing unsheltered homelessness during Point In Time counts (2008-2019).

Ratio of Unsheltered Homelessness

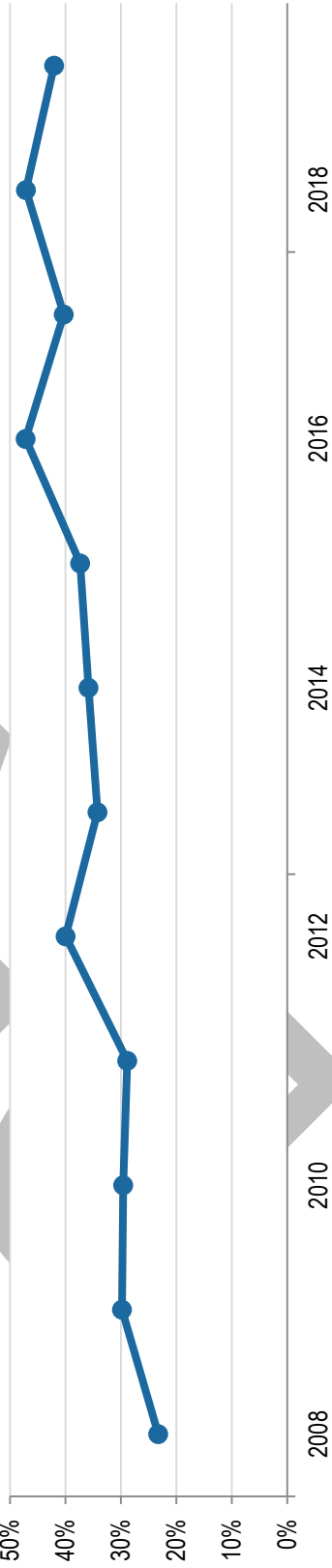


Figure 10: Percent of people experiencing homelessness who are unsheltered during Point In Time counts (2008-2019).

Rate of Homelessness in Whatcom County

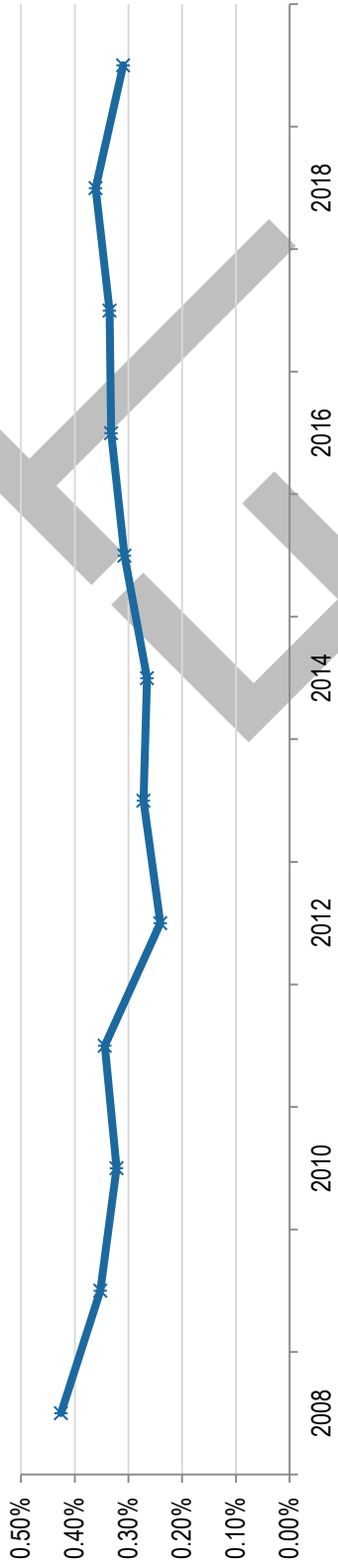
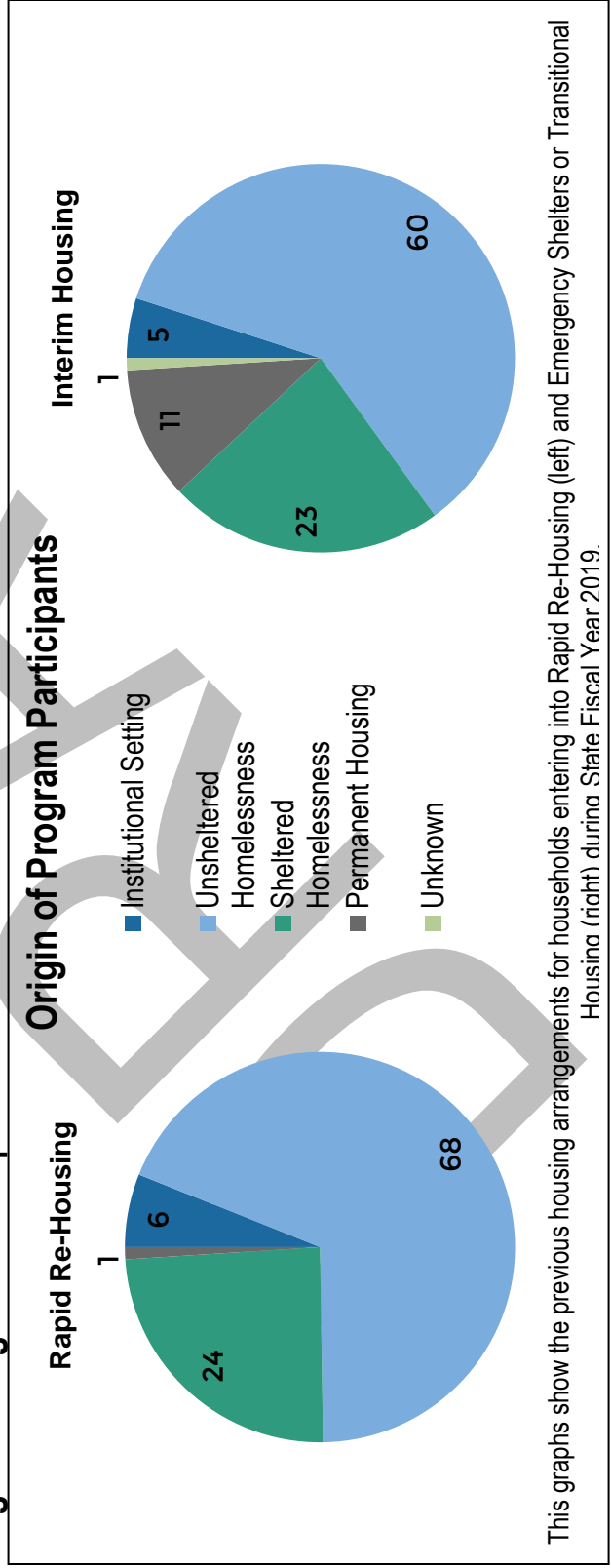


Figure 11: The Percent of Whatcom County residents experiencing either sheltered or unsheltered homelessness during Point In Time counts (2008-2019). The rate of homelessness was 0.29% in Washington State in 2019 and 0.17% nationally in 2018 (most recent available data).

Origin of Program Participants



Objective 2: Prioritize housing for people with the greatest need.

This objective refers to people living unsheltered, in emergency shelters, and in transitional housing. Implementing changes so our system enables people to move quickly into permanent housing is not only a cost-saving and humane measure, but achieves what people want - a home of their own. The primary mechanism for housing prioritization is our Coordinated Entry system operated by the Whatcom Homeless Service Center. A standardized assessment, OrgCode's Service Prioritization Decision Assessment Tool (SPDAT)³⁰, is in use to objectively determine the level of need among households requesting services. As program openings occur, level of need is used to prioritize services for eligible households.

Measure of Success	Action	Responsible Parties	Timeline	Milestones Prior to 2022	How Success Will Be Measured
2.1 Compliance with state and federal Coordinated Entry requirements for all projects receiving federal, state and local homeless funds	2.1a Review requirements with project staff regularly	2.1a WHSC & WCHD	2.1a Quarterly	2.1a Quarterly meetings will be held with new staff beginning in 2020; annual meeting with all HMIS active staff by 2020; new governance committee meets biannually beginning in 2020	2.1a Data quality reports show consistent improvement; monitoring by WCHD and Commerce results in no findings or issues.
2.2 Revisit the Coordinated Entry Core Element recommendations and the Office of Homeless Youth's Five Recommendations for Making Coordinated Entry Work For Youth and Young Adults annually	2.2a Implement recommendations in consultation with local youth services provider; assess need for additional access points for CE for youth	2.2a WCHD, WHSC & NWYS	2.2a WCHD, WHSC & NWYS will meet annually to respond to changes; decision to implement recommendations made by 2/1/20.	2.2a Number of youth-headed households in Point In Time counts decreases	2.2a Point In Time reports
2.3 Successful implementation of prioritization policies for all projects receiving federal,	2.3a Update assessment tool to more accurately determine needs and	2.3a WHSC	2.3a New tool in use for select populations by end of 2019	2.3a SPDAT 4.01 assessments complete for majority of highly vulnerable households	2.3a A detailed assessment is available for placements in

³⁰ <https://d3n8a8pro7vhmxc.cloudfront.net/orgcode/pages/313/attachments/original/1479850999/SPDAT-v4.01-Single-Fillable.pdf?1479850999>

Measure of Success	Action	Responsible Parties	Timeline	Milestones Prior to 2022	How Success Will Be Measured
state and local homeless funds, resulting in prioritized people consistently housed in a timely manner	improve referrals			on housing pool list	services/program from the housing pool list for the majority of prioritized households
	2.3b Streamline referral process and communication between CE lead and partner agencies	2.3b WCHD, WHSC	2.3b New referral process in place by end of March 2020	2.3b Regular meetings to discuss referrals with all relevant agencies	2.3b Fewer negative outcomes for clients in programs
	2.3c Increase the percent of system entries for households who were previously unsheltered or fleeing domestic violence to 60%	2.3c WCHD, WHSC, partner agencies	2.3c Increase to 60% by 06/30/2020	2.3c Maintain level of unsheltered entries at 60% or higher	2.3c County report cards from Department of Commerce

Where we are now:

The prioritization of services and resources for people in need is an ongoing challenge. Different opinions, perspectives, and values exist along a continuum. Funding requirements from HUD and the Washington State Department of Commerce require that the most vulnerable - those with the greatest needs - are prioritized for services because they are most likely to suffer the greatest harm as a result of being turned away from services. Much of the state and federal funding spent locally is designated to support people who are experiencing chronic homelessness, which is both 12 months or more of homelessness either continuously or in four or more episodes over the last three years, and the presence of a professionally recognized (and documented) disability. On the other end of the spectrum, others are quick to point out that a greater number of people could be served if resources were spread more thinly for those who need significantly less support- so called "light touch" populations. There are also strong opinions in support of specific special populations - homeless youths, seniors, families with young children, veterans, individuals with medical complications, people with developmental disabilities, and for people with mental illness. Because the needs of the community so greatly dwarf the resources devoted to resolving homelessness, conflicting values about prioritizing those resources will persist.

The Whatcom County Health Department's housing program budget is funded with seven distinct revenue sources, each with its own set of eligible expenses and household eligibility criteria. Details about revenue, expenditures, and eligible uses of funds are available on the Whatcom County website, from the Washington State Department of Commerce, from HUD, in Washington State Administrative Code, and in the Revised Code of Washington. Where flexibility exists, the health

department strives to gather input from diverse stakeholders that work in housing-related fields, from elected officials, from open public meetings of the Whatcom County Housing Advisory Committee, from the general public, and from people who have the lived experience of homelessness.

Objective 3: Operate an effective and efficient homeless crisis response system that swiftly moves people into stable permanent housing. For people who experience homelessness, their time without housing is often traumatic, dangerous, and fraught with significant risks to their health. For these reasons, as well as others, it is important to strive to make these homeless experiences as brief as possible. To quickly re-house an individual or family there must be effective outreach, accessible intake processes, and program capacity to enroll new clients.

A key challenge in program capacity has been the scarcity of vacancies and cost of rentals, as detailed on page 11. Many programs struggle to exit households from interim housing or ongoing case management, and rising rents have made it very difficult to continue to expand RRH programs that require rental assistance.

State Fiscal Year	Average number of days spent homeless before housing provided
2015	81
2016	112
2017	172
2018	161

Table 1: Time spent homeless in any living arrangement before being housed

State Fiscal Year	Days in Interim Housing before enrollment in Permanent Housing Projects (mean)	Days in Interim Housing before enrollment in Permanent Housing Projects (median)
2018	126	63
2019	93	44

Table 2: Length of time in emergency shelters or transitional housing before obtaining permanent housing. This does not include time spent unsheltered or in an emergency shelter or transitional housing facilities that does not participate in Washington State's HMIS data system.

It is encouraging to see the length of time decrease in the two tables above from 2017 through present, but it does not capture the experience of all people facing homelessness. According to the 2019 Whatcom County Point In Time Count Report, roughly 20% of the people counted in 2019 were also counted in 2018, and 11% were also counted in 2017. This means that 20% of the people (about 140 individuals) were in roughly the same position they had been in full year ago.

Measure of Success	Action	Responsible Parties	Timeline	Milestones Prior to 2022	How Success Will Be Measured
3.1 Increase percentage of exits to permanent housing to the level of the top performing	3.1a Implement recommendations from CE assessment	3.1a WHSC, WCHD	3.1a TBD	3.1a TBD	3.1a TBD

20 percent of homeless crisis response systems nationwide.	3.1b Improve referrals to better match needs of clients	3.1b All agencies participating in HMIS	3.1b Continuous	3.1b Increased percent exits to permanent housing by 2% annually from 2019 to 2022	3.1b County Report Cards; HMIS data from WHSC
	3.1c Improve exits to permanent housing from all programs by 5% by 06/30/2020	3.1c WCHD, partner agencies	3.1c Continuous	3.1c Increase system-wide average or successful exits to 70%	3.1c County Report Cards
	3.2a Build partnerships with behavioral health providers and expand access to behavioral health services	3.2a WCHD	3.2a Continuous	3.2a Increased number of clients accessing BH services	3.2a Quarterly reports from PSH facilities; County Report Cards
3.2 Reduce returns to homelessness after exits to permanent housing to less than 10 percent	3.2b Strengthen landlord liaison program	3.2b WHSC	3.2b Continuous	3.2b Annual housing related contacts from LL program increased	3.2b LL Monthly reports
	3.2c Reduce returns to homelessness to 5% or less by 2024	3.2c WCHD, WHSC, partner agencies	3.2c Continuous	3.2c Returns to homelessness will reduce to 7% or less	3.2c County Report Cards
	3.3a Increase case management to decrease size of caseloads as funding allows	3.3a WCHD and case management partners	3.3a When funding is available	3.3a Average length of stay in ES and TH decreases	3.3a County Report Cards; quarterly reports from agencies
3.3 Reduce average length of stay in temporary housing projects to less than 90 days.	3.3b Respond quickly to lengths of stay in excess of 90 day; develop permanent housing plans within 14 days after client enters interim housing	3.3b WCHD; all relevant ES case management and shelter providers	3.3b Quarterly	3.3b Reasons for extended stays are documented in client and agency files	3.3b Analysis conducted to determine causes of long stays; reduction in average # of days spent in ES and TH projects

Objective 4: Project the impact of the fully implemented local plan on the number of households housed and the number of households left unsheltered, assuming existing resources and state policies.

Measure of success:

- a. An estimate of people experiencing homelessness that will be housed during 2024 after successful implementation of the local plan using existing resources, and the count of households left unsheltered at a point in time in 2024, based on credible data and research; including the data assumptions, calculations, and related citations necessary for outside parties to review and reproduce the estimate.

Measure of Success	Action	Responsible Parties	Timeline	Milestones Prior to 2022	How Success Will Be Measured
4.1 An estimate of people experiencing homelessness that will be housed during 2024 after successful implementation of the local plan using existing resources, and the count of households left unsheltered at a point in time in 2024, based on credible data and research; including the data assumptions, calculations, and related citations necessary for outside parties to review and reproduce the estimate	4.1a Update modelling tool provided by Commerce with latest numbers to improve accuracy	4.1a WCHD	4.1a By September 01, 2019	4.1a Completed	4.1a Tool attached as appendix to this plan update and subsequent updates
	4.1b Make annual adjustments in response to variations from predictions	4.1b WCHD	4.1b By September 1 st of each year 2020-2024	4.1b Annual updates	4.1b Annual updates will include updated appendix

The model provided by Department of Commerce predicts that the number of unsheltered homeless households will decrease by 24 over the next five years if demographics and housing costs remain stable, given the current performance of our crisis response system. However, even modest growth in population and rents will reverse the predicted decrease. The table below highlights six potential population and rent scenarios:

	Population Growth (annual %)	Rent Growth (annual %)	Predicted change in number of unsheltered households in 2024	Annual funding increases required to offset inflation (price of service delivery) and to overcome scenario's increase of population and rent prices
Scenario 1	0	0	-24	\$111,629
Scenario 2	0	3	-5	\$198,314
Scenario 3	1.5	3	+29	\$318,183
Scenario 4	1.5	5	+97	\$493,327
Scenario 5	1.5	8	+129	\$758,772

For reference, the population growth rate in Whatcom County has been about 1.5% over the last decade. The year-over-year increase in Whatcom County rent value, according to Zillow was 6.4% in July of 2019. An annual growth rate of 5% has been the average since 2012.

Objective 5: Address racial disparities among people experiencing homelessness.

To better understand the impact of race on homelessness and access to services, the following analysis was derived from questions posed by the Washington State Department of Commerce and data collected in 2018.

- 1) How does your county compare to other like size counties in the state? Are any groups over or underrepresented in the homeless population?
 - a. In Whatcom County, people who belong to minority groups are over-represented among people experiencing poverty, and over-represented even more so among people experiencing homelessness. Although white people make up 86% of the population and 78% of people experiencing poverty, they account for only 68% of those identified during the most recent Point In Time Count. In families with children, white people made up only 48% of the people experiencing homelessness.
 - b. The Native Americans/Alaskans make up only about 3% of the county's population, but they account for 5% of people in poverty and 16% of people experiencing homelessness. These disparities are larger still within families with children experiencing homelessness, where Native American/Alaskan individuals accounted for 31% of all the people in families with children who were experiencing homelessness.
 - c. Black people make up a small percent of the county, and are only 2% of the people living in poverty. Still, they make up 4% of people experiencing homelessness.
 - d. For multi-racial or those who do not identify as white, black, Native American/Alaskan, or Asian/Pacific Islander, there are also elevated rates of homelessness beyond what poverty ratios would predict, but this is seen only among families with children. The "Other/Multi-Racial" group makes up 10% of those in poverty, but 15% of the homeless families with children population.
 - e. Single-parent households with children are disproportionately headed by a female parent. Nationally, single mothers account for about 80% of the single-parent households; however they were identified as 93% of the single-parent households during the Point In Time Count.
- 2) In PIT counts, are there significant differences between sheltered and unsheltered counts?
 - a. For people without children, race appears to play only a very small role in access to shelter. Although white people make up 68% of the people experiencing homelessness in Whatcom County, they account for a larger percent (73%) of people who are unsheltered. This means that people of racial minorities are able to (or choose to) access shelter at a slightly higher rate than their white peers. This phenomenon is more pronounced among families with children, where we see white people make up 48% of the population, but account for 58% of those who are unsheltered.
- 3) Are there specific local or state conditions that might lead to these differences?
 - a. The most startling data here suggests that Native American/Alaskans in poverty are three times more likely to become homeless than others who are in poverty. And although this population is just 5% of the county's people experiencing poverty, they account for 31% of the people in families who are experiencing homelessness. Specific local conditions that may be contributing to this, as well as possible corrections need to be researched; this will be a topic for discussion in the new Coordinated Entry governance body.

Measure of Success	Action	Responsible Parties	Timeline	Milestones Prior to 2022	How Success Will Be Measured
5.1 Completion of an initial analysis using a racial equity tool and data provided by Commerce.	5.1a Include analysis in this document	5.1a WCHD, Steering Committee of Coalition to End Homelessness	5.1a By September 01, 2019	5.1a Completed	5.1a Analysis included in this plan and subsequent updates
	5.1b Revisit analysis and make adjustments annually	5.1b WCHD	5.1b By September 1 st of each year 2020-2024	5.1b Annual updates	5.1b Annual updates will include updated appendix
5.2 Reduce disparities in homelessness seen in the Point In Time Count for people of color, LGBTQ, and formerly institutionalized individuals	5.2a Provide training for partner agency staff on equity and cultural competency	5.2a WCHD with Partner Agencies	5.2a At least one annual training specifically on equity	5.2a Training program in place	5.2a Annual training activities; HMIS and PIT Count Data will indicate fewer disparities in data reporting on successful exits to PH and housing retention
	5.2b Require contractual partners of WCHD to submit annual plan on how they intend to work toward reduction in disparities in at least one identified group with disparities; provide opportunities for more suggestions from partners	5.2b WCHD with Partner Agencies	5.2b Included in contracts/amen dments by 01/01/2020	5.2b Increase in # or % of households from minority groups that receive permanent housing, and retain housing for 6 months and 1 year.	5.2b Quarterly reports

	5.2c Develop criteria for CE assessment that recognizes barriers for people of color, LGBTQ, formerly institutionalized individuals and other groups that face disparities in rates of homelessness	5.2c WCHD and WHSC	5.2c WCHD and WHSC and partners will discuss and decide on this by 06/01/2020.	5.2c Assessment tool modified to account for systemic prejudice that adds barriers to housing for minority groups	5.2c Decrease of time spent in housing pool for people that belong to groups facing disparities in rates of homelessness
	5.2d Analyze hiring and recruitment practices of partner organizations to determine if outreach to populations with inequitable outcomes in housing can be improved	5.2d WCHD with Partner Agencies	5.2d Analysis of hiring practices completed by 06/01/2020	5.2d Hiring and recruitment policies include considerations to attract staff that reflects the population being served	5.2d New efforts to recruit from minority populations will be documented and reported in annual updates
	5.2e Fill position for Tribal Representative on Whatcom County Housing Advisory Committee	5.2e WCHD housing staff	Position will be filled by 06/01/2020	Tribal Representative will be present for majority of meetings	List of attendees in minutes will include Tribal Representative

Glossary

Affordable Housing – Housing is considered “affordable” when a household pays no more than 30% of their gross income towards housing, inclusive of utilities.

Chronically Homeless – A subset of the homeless population that has been homeless either for the last 12+ months, or homeless several times over the past three years adding up to 12 months or longer. People who have experienced chronic homelessness are the primary participants in permanent supportive housing projects.

CoC – Continuum of Care (CoC) is a HUD designation for a jurisdiction that receives federal grants for housing programs. In Washington State, the five most populous counties (King, Snohomish, Pierce, Spokane, and Clark) constitute their own CoCs, while the rest of the counties (including Whatcom County) form a sixth CoC called the Balance of State.

Commerce – The Washington State Department of Commerce is the primary state-level funder for housing assistance in Washington State. There are three offices in particular that support people experiencing homelessness, the Office of Family and Adult Homelessness, the Office of Supportive Housing, and the Office of Homeless Youth.

Coordinated Entry – A system that allows people seeking services to have a single point of entry for all participating agencies. This eliminates the need to visit and register with several agencies across the county. A list of people seeking services is used to connect households with agencies that provide services.

Diversión – A relatively brief service that helps households creatively solve housing crises without formal engagement in the coordinated entry housing system. Households that use diversion services typically will relocate to a new living situation but will not losing housing altogether.

ES – Emergency Shelter (ES) is any type of site that houses individuals or families on a temporary basis. Some shelters are reserved for specific populations, such as women fleeing domestic violence or for minors, while others are available for any adult seeking shelter. People using emergency shelters, regardless of their length of stay, are still considered to be homeless.

HMIS – The Homeless Management Information System is a database that keeps statistics about housing services and clients. Information from Whatcom County is connected to other counties and used by Department of Commerce and HUD to analyze performance of each county and Continuum of Care. Data entry is required of agencies that receive funding from the Whatcom County Health Department and for all programs receiving state or federal funds.

Housing Pool – The “housing pool” serves as a quasi-wait list that matches individuals seeking services with appropriate programs. Households in the housing pool are organized by eligibility status, housing needs and vulnerability.

HUD – The United States Department of Housing and Urban Development (HUD) is a funder for many housing subsidy programs delivered locally and the primary funder of the Whatcom County and Bellingham Housing Authority.

Partner Agencies – Non-profit organizations that receive funding from local, state, and/or federal sources and implements programs that serve populations experiencing and/or at risk of homelessness. Many of these organizations also collect private contributions at fundraising events and benefit from significant volunteer support. As a condition of public funding, these agencies must record data in HMIS and populate their programs primarily through referrals from the WHSC.

PH – Permanent Housing (PH) can be subsidized or paid at market rate. PSH and RRH program participants are considered to be in permanent housing and no longer homeless.

Prevention – A program that provides stopgap funding for households in imminent risk of eviction or housing loss. Unlike diversion services, prevention usually helps families maintain their housing without having to relocate.

PSH – Permanent Supportive Housing (PSH) is a service that combines rental subsidies with ongoing case management support. PSH is offered either in single-site facilities that provide on-site staff to assist tenants, or in scattered-site locations that may be integrated into neighborhoods.

Rapid Re-Housing – A rental subsidy that generally lasts for about two years. Households receiving rapid re-housing (RRH) are expected to develop financial independence over the two year period and take over rent payments at the completion of the program. These tenants have leases with their landlords and typically remain in the same housing unit after the subsidy ends.

Referral – A referral for a client is issued by the WHSC when partner agencies identify a vacancy or additional capacity. When requested for a referral, the WHSC accesses the Housing Pool to determine the most appropriate household to refer to the requesting agency.

SPDAT – The Service Prioritization Decision Assistance Tool is used to determine the level of vulnerability of applicants for housing services. The result of this assessment helps determine the most appropriate service for the household.

TAY Triage Tool – This version of the SPDAT is designed specifically for transition-aged youths (TAY). It helps determine the needs of young adults aged 18-24 and is used both for Northwest Youth Services and Whatcom Homeless Service Center intakes for client in that age range.

TH – Transitional Housing (TH) is a temporary arrangement that is expected to provide subsidized housing for up to two years. Unlike RRH, transitional housing tenants are not protected by leases and are expected to move out to a different home at the end of the program. While in TH, households are still considered to be homeless.

WHSC – The Whatcom Homeless Service Center is the lead agency for Coordinated Entry in Whatcom County. It disperses rental assistance funding and fills referral requests when partner agencies have vacancies in their programs.

Appendix A: Interim Housing in Whatcom County

As of early 2019, the number of year-round emergency shelter or transitional housing beds for men, women, and children in Whatcom County was approximately 700. In practice, due to household configurations, the total number of individuals that can be sheltered is typically less, although temporary shelters are used during the winter months and motels can be used to add capacity when necessary. Because many of the organizations that provide shelter do not participate in county-wide data sharing, the number of people in shelters at any given moment is generally not known.

Interim housing operated by partner agencies that work with the Whatcom Homeless Service Center and/or receive funding from the City of Bellingham or Whatcom County Health Department:

- *Domestic Violence and Sexual Assault Services (DVSAS)*
 - DVSAS's Safe Housing Program provides emergency, confidential shelter to individuals and families fleeing domestic violence. Survivors are housed in three buildings at two locations in Bellingham, one for families and two that are limited to adult women. Survivors can be screened through the DVSAS office in downtown Bellingham or over the 24-hour helpline, and can enter the shelter immediately. Shelter stays are typically limited to ninety days, and motel stays are available for survivors who do not identify as female.
- *Interfaith Coalition*
 - Interfaith Coalition uses several houses and housing units to provide emergency shelter and transitional housing for families. These units are located in Bellingham, Ferndale, and Blaine. The goal for the emergency shelter units is to move families into permanent housing within 90 days, however this demographic and the expense of housing families make this target very challenging. Transitional housing units allow for stays up to two years in length. Entry to these units is through Coordinated Entry.
- *Lydia Place*
 - Lydia Place operates a small transitional housing facility with room for five households (women with or without children). Households may stay up to a year, but often move on after only a few months. This facility is located in Bellingham. Lydia Place also provides motel stays to be used as emergency shelter on an as-needed basis for families. Entries to Lydia Place's transitional housing program are facilitated by Coordinated Entry.
- *Northwest Youth Services*
 - Northwest Youth Services operates a Positive Adolescent Development (PAD) program for up to eight minors aged 13-17 that is available on an emergency basis directly through Northwest Youth Services. They also operate an eight-bed emergency shelter for youths aged 18-24. Both shelters limit stays to 90 days and are located in Bellingham. Transitional housing is available for youth at scattered site units with case management support available.
- *Sun Community Services*
 - Sun Community Services operates a nine bed emergency shelter called Sun House in Bellingham. Residents there are expected to limit their stays to 90 days, although these stays are extended on a case-by-case basis when necessary. Their beds are filled through the Coordinated Entry referral process, and their focus is primarily on single adults with serious mental illness.
- *Whatcom Homeless Service Center*
 - The Whatcom Homeless Service works with Opportunity Council's Community Services division to provide emergency motel stays primarily for families with children on an as-needed basis.
- *YWCA*

- The YWCA in downtown Bellingham provides both emergency shelter and transitional housing for a total of 36 single women. Entry to this facility is through the Coordinated Entry system.

Interim housing operated by agencies that do not work with the Whatcom Homeless Service Center and/or receive funding from the City of Bellingham or Whatcom County Health Department:

- *Engedi Refuge Ministries*
 - The Engedi Refuge works with women who are survivors of sex trafficking. They house up to six women at a time at a facility in Lynden without limits on length of stay. Entries to the refuge come through the Washington Anti-Trafficking Response Network.
- *HomesNOW!*
 - The HomesNOW! organization operates a tiny-home encampment of 15 units on a temporary basis in Bellingham. Entries to this encampment are screened by HomesNOW! staff with consultation from the Bellingham Police Department. This organization intends to expand in the coming years and add operations outside of Bellingham. There is no specific limit to length of stay.
- *Lighthouse Mission Ministries*
 - The Lighthouse Mission's Drop-In Center, in Bellingham, is the largest emergency shelter in Whatcom County. The Lighthouse also operates a transitional housing program for single women and for women with young children and another for single men. There is no limit on the number of nights a person may stay at the Mission.
- *Lummi Housing Authority*
 - The Lummi Housing Authority operates a temporary housing facility for tribal members on the Lummi Indian Reservation called Sche'leng'en Village. This project provides housing and wrap-around services for 30 families. Entry is through the Lummi Housing Authority and residents must comply with clean and sober policies before admittance. There is no limit on length of stay, but the residencies are not expected to be permanent for most households.
- *New Way Ministries*
 - New Way Ministries provides housing for 23 families in Lynden, Washington. Applications for entry are made directly with the facility.
- *Lummi Stepping Stones*
 - Lummi Stepping Stones provide emergency shelter in two facilities on the Lummi Indian Reservation. They provide beds for up to 51 individuals and entries are through the Stepping Stones organization directly.
- *Lummi Victims of Crime*
 - Lummi Victims of Crime is a domestic violence support agency that operates on the Lummi Indian Reservation. They provide emergency shelter for up to five individuals.

Appendix B: Coordinated Entry Programs

Whatcom Homeless Service Center: Coordinated Entry System Partners		
Partner Agency	Intervention Type	Population Served
Catholic Housing Services	Permanent Affordable Housing	Low-income adults and families
Catholic Housing Services	Permanent Supportive Housing with 24-hour On-site Staff	Chronically homeless single adults; some young adults
Catholic Community Services	Case Management	CH single adults
DVSAS	Emergency Shelter	Survivors (families and singles) of domestic violence
Interfaith Coalition	Emergency Shelter	Families with children experiencing homelessness
Interfaith Coalition	Transitional Housing	Families with children experiencing homelessness
Lake Whatcom Residential and Treatment Center	Permanent Supportive Housing	Chronically homeless individuals with mental illness
Lydia Place	Transitional Housing	Families with children
Lydia Place	Case Management	Families with children; some singles
Lydia Place	Rapid Re-Housing	Families with children
Lydia Place	Long Term Support (No disabilities required)	Bellingham Housing Authority project-based voucher holders
Mercy Housing	Permanent Affordable Housing	Low-Income senior households
Northwest Youth Services	Emergency Shelter	Youth and young adults
Northwest Youth Services	Rapid Re-Housing	Families with children
Northwest Youth Services	Transitional Housing	Youth and young adults
Northwest Youth Services	Case Management	Youth and young adults
Opportunity Council	Case Management	Families with children and small number of singles
Opportunity Council	Permanent Supportive Housing	Chronically homeless single adults and single adults with children
Opportunity Council	Transitional Housing	Homeless families with children
Opportunity Council	Rapid Re-Housing	Families with children; veterans; aged, blind, or otherwise disabled adults
Opportunity Council	Emergency Shelter	Homeless families with children
Pioneer Human Services	Permanent Supportive Housing with 24-hour On-site Staff	Singles re-entering the community from institutions; Veterans; chronically homeless
Sun Community Services	Emergency Shelter with 24-hour On-site Staff	Single adults with serious mental illness discharged from correctional and mental health facilities or unsheltered
Sun Community Services	Permanent Supportive Housing	Chronically homeless single adults
YWCA	Emergency Shelter and Transitional Housing with Daytime On-site Case Manager	Single women experiencing homelessness and often history of domestic violence

Appendix C: County Recommendations to the State

- Eliminate unnecessary reporting requirements and regulations for counties to allow county staff time to focus on implementation of system improvements, increased support to partners, and monitoring contract compliance.
- Support counties to use local document recording fees without tying use of the fees to CHG requirements. This provides opportunities for counties to respond effectively to the unique local combination of factors that drives homelessness.
- Seek input from counties before assigning funding requirements for a specific population. For example, the Permanent Supportive Housing funding in the CHG and the ending of TANF specific funding may not be as helpful for Whatcom County as general CHG funding, which allows for more varied uses.
- Consider legislation that would create consistency and factor in special needs when clearing homeless encampments from public property.
- Consider legislation that would revise sitting and lying in public ordinances to create safe alternatives for people without homes.
- Provide funding that can be used to install public bathrooms or urban rest stops to enable better hygiene and health outcomes for people without homes.
- Sanction and support safe parking or camping areas that promote security, stability, and healthy conditions conducive to exiting homelessness.
- Create limits or regulations relating to escalation of rent without improvements or justification.
- Create legislation to limit the application and move-in fees that property management companies charge.
- Provide more oversight resources to better enforce fair housing laws; provide legal support to applicants who have been illegally discriminated against to bring lawsuits against landlords who break the law.
- Gradually taper withdrawal of social service benefits to avoid abrupt benefit cliffs.
- Fund complete behavioral health and medical services that are accessible for indigent people with mental illness, and support the inclusion of these services in supportive housing programs and operations.
- Create legislation to ban the use of criminal history as criteria that may deny housing to an individual, much like the “ban the box” legislation for job applications.
- Fund an increase of accessibility of legal support services for survivors of domestic violence who wish to separate from spouses and free themselves from their ex-partner’s debts.
- Add contextual flexibility to the criteria that define chronic homelessness or other eligibility restrictions, and develop systems for exceptions that would increase efficiency and effectiveness of the homeless housing system for people in unique situations or who are unable to produce specific types of documentation.



Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2019-499

File ID:	AB2019-499	Version:	1	Status:	Agenda Ready
File Created:	09/24/2019	Entered by:	AHester@co.whatcom.wa.us		
Department:	Public Works Department	File Type:	Resolution		
Assigned to:	Council Public Works & Health Committee	Final Action:			
Agenda Date:	10/08/2019	Enactment #:			

Primary Contact Email: Sdraper@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Resolution in the matter of considering vacating a portion of Horton Road

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

The attached resolution in the matter of considering vacating a portion of Horton Road is submitted per RCW 36.87 and WCC 12-20.

Adoption of this resolution will trigger the County Engineer to report on the proposed vacation at a future Council meeting. Once the County Engineer's report is submitted the road vacation will be considered by Council under a separate resolution and a public hearing will need to be scheduled

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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JON HUTCHINGS
DIRECTOR



MEMORANDUM

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

Through: Jon Hutchings, Director *JH*

From: Andrew Hester, Real Estate Coordinator *AH*

Date: September 24, 2019

Re: In the Matter of Considering Vacating a Portion of Horton Road

The attached petition asks for the vacation of a portion of Horton Road.

Recommended Action

The attached petition for vacation meets all statutory requirements. It is recommended that the County Council direct the County Engineer to investigate and report his findings to the County Council.

Please contact me at extension 6216 if you have any questions regarding this action.

Encl.

SPONSORED BY: _____

PROPOSED BY: Public Works

INTRODUCTION DATE: _____

RESOLUTION NO. _____

IN THE MATTER OF CONSIDERING VACATING A PORTION OF HORTON ROAD

WHEREAS, on April 26, 2019; Chad TerWisscha and Ken Jorgensen submitted a petition for the vacation of a portion of Horton Road lying within the unincorporated area of Whatcom County, accompanied by the penal sum of \$790.00, and,

WHEREAS, as described in RCW 36.87.010, when a county road or any part thereof is considered useless the Whatcom County Council may declare its intention to formally consider vacation, by resolution.

WHEREAS, without pre-judging the result of its future consideration of this matter, the Whatcom County Council has received sufficient information to warrant consideration of vacation of the right-of-way identified in the above-referenced petition and described more fully below;

NOW, THEREFORE, BE IT RESOLVED that it is the intention of the Whatcom County Council to consider vacation of the following described right of way:

That portion of Horton Road adjacent to Lot 5, Block 73 and Lot 12, Block 72, "Bakerview Addition to the City of Bellingham", recorded in Volume 7 of Plats, Pages 40 to 45, Section 1, Township 38 North, Range 2 East, W.M. Situate in Whatcom County, Washington.

Subject to and/or together with all easements, covenants, restrictions and/or agreements of record or otherwise, and further subject to Whatcom County retaining an easement in respect to the portion of right-of-way proposed for vacation, for the construction, repair, and maintenance of any and all public utilities and services now located on or in the portion that may be vacated.

AND BE IT FURTHER RESOLVED that the County Engineer investigate and report to the County Council on the matter of the proposed vacation so that the Council may set a public hearing on the matter.

APPROVED this _____ day of _____, 2019


ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, County Clerk

Rud Browne, Council Chair

APPROVED AS TO FORM:

 9/26/19

Senior Civil Deputy Prosecutor

BEFORE THE WHATCOM COUNTY COUNCIL

IN THE MATTER OF VACATION OF
THE COUNTY ROAD KNOWN AS

HORTON RD

Petitioned for by:

CHAD TERWISSCHA &
et.al. KEN JORGENSEN

PETITION FOR VACATION
OF PLATTED ROAD

(RCW 58.17 AND 36.87)

Pursuant to Whatcom County Ordinance No. 1-72, dated February 14, 1972, the undersigned and those signing attached petition, which bears signatures and property descriptions of five land owners residing in the vicinity of said road, request vacation of the county road hereinafter described, and agree with the statements below:

1. Petitioners are residents of Whatcom County and owners of real property in the vicinity of the road sought to be vacated.
2. The road sought to be vacated is legally described as follows:
PORTION OF HORTON RD. ADJACENT TO
LOT 5 BLK 73 &
LOT 12 BLK 72
3. The pertinent facts in support of this petition are:
4. The road to be vacated is useless as a part of the County road system and the public will benefit by its vacation and abandonment.
5. Petitioners will pay all costs and expenses incurred by the Count in examination, report, notice and proceedings pertaining to this petition.
6. A bond in the penal sum of \$790.00, payable to Whatcom County Treasurer, accompanies this petition.
7. The application fee accompanies this petition.

WHEREFORE, petitioners request the County Road Engineer to report upon this petition, that a hearing take place on this report, and that an order be entered vacating and abandoning said road.

CONTACT PERSON:

CHAD TERWISSCHA

360 363 7000

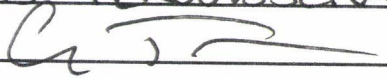
chad542@gmail.com

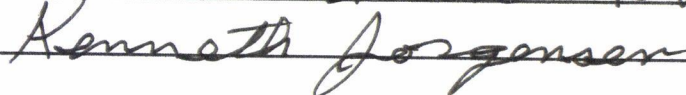
Signed this 26th day of April, 2019.

Page 1 of 2

WHEREFORE, petitioners request the County Road Engineer to report upon this petition, that a hearing take place on this report, and an order be entered vacating and abandoning said road. (NOTE: A minimum of five signatures is required by law; see statement near the beginning of page 1).

PETITIONERS' NAMES: Property owned by petitioner (part of sec. or name of plat, see (lot), TWP, (Blk) Range):

CHAD TERWISSCHA 4610 ALDRICH RD
 380201035150 0000

KEN JORGENSEN 4592 ALDRICH RD
 380201030119 0000

A map of the road proposed to be vacated and surrounding properties, with each of the above signed petitioners properties indicated thereon, shall be attached to this petition in order for it to be accepted in the County Council Office.

HORTON RD VACATION

Darin Peterson 2-22-19
Dai ~~Peterson~~ 3802010322540000
4686 Aldrich Rd.
Bellingham, WA 98226

Brandon Osgoodby 2/23/19 ~~Brett Wiltse~~
~~380~~ 3802024481710000 Brett Wiltse
568 Wiltse Ln 4581 Aldrich Rd
Bham WA 98226 Bham WA 98226
3802024971130000

Frank R Wiltse

FRANK R WILTSE 3-23-19
505 WILTSE LANE 3802024951280000
BELLINGHAM WASH

DUSTIN MASTERS 3/23/19 3802024921450000
~~Dustin Masters~~
Rebecca Masters 3/23/19
R Masters
4607 Aldrich RD 98226

Horton Rd. vacation South of 4610 Aldrich Rd. and North of 4592 Aldrich Rd.

Chad TerWisscha and Keneth Jorgensen would like to vacate this ROW because it has no value to Whatcom County for numerous reasons.

-The topography of the terrain makes it a non-cost effective option for any type of roadway or access to be built due to the enormous gully/creek and embankment height. This would also create a huge environmental impact and disturbance.

-The City of Bellingham has a confirmed location for Horton Road to be laid from Cordata to Aldrich and is approximately 1500 feet south of said ROW.

-There is no road access from the East side of this property and does not lock any property owners from access to their land. It is adjacent to City of Bellingham property.

-The size of this property (approx.. 60' x 660') gives no option for building or any other use.

-Appears to be wetlands and must be preserved.

TOWNSHIP

38

RANGE

2E

SECTION

01

MAP NO.

04

SCALE

1"=200'

DATE

02/10/89

NOV 08 2011

THIS MAP IS FOR
GENERAL REFERENCE
PROPERTY LOCATION
AND NOT GUARANTEED
FOR SURVEY
MEASUREMENTS







Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2019-511

File ID:	AB2019-511	Version:	1	Status:	Agenda Ready
File Created:	09/30/2019	Entered by:			
Department:		File Type:	Discussion		
Assigned to:	Council Planning and Development Committee				Final Action:
Agenda Date:	10/08/2019				Enactment #:

Primary Contact Email: DBrown@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Discussion regarding draft interim zoning regulations for the siting, establishment, and operation of temporary homeless facilities

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Discussion regarding draft interim zoning regulations for the siting, establishment, and operation of temporary homeless facilities.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
Originator:		6/12/2018		6/19/2018	Introduction
Division Head:				7/10/2018	Introduction
Dept. Head:	<i>[Signature]</i>	6-13-18		7/24/2018	Public Hearing
Prosecutor:	<i>[Signature]</i>	6/13/18			
Purchasing/Budget:					
Executive:					

TITLE OF DOCUMENT:

Interim ordinance regs for siting & operation of homeless encampments

ATTACHMENTS:

Interim ordinance

SEPA review required?	() Yes	() NO	Should Clerk schedule a hearing ?	(<input checked="" type="checkbox"/>) Yes	() NO
SEPA review completed?	() Yes	() NO	Requested Date:	7/10/2018	

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE: (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)

An interim ordinance of Whatcom County, Washington relating to land use and zoning; declaring an emergency; adopting interim zoning regulations for the siting, establishment, and operation of temporary tent emcampments; and setting twelve months as the effective period of the interim zoning regulations to allow the County to study the land use impacts of such uses.

COMMITTEE ACTION:

7/10/2018: Discussed and amended

COUNCIL ACTION:

6/19/2018: Withdrawn. To be rescheduled at the next Council meeting
 7/10/2018: Substitute Introduced 6-0, Ballew absent
 7/24/2018: Adopted 7-0, Ordinance 2018-041

Related County Contract #:

Related File Numbers:

Ordinance or Resolution
 Number: Ord. 2018-041

Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County's website at: www.co.whatcom.wa.us/council.

5
6 **ORDINANCE NO. 2018-041**
7 **(AN INTERIM ORDINANCE OF WHATCOM COUNTY, WASHINGTON)**
8

9 **ADOPTING INTERIM ZONING REGULATIONS FOR THE SITING, ESTABLISHMENT,**
10 **AND OPERATION OF TEMPORARY HOMELESS FACILITIES**

11
12 **WHEREAS,** homelessness continues to be a local, regional and national challenge
13 due to many social and economic factors; and

14
15 **WHEREAS,** tent and tiny house encampments have become a temporary mechanism
16 for providing shelter for homeless individuals and families; and

17
18 **WHEREAS,** under RCW 36.01.290 the Washington State Legislature has authorized
19 religious organizations to host temporary encampments to provide shelter for homeless
20 individuals on property that these religious organizations own or control; and

21
22 **WHEREAS,** on June 19, 2018, the Whatcom County Council adopted an emergency
23 ordinance (Ordinance 2018-039) adopting regulations for the establishment and operation
24 of temporary tent encampments that is effective for 60 days; and

25
26 **WHEREAS,** the Whatcom County Code does not currently have permanent
27 provisions addressing the establishment and operation of temporary homeless facilities; and

28
29 **WHEREAS,** an emergency exists necessitating adoption of interim temporary
30 homeless facilities regulations and processing requirements to preserve and protect public
31 health and safety and prevent danger to public or private property; and

32
33 **WHEREAS,** the proposed interim ordinance will replace Ordinance 2018-039 by
34 adopting interim regulations for one year; and

35
36 **WHEREAS,** interim zoning controls enacted under RCW 36.70A.390 and/or RCW
37 36.70.790 are methods by which the County may preserve the status quo so that new plans
38 and regulations will not be rendered moot by intervening development; and

39
40 **WHEREAS,** RCW 36.70A.390 and RCW 36.70.790 both authorize the enactment of
41 an interim zoning map, interim zoning ordinance, or interim official control without holding a
42 public hearing as long as a public hearing is held within at least sixty days of enactment;
43 and

44
45 **WHEREAS,** RCW 36.70A.390 provides that, "A county or city governing body that
46 adopts a moratorium, interim zoning map, interim zoning ordinance, or interim official
47 control without holding a public hearing on the proposed moratorium, interim zoning map,
48 interim zoning ordinance, or interim official control, shall hold a public hearing on the
49 adopted moratorium, interim zoning map, interim zoning ordinance, or interim official
50 control within at least sixty days of its adoption, whether or not the governing body
51 received a recommendation on the matter from the planning commission or department. If
52 the governing body does not adopt findings of fact justifying its action before this hearing,
53 then the governing body shall do so immediately after this public hearing. A moratorium,
54 interim zoning map, interim zoning ordinance, or interim official control adopted under this

1 section may be effective for not longer than six months, but may be effective for up to one
2 year if a work plan is developed for related studies providing for such a longer period. A
3 moratorium, interim zoning map, interim zoning ordinance, or interim official control may be
4 renewed for one or more six-month periods if a subsequent public hearing is held and
5 findings of fact are made prior to each renewal"; and
6

7 **WHEREAS**, in conformity with the responsibilities of Whatcom County to meet public
8 health, safety and welfare requirements and provide zoning and land use regulations
9 pursuant to state law, and the County's authority to regulate land use activity within its
10 corporate limits, the County intends to develop appropriate public health, safety and welfare
11 requirements and zoning and land use regulations for the establishment and operation of
12 temporary homeless facilities; and
13

14 **WHEREAS**, the County Council has determined it needs additional time to conduct
15 appropriate research to analyze the effects of the establishment and operation of temporary
16 homeless facilities; and
17

18 **WHEREAS**, interim zoning will provide the County with additional time to review and
19 amend its public health, safety and welfare requirements and zoning and land use
20 regulations related to the establishment and operation of temporary homeless facilities;
21 and
22

23 **WHEREAS**, interim zoning will also allow qualifying religious organizations and
24 registered not-for-profit, tax exempt 501(c)(3) organizations the opportunity to establish
25 and operate temporary homeless facilities; and
26

27 **WHEREAS**, a determination of non-significance (DNS) was issued under the State
28 Environmental Policy Act (SEPA) on July 3, 2018; and
29

30 **WHEREAS**, the County Council concludes that the County does have the authority to
31 establish an interim zoning ordinance and that the County must adopt interim zoning
32 concerning the establishment and operation of temporary homeless facilities to act as a
33 stop-gap measure: (a) to provide the County with an opportunity to study the issues
34 concerning the establishment and operation of temporary homeless facilities and
35 prepare appropriate revisions to the County's codes and regulations; (b) to protect the
36 health, safety, and welfare of the citizens of Whatcom County by avoiding and
37 ameliorating negative impacts and unintended consequences of establishing and
38 operating temporary homeless facilities and (c) to avoid applicants possibly establishing
39 vested rights contrary to and inconsistent with any revisions the County may make to its
40 rules and regulations as a result of the County's study of this matter; and
41

42 **WHEREAS**, the County Council adopts the foregoing as its findings of facts justifying
43 the adoption of this Ordinance; and
44

45 **NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that:**
46

47 **Section 1. Findings of Fact.** The County Council adopts the above "WHEREAS" recitals
48 as findings of fact in support of its action as required by RCW 36. 70A.390 and RCW
49 36.70.790.
50

51 **Section 2. Regulations established.** Regulations concerning the establishment and
52 processing of applications for temporary homeless facilities in unincorporated Whatcom
53 County are hereby established. Establishing such facilities contrary to the provisions of
54 this ordinance is prohibited. Administrative Use approvals shall be required for

1 temporary homeless facilities in the County. Applications for administrative use
2 approvals, land use approvals, or any other permit or approval, in any way associated
3 with temporary homeless facilities, shall not be processed, issued, granted, or approved
4 unless in compliance with this ordinance. If a temporary homeless facility is established
5 in violation of this ordinance or if, after an administrative use permit is issued for the
6 same, the director of the planning and development services department determines
7 that the permit holder has violated this ordinance or any condition of the permit, the
8 temporary homeless facility, its sponsor and managing agency shall be subject to code
9 enforcement and all activities associated with the temporary homeless facility shall
10 cease, and the site shall be vacated and restored to its pre-encampment conditions.
11

12 **Section 3. Definitions.** The following definitions apply to temporary homeless facilities:
13

- 14 A. "Temporary homeless facility" means a facility providing temporary housing
15 accommodations that includes a sponsor and managing agency, the primary
16 purpose of which is to provide temporary shelter for people experiencing
17 homelessness in general or for specific populations of the homeless. Temporary
18 homeless facilities include temporary tent encampments and temporary tiny
19 house encampments.
20
- 21 B. "Temporary tent encampment" means a short-term living facility for a group of
22 homeless people that is composed of tents or other temporary structures, as
23 approved by the director, on a site provided or arranged for by a sponsor with
24 services provided by a sponsor and supervised by a managing agency.
25
- 26 C. "Temporary tiny house encampment" means a temporary homeless facility for a
27 group of people living in purpose-built tiny houses for people experiencing
28 homelessness, as approved by the director, on a site provided or arranged for by
29 a sponsor with services provided by a sponsor and supervised by a managing
30 agency. Temporary tiny houses for the homeless are typically less than 200
31 square feet and easily constructed and moved to various locations. For the
32 purposes of this ordinance, temporary tiny homes are not dwelling units and, as
33 such, are not required to meet building codes.
34
- 35 D. "Managing agency" means an organization identified as the manager of a
36 temporary homeless facility that has the capacity to organize and manage a
37 temporary homeless facility. Managing agencies are limited to religious
38 organizations and non-profit agencies. A "managing agency" may be the same
39 entity as the sponsor.
40
- 41 E. "Sponsor " means an organization that :
42 1. invites a temporary homeless facility to reside on land they own or lease;
43 and
44 2. is a State of Washington registered not-for-profit corporation and
45 federally recognized tax exempt 501(c)(3) organization; or
46 3. is recognized by the Internal Revenue Service as exempt from federal
47 income taxes as a religious organization, which expresses its religious
48 mission, in part, by organizing living accommodations for the homeless.
49
- 50 F. "Director" means the Planning and Development Services Department Director.
51

52 **Section 4. Requirements.** The following requirements shall apply to all temporary
53 homeless facilities approved under this ordinance, unless modified by the director
54 through approval of an administrative use permit.

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- A. The encampment shall be located a minimum of 20 feet from the property line of abutting properties containing commercial, industrial, and multifamily residential uses. The encampment shall be located a minimum of 40 feet from the property line of abutting properties containing single-family residential or public recreational uses, unless the director finds that a reduced buffer width will provide adequate separation between the encampment and adjoining uses, due to changes in elevation, intervening buildings or other physical characteristics of the site of the encampment.
 - B. No temporary homeless facility shall be located within a critical area or its buffer as defined by Whatcom County Code (WCC) 16.16 or 23.
 - C. A temporary homeless facility shall comply with the applicable development standards of Whatcom County Code Title 20 Zoning, except that temporary homeless facilities shall not be considered structures for the purposes of calculating parcel's total lot coverage, as defined by WCC 20.97.217.
 - D. A six-foot-tall fence is required around the perimeter of the encampment to limit access to the site for safety and security reasons; provided, that the fencing does not create a sight obstruction at the street or street intersections or curbs as determined by the county engineer, unless the director determines that there is sufficient vegetation, topographic variation, or other site conditions such that fencing would not be needed.
 - E. Exterior lighting must be directed downward and glare contained within the temporary encampment.
 - F. The maximum number of residents at a temporary encampment site shall be determined by the director taking into consideration site conditions, but in no case shall the number be greater than fifty (50) people.
 - G. On-site parking of the sponsor shall not be displaced unless sufficient required off- street parking remains available for the host's use to compensate for the loss of on- site parking or unless a shared parking agreement is executed with adjacent properties.
 - H. A transportation plan, including provisions for transit, and pedestrian and bicycle ingress and egress to the encampment, shall be submitted for review and approval.
 - I. No children under the age of 18 are allowed to stay overnight in the temporary encampment, unless accompanied by a parent or guardian. If a child under the age of 18 without a parent or guardian present attempts to stay at the encampment, the sponsor and the managing agency shall immediately contact Child Protective Services and shall actively endeavor to find alternative shelter for the child.
 - J. The sponsor or managing agency shall provide and enforce a written code of conduct, which not only provides for the health, safety and welfare of the temporary encampment residents, but also mitigates impacts to neighbors and the community. A copy of the code of conduct shall be submitted to the County at the time of application for the administrative use permit. Said code shall be incorporated into the conditions of approval. The managing agency shall post the

County approved written code of conduct on site.

- K. An operations plan must be provided that addresses site management, site maintenance, and provision of human and social services. Individuals or organizations shall have either a demonstrated experience providing similar services to homeless residents; and/or certification or academic credentials in an applicable human service field; and/or applicable experience in a related program with a homeless population. Should an individual or organization not have any of the preceding qualifications, additional prescriptive measures may be required to minimize risk to both residents of the temporary homeless facility and the community in general.
- L. The sponsor and the managing agency shall ensure compliance with Washington State laws and regulations and the Whatcom County Health Department's regulations concerning, but not limited to, drinking water connections, solid waste disposal, and human waste. The sponsor and the managing agency shall permit inspections by local agencies and/or departments to ensure such compliance and shall implement all directives resulting therefrom within the specified time period.
- M. The sponsor and managing agency shall assure all applicable public health regulations, including but not limited to the following, will be met for:
 - 1. Potable water, which shall be available at all times at the site;
 - 2. Sanitary portable toilets, which shall be set back from all property lines as determined by the director;
 - 3. Hand-washing stations by the toilets and food preparation areas;
 - 4. Food preparation or service tents; and
 - 5. Refuse receptacles.
- N. Public health regulations (WAC 246.215 and WCC 24.03) on food donations and food handling and storage, including proper temperature control, shall be followed and homeless encampment residents involved in food donations and storages shall be made aware of these Whatcom County Health Department requirements.
- O. The sponsor and the managing agency shall designate points of contact and provide contact information (24 hour accessible phone contact) to the chief criminal deputy of the Whatcom County Sheriff or his/her designee. At least one designated point of contact shall be on duty at all times. The names of the on-duty points of contact shall be posted on-site daily and their contact information shall be provided to the Whatcom County Sheriff's Office as described above.
- P. Facilities for dealing with trash shall be provided on-site throughout the encampment. A regular trash patrol in the immediate vicinity of the temporary encampment site shall be provided.
- Q. The sponsor and the managing agency shall take all reasonable and legal steps to obtain verifiable identification information, to include full name and date of birth, from current and prospective encampment residents and use the identification to obtain sex offender and warrant checks from appropriate agencies. The sponsor and the managing agency shall keep a current log of names and dates of all people who stay overnight in the encampment. This log shall be available upon request to law enforcement agencies and prospective

1 encampment residents shall be so advised by the sponsor and managing agency.
2 Persons who have active warrants, or who are required to register as sex
3 offenders, are prohibited from the encampment's location.
4

- 5 R. The sponsor and the managing agency shall immediately contact the Whatcom
6 County Sheriff's Office if someone is rejected or ejected from the encampment
7 when the reason for rejection or ejection is an active warrant or a match on a sex
8 offender check, or if, in the opinion of the on-duty point of contact or on-duty
9 security staff, the rejected/ejected person is a potential threat to the community.
10
11 S. Tents over 300 square feet in size and canopies in excess of 400 square feet shall
12 utilize flame retardant materials.
13
14 T. The sponsor, the managing agency and temporary encampment residents shall
15 cooperate with other providers of shelters and services for homeless persons
16 within the County and shall make inquiry with these providers regarding the
17 availability of existing resources.
18
19 U. The sponsor and/or managing agency shall provide before-encampment photos of
20 the host site with the application. Upon vacation of the temporary encampment,
21 all temporary structures and debris shall be removed from the host site within
22 one calendar week.
23
24 V. Upon cessation of the temporary encampment, the site shall be restored, as near
25 as possible, to its original condition. Where deemed necessary by the director,
26 the sponsor and/or managing agency shall re-plant areas in which vegetation had
27 been removed or destroyed.
28

29 **Section 5. Frequency and duration of temporary homeless facilities.**
30

- 31 A. No more than a maximum of 100 people may be housed in temporary homeless
32 facilities (encampments) located in the unincorporated County at any time.
33 Multiple encampment locations may be permitted provided that the aggregate
34 total of people in all temporary tent and/or tiny house encampments shall not
35 exceed 100.
36
37 B. The director shall not grant a permit for the same site more than once in any
38 calendar year; provided that director is not authorized to issue a permit for the
39 same site sooner than 180 days from the date the site is vacated as provided for
40 in Section 4 of this ordinance.
41
42 C. Temporary tent encampments may be approved for a period not to exceed 180
43 days. The director may grant one 180-day extension, provided all conditions have
44 been complied with and circumstances associated with the use have not changed.
45 This extension shall be subject to a Type II review process and may be appealed
46 to the hearing examiner as provided in WCC 22.05.020(1). The permit shall
47 specify a date by which the use shall be terminated and the site vacated and
48 restored to its pre-encampment condition.
49
50 D. Temporary tiny house encampments may be approved for a period of between
51 six months and up to one year, provided the sponsor and managing agency
52 comply with all permit conditions. The director may grant one or more
53 extension(s) not to exceed one additional year, provided enabling legislation
54 allows so. Extensions are subject to a Type II review process and may be

1 appealed to the hearing examiner as provided in WCC 22.05.020(1). The permit
2 shall specify a date by which the use shall be terminated and the site vacated
3 and restored to its pre-encampment condition.
4

5 **Section 6. Permit required.** Establishment of a temporary homeless facility shall require
6 approval of an administrative use permit, as described in this ordinance, and compliance
7 with all other applicable County regulations. The director shall have authority to
8 grant, grant with conditions or deny an application for an administrative use permit
9 under this ordinance.
10

11 **Section 7. Application.** Application for an administrative use permit shall be made on
12 forms provided by the County, and shall be accompanied by the following information;
13 provided, that the director may waive any of these items, upon request by the applicant
14 and finding that the item is not necessary to analyze the application. An application to
15 establish a temporary homeless facility shall be signed by both the sponsor and the
16 managing agency ("applicant") and contain the following:
17

- 18 A. A site plan of the property, drawn to scale, showing existing natural features,
19 existing and proposed grades, existing and proposed utility improvements,
20 existing rights-of-way and improvements, and existing and proposed structures,
21 tents and other improvements (including landscaping and fencing at the
22 perimeter of the proposed encampment and the property and off-street parking);
- 23 B. A vicinity map, showing the location of the site in relation to nearby streets and
24 properties;
- 25 C. A written summary of the proposal, responding to the standards and
26 requirements of this ordinance;
- 27 D. The written code of conduct, operations plan and a transportation plan as
28 required by this ordinance;
- 29 E. Statement of actions that the applicant will take to obtain verifiable identification
30 from all encampment residents and to use the identification to obtain sex
31 offender and warrant checks from appropriate agencies;
- 32 F. Project statistics, including site area, building coverage, number and location of
33 tents and temporary structures, expected and maximum number of residents,
34 and duration of the encampment;
- 35 G. Address and parcel number of the subject property;
- 36 H. Photographs of the site;
- 37 I. A list of other permits that are or may be required for development of the
38 property (issued by the County or by other government agencies), insofar as
39 they are known to the applicant;
- 40 J. Permit fees for temporary homeless facilities shall be in accordance with WCC
41 22.25;
- 42 K. A list of any requirement under this ordinance for which the applicant is asking to
43 modify.
44

45 **Section 8. Permit Procedures.**
46

- 47 A. Notice. All temporary homeless facility applications shall be reviewed under a
48 Type II process under WCC 22.05, except that the final decision must be
49 rendered within 60 days of a determination of completeness. Additionally, the
50 notice of application shall contain proposed duration and operation of the
51 temporary homeless facility, number of residents for the encampment, and
52 contain a County website link to the proposed written code of conduct, operations
53 plan and transportation plan for the facility.
- 54 B. Decision and Notice of Decision. Final action on permit applications made under

1 this section shall be in accordance with WCC 22.05. Before any such permit may
2 be granted, the applicant shall demonstrate and the director shall find
3 consistency WCC 20.84.220 and the following:
4

- 5 1. The proposed use meets the requirements of this ordinance; and
- 6 2. Measures, including the requirements herein and as identified by the
7 director, have been taken to minimize the possible adverse impacts which
8 the proposed encampment may have on the area in which it is located. It
9 is acknowledged that not all impacts can be eliminated, however the risk
10 of significant impacts can be reduced to a temporary and acceptable level
11 as the duration of the encampment will be limited.
12

13 A notice of the decision shall be provided in accordance with WCC 22.05.
14

- 15 C. Conditions. Because each temporary encampment has unique characteristics,
16 including, but not limited to, size, duration, uses, number of occupants and
17 composition, the director shall have the authority to impose conditions on the
18 approval of an administrative use permit to ensure that the proposal meets the
19 criteria for approval listed above. Conditions, if imposed, must be intended to
20 protect public health, life and safety and minimize nuisance-generating features
21 such as noise, waste, air quality, unsightliness, traffic, physical hazards and
22 other similar impacts that the temporary encampment may have on the area in
23 which it is located. In cases where the application for an administrative use
24 permit does not meet the provisions of this ordinance (except when allowed
25 under subsection (D) of this section) or adequate mitigation may not be feasible
26 or possible, the director shall deny the application.
27
- 28 D. Modification of Requirements. The director may approve an administrative use
29 permit for a temporary encampment that relaxes one or more of the standards in
30 this ordinance only when, in addition to satisfying the decision criteria stated
31 above, the applicant submits a description of the standard to be modified and
32 demonstrates how the modification would result in a safe encampment with
33 minimal negative impacts to the host community under the specific
34 circumstances of the application. In considering whether the modification should
35 be granted, the director shall first consider the effects on the health and safety of
36 encampment residents and the neighboring communities. Modifications shall not
37 be granted if their adverse impacts on encampment residents and/or neighboring
38 communities will be greater than those without modification. The burden of proof
39 shall be on the applicant.
40
- 41 E. Appeal. The director's decision may be appealed to the hearing examiner as
42 provided in WCC 22.05.020(1) and 22.05.160.
43
- 44 F. Revocation. The director shall also have the authority to revoke an approved
45 administrative use permit, pursuant to WCC 22.05.150 at any time a sponsor or
46 managing agency has failed to comply with the applicable provisions of this
47 ordinance or permit.
48

49 **Section 9. Purpose.** The purpose of this interim ordinance is to allow and establish a
50 review process for the location, siting, and operation of temporary homeless facilities
51 within the unincorporated County. While the interim ordinance is in effect, the County
52 will study the land use and other impacts associated with temporary homeless facilities,
53 draft final zoning and regulations to address such uses, hold public hearings on such
54 draft regulations, and adopt such regulations.

Section 10. Duration of Interim Ordinance. This interim ordinance will replace Ordinance 2018-039 and shall be in effect for one year beginning on July 24, 2018 and ending on July 24, 2019, unless another ordinance is adopted amending the Whatcom County Code and rescinding this interim ordinance before July 24, 2019.

Section 11. Work Plan. During the interim ordinance period, County staff will study the issues concerning the establishment and operation of temporary homeless facilities. Staff will prepare a draft ordinance with appropriate revisions to the County's land use regulations; perform SEPA review of the draft ordinance, and conduct the public review process, including public hearings before the County's Planning Commission and County Council, as required for amendments to the County's development regulations.

Section 14. Conflict with other Whatcom County Code Provisions. If the provisions of this Ordinance are found to be inconsistent with other provisions of the Whatcom County Code, this Ordinance shall control.

Section 15. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional or unlawful by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

ADOPTED this 24th day of July, 2018.

ATTEST:


Dana Brown-Davis, Council Clerk

APPROVED as to form:


Civil Deputy Prosecutor

**WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON**


Rud Browne, Chairperson

☒ **Approved** () **Denied**


Jack Louws, Executive

Date: July 25, 2018

INFORMATION FROM THE ADMINISTRATION:

The section that Council had an issue with is under Section 4, I;

"No children under the age of 18 are allowed to stay overnight in the temporary encampment, unless accompanied by a parent or guardian. If a child under the age of 18 without a parent or guardian present attempts to stay at the encampment, the sponsor and the managing agency shall immediately contact Child Protective Services and shall actively endeavor to find alternative shelter for the child."

The concern from some Councilmembers is the "immediately contact Child Protective Services." Could it be written as follows;

"No children under the age of 18 are allowed to stay overnight in the temporary encampment, unless accompanied by a parent or guardian. If a child under the age of 18 without a parent or guardian present attempts to stay at the encampment, the sponsor and the managing agency shall immediately ~~contact Child Protective Services and~~ shall actively endeavor to find alternative shelter for the child through community partners such as Northwest Youth Services, Opportunity Council, Lighthouse Mission, Interfaith Coalition and other appropriate homeless youth services organizations."

INFORMATION FROM HEALTH AND HUMAN SERVICES:

In response to the specific question about children under 18, Northwest Youth Services has a shelter for kids aged 13 – 17. They call it the PAD (Positive Adolescent Development), located at their offices on State Street. It is only for unaccompanied children, however.

The Lighthouse Mission has a special room for families with children under 18. Interfaith Coalition has the Family Promise program that offers temporary shelter to families with children. The Opportunity Council provides motel stays, and Lydia Place has some ability to provide temporary housing to families with children.

... the Mission or the Opportunity Council are the best first stops for families with children under 18 who have no home/shelter.



Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2019-479

File ID:	AB2019-479	Version:	1	Status:	Agenda Ready
File Created:	09/18/2019	Entered by:	DBrown@co.whatcom.wa.us		
Department:	Council Office	File Type:	Discussion		
Assigned to:	Council Planning and Development Committee			Final Action:	
Agenda Date:	10/08/2019			Enactment #:	

Primary Contact Email: dbrown@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Discussion of proposed ordinance amending Whatcom County Code Chapters 11.16 and 11.20 to protect Lake Samish shoreline properties and Lake Samish water recreation

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

This proposed ordinance would amend Code language recently adopted by the Council related to use and protection of Lake Samish. Lake Samish property owners, boaters, and recreational users have come together to understand the concerns of each group and identify a compromise which would be mutually agreeable to all parties and have developed this alternative solution supported by a majority of area residents.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
09/24/2019	Council Planning and Development Committee	HELD IN COMMITTEE	Council Planning and Development Committee

ORDINANCE NO. _____

AMENDING WHATCOM COUNTY CODE CHAPTERS 11.16 AND 11.20 TO
PROTECT LAKE SAMISH SHORELINE PROPERTIES AND LAKE SAMISH
WATER RECREATION

WHEREAS, a relatively new class of recreational boats carrying large amounts of water for ballast (weight) are designed to displace maximum amounts of lake water around and behind the boats; and

WHEREAS, these vessels are operating on Lake Samish, and wakes from these boats have been observed travelling to shores of Lake Samish with force sufficient to damage private property; and

WHEREAS, property owners around Lake Samish desire a balance between damage to personal property and the need for ongoing water recreation; and

WHEREAS, Lake Samish property owners, boaters, and recreational users have come together to understand the concerns of each group and identify a compromise which would be mutually agreeable to all parties; and

WHEREAS, these parties have developed an alternative solution supported by an overwhelming majority; and

WHEREAS, the Whatcom County Code currently recognizes the need to protect public health, safety, and property with regulations on the speed of vessels on Lake Whatcom, and with regulations on the manner and distance that vessels operate from the shore of Lake Whatcom; and

WHEREAS, the Whatcom County Council values the opinions of our community, the time and effort invested by community members to discuss and find a mutually agreeable solution, and the flexibility and willingness of all parties to agree to such a compromise; and

NOW BE IT ORDAINED by the Whatcom County Council that Whatcom County Code Chapters 11.16 and 11.20 shall be amended to include the following (as outlined in Exhibit A to this ordinance):

- A six mile per hour speed limit shall apply 300 feet from the shore of Lake Samish shoreline for all vessels utilized to displace water for the purpose of surfing or wakesurfing or similar activities that produce wakes for surfing and 150 feet for all other vessels.
- The no wake zone shall be adjusted to the east of the W. Lake Samish Drive Bridge, to a point where the 300 foot no wake zone meet, forming a distance 600 feet between shorelines.

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- Vessels and persons under tow on water skis, aquaplane, innertube or a similar contrivance will not operate within 150 feet from the shore on Lake Samish and vessels or 300 feet from the shore when wake surfing as defined in the Exhibit A to this ordinance.

7 APPROVED this _____ day of _____, 2019.

8

9 ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY,

10

11 WASHINGTON

12

13 _____

14 Dana Brown Davis, Clerk of the Council

Rud Browne, Council Chair

15

16

17 APPROVED AS TO FORM:

WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON

18

19

20

21 _____

22 Civil Deputy Prosecutor

Jack Louws, County Executive

() Approved () Denied

23

24

25

26

27 Date Signed: _____

EXHIBIT A

Chapter 11.16 OPERATION AND SPEED REGULATIONS

Sections:

11.16.010 Operation – Overloading prohibited.

11.16.020 Operation – Right-of-way rules.

11.16.030 Speed regulations.

11.16.010 Operation – Overloading prohibited.

It is unlawful for any vessel to be loaded with passengers or cargo which exceed the safe-carrying capacity of the vessel where the safe-carrying capacity of the vessel is specified by the manufacturer. Such limitation shall be considered the maximum safe load, and in no event shall a vessel be loaded beyond a capacity which is reasonable and prudent under given atmospheric conditions and other actual and potential hazards affecting operation. (Ord. 90-83 (part)).

11.16.020 Operation – Right-of-way rules.

The operation rules as between vessels are provided as follows:

- A. When two vessels are approaching each other head on, or so nearly so as to involve the risks of collision, each boat shall bear to the right and pass the other boat on its left side.
- B. One vessel may overtake another on either side but shall grant the right-of-way to the overtaken boat.
- C. When two vessels are approaching each other obliquely or at right angles, the boat approaching on the right side has the right-of-way.
- D. A vessel underway must yield the right-of-way to a craft not underway.
- E. A motor-powered vessel underway must yield the right-of-way to a sailboat, rowboat, canoe, or other vessel not propelled by a motor.
- F. A seaplane underway shall yield the right-of-way to all other vessels.
- G. A swimmer including a person on a flotation device, or a fallen skier, has the right-of-way over any craft.

H. No vessel shall approach within 50 feet of a diver's flag indicating the presence of a person operating under water.

I. All vessels shall reduce speed and, if necessary, stop and, in any event, yield the right-of-way upon the approach of an emergency vessel. (Ord. 90-83 (part)).

11.16.030 Speed regulations.

A. Speed Limits. No vessel shall exceed the following speeds, except as provided in Chapter [11.36](#) WCC:

1. Within 100 feet of a swimmer, six miles per hour;

2. Within 150 feet from docks, floats, or the shoreline on every lake except Lake Whatcom and Lake Samish where the distance shall be 300 feet from docks, floats, or the shoreline (except when necessary for a safe take off as defined in WCC [11.20.010\(C\)](#)), six miles per hour;

3. Within 100 feet of any vessel not propelled by a motor, six miles per hour;

4. One-half hour after sunset to one-half hour before sunrise, eight miles per hour;

5. During daylight hours in unrestricted areas, 40 miles per hour;

6. Within 300 feet of any public boat launch, six miles per hour;

7. Within South Bay Lake Whatcom south of a line approximately as defined as extending from 48° 40' 48" N, 122° 18' 49" W to 48° 40' 43" N, 122° 18' 36", shall be designated as a "no-wake" zone.

8. Within Lake Samish the area between county bridge No. 107 (bridge located south of, and adjacent to, Lake Samish Park) and the North-South line of 122° 24' 00" West shall be designated as a "no-wake" zone;

9. Where the distance on Lake Whatcom shall be 300 feet from docks, floats, or the shoreline (except when necessary for a safe take off as defined in WCC [11.20.010\(C\)](#)), six miles per hour;

10. Where the distance on Lake Samish shall be 300 feet from docks, floats, or the shoreline for all vessels utilized to displace water for the purpose of surfing or wakesurfing or similar activities that produce wakes for surfing, or 150 feet from docks, floats, or the shoreline for all other vessels (except when necessary for a safe take off as defined in WCC [11.20.010\(C\)](#)), six miles per hour;

B. Due Care and Caution Required. Compliance with the speed regulations contained herein shall not relieve the operator of any vessel from the further exercise of due care and caution as circumstances shall require. (Ord. 2004-036 § 1; Ord. 2002-027; Ord. 90-83 (part)).

1

2 **Chapter 11.20**

3 **WATER SKIING, SWIMMING AND SKIN DIVING**

4 **REGULATIONS**

5 Sections:

6 11.20.010 Water skiing.

7 11.20.020 Swimming.

8 11.20.025 Floatation devices on the South Fork of the Nooksack River.

9 11.20.030 Skin diving.

10 **11.20.010 Water skiing.**

11 A. Age Requirements. No vessel which has in tow or is otherwise assisting a person on water skis,
12 aquaplane, surfboard, innertube or similar contrivances, shall be operated unless such vessel is occupied
13 by at least two persons, one at least the age of 16 years, and one of at least eight years of age who shall
14 be observer or ski-tender in addition to the operator; provided that this prohibition shall not apply to
15 vessels used in duly authorized ski tournaments.

16 B. Intoxication Prohibited. No person shall ride or manipulate any water skis, aquaplane, surfboard,
17 innertube or similar contrivance while in tow, or being assisted by a vessel, when such person is under
18 the influence of intoxicating liquor or drugs to a degree which renders said person incapable of safely
19 riding or manipulating such a contrivance.

20 C. Distance from Shoreline. Except on safe takeoffs and safe landing, vessels and persons under tow on
21 water skis, aquaplane, surfboard, innertube or a similar contrivance, and vessels being utilized to displace
22 water for the purpose of surfing or wakesurfing or similar activities that produce wakes for surfing must
23 keep 150 feet or more from the dock, float, or shoreline with the exception of Lake Whatcom which shall
24 remain at except for Lake Whatcom and Lake Samish where the distance shall be 300 feet from the
25 shore, dock or float, and Lake Samish where the distance shall be 300 feet from the shore, dock or float
26 for vessels being utilized to displace water for the purpose of surfing or wakesurfing or similar activities
27 that produce wakes for surfing and 150 feet for all other vessels. A takeoff will not be considered "safe"
28 unless the person(s) under tow are heading away from the shore and the takeoff can be accomplished
29 without any risk to swimmers or vessels. The person(s) under tow, but not the vessel, may come within
30 150 feet of the shoreline when in the process of landing, provided that the return to the shore must be at
31 any angle of 45 degrees or more to the shoreline.

1 D. Other Vessels. No vessel shall follow behind a skier closer than 300 feet, not cross the towing boat
2 bow by less than 200 feet, nor alongside a skier closer than 100 feet.

3 E. Personal Flotation Devices Required. Any person on water skis, aquaplane, surfboard, innertube or
4 similar contrivance shall wear about his body a type I, II, or III personal flotation device as defined and
5 required by the U.S. Coast Guard.

6 F. Conduct. Any person on water skis, aquaplanes, surfboards, innertubes, or similar contrivances shall
7 conduct himself upon the same in a careful and prudent manner, and shall remain at all times a
8 reasonable and prudent distance from other persons and from the property of others, and shall not come
9 within 100 feet of a swimmer or any other vessel.

10 G. Hours. No vessel shall have in tow or shall otherwise assist a person on water skis, aquaplane,
11 surfboard, innertube or a similar contrivance from one-half hour after sunset to one-half hour before
12 sunrise; provided, that this subsection shall not apply to vessels engaged in duly authorized water ski
13 competitions or expositions.

14 H. Pattern. All boats towing skiers shall go in a counterclockwise pattern.

15 I. Public Boat Launches. No drop-off or take-off of skier or having a person in tow within 300 feet of public
16 boat launch.

17 J. Skier Down Flags. When your skier is in the water the observer must display a red or orange "skier
18 down" flag. This flag must be 12 inches square and mounted on a two-foot pole. (Ord. 90-83 (part)).

19 **11.20.020 Swimming.**

20 No person shall swim or operate a paddleboard, innertube, rubber raft or similar unlicensed device except
21 in restricted swimming areas or within a distance of 150 feet from the shore, unless the swimmer is
22 accompanied by a vessel. (Ord. 90-83 (part)).

23 **11.20.025 Floatation devices on the South Fork of the Nooksack River.**

24 No person shall operate a paddleboard, innertube, inflatable floatation device, foam floatation device,
25 limb-propelled floatation device, or rubber raft intended for limb use on the section of the South Fork of
26 the Nooksack River between Edfro Creek and the Acme Bridge between the dates of June 1st and
27 October 31st. The provisions of this section shall not apply to:

28 A. Devices engaged principally in commercial operations constituting an act of interstate or foreign
29 commerce or bona fide scientific research;

1 B. Use for emergency purposes when there is reasonable belief that such use is necessary to protect or
2 preserve persons, animals or property;

3 C. Use by law enforcement agencies to enforce the above provisions;

4 D. Department of Natural Resources-designated and Whatcom County-designated swimming/boating
5 areas on the South Fork of the Nooksack River. (Ord. 2005-089 Exh. A).

6 **11.20.030 Skin diving.**

7 A. No person shall operate (swim, float or walk) under water with the aid of any artificial device such as
8 snorkel or self-contained underwater breathing apparatus (scuba) beyond 100 feet from the shoreline
9 unless closely accompanied by a boat displaying a diver's flag or unless marked by a diver's flag above
10 the water surface and above the operator's position in the water.

11 B. The underwater operator shall keep within a 50-foot horizontal radius of the diver's flag at all times.

12 C. No person shall display any diver's flag except during the period a person is operating under water
13 within the vicinity of the diver's flag.

14 D. Separate diver's flags shall be displayed for each person so operating under water.

15 E. No person shall operate under water, except with a permit issued at the discretion of the sheriff's
16 department, within a 300-foot horizontal radius of any boat ramp or landing wharf of any boat marina, nor
17 shall such person operate within a 100-foot horizontal radius of any platform normally used for diving.
18 (Ord. 90-83 (part)).



Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2019-417

File ID:	AB2019-417	Version:	1	Status:	Held In Committee
File Created:	07/24/2019	Entered by:	AWebb@co.whatcom.wa.us		
Department:	Prosecuting Attorney's Office	File Type:	Resolution		
Assigned to:	Council Planning and Development Committee	Final Action:			
Agenda Date:	10/08/2019	Enactment #:			

Primary Contact Email: rbucking@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Resolution to replace the Business Rules of the Whatcom County Hearing Examiner

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

The existing Business Rules of the Whatcom County Hearing Examiner were approved and established in 1986 under Resolution 86-14. They are outdated and need to be replaced.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
09/24/2019	Council Planning and Development Committee	HELD IN COMMITTEE	Council Planning and Development Committee
09/24/2019	Council	HELD IN COMMITTEE	Council Planning and Development Committee

PROPOSED BY: Consent
INTRODUCTION DATE: _____

RESOLUTION NO. _____

**REPLACEMENT OF THE BUSINESS RULES
OF THE WHATCOM COUNTY HEARING EXAMINER**

WHEREAS, Resolution 86-41 approved and established the Business Rules of the Whatcom County Hearing Examiner in 1986; and

WHEREAS, Whatcom County Council recently adopted Ordinance 2018-032 that amended the Whatcom County Code (WCC) Title 2 Administration and Personnel; Title 9 Public Peace, Morals and Welfare; Title 16 Environment; Title 20 Zoning; Title 21 Land Division Regulations; Title 23 Shoreline Management Program; and Title 24 Health; and created a new Title 22 Land Use and Development Procedures in order to consolidate and clarify the Whatcom County permit review procedures; and

WHEREAS, Ordinance 2018-032 included some substantive changes to the appeal procedures of final decisions of the hearing examiner; and

WHEREAS, the 1986 Business Rules of the Whatcom County Hearing Examiner may now be inconsistent with Title 2, Title 9, Title 16, Title 20, Title 21, Title 23, Title 24, and/or the new Title 22;

NOW, THEREFORE, BE IT RESOLVED by the Whatcom County Council that the Business Rules of the Whatcom County Hearing Examiner are replaced as indicated in Exhibit A to this resolution.

APPROVED this _____ day of _____, 2019.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Clerk of the Council

Rud Browne, Council Chair

APPROVED AS TO FORM:

Karen Frakes, Civil Deputy Prosecutor

EXHIBIT A

BUSINESS RULES OF THE WHATCOM COUNTY HEARING EXAMINER

ARTICLE 1 – RULES OF GENERAL APPLICATION

1.1 These rules are supplementary to the provisions of the ordinances of Whatcom County as they relate to the procedures of the Hearing Examiner.

1.2 Nothing herein shall be construed to give or grant to the Hearing Examiner the power or authority to alter or change the Zoning Ordinance, including the Zoning Map, that authority being fully reserved to the Whatcom County Council.

1.3 The Hearing Examiner shall maintain for public inspection a file containing the various records of his or her actions, findings, and determinations.

1.4 It is the policy of the Hearing Examiner that, to the extent practicable and consistent with requirements of law, public hearings shall be conducted expeditiously. In the conduct of such proceedings, the Hearing Examiner and all parties, or their agents, shall make every effort at each stage of a proceeding to avoid delay.

1.5 In order to ensure the appearance of fairness, ex parte communications shall be proscribed as follows:

A. No person, nor his or her agent, employee, or representative, who is interested in a particular petition or application which is designated for a public hearing shall communicate ex parte, directly or indirectly, with the Hearing Examiner concerning the merits of that or a factually related petition or application. This rule shall not prohibit ex parte communications concerning procedural matters only.

B. The Hearing Examiner shall not communicate ex parte directly or indirectly, with any person, nor with his or her agent, employee or representative, interested in a particular application which is designated for a public hearing with regards to the merits of that or a factually related petition or application. This rule shall not prohibit ex parte communications concerning procedural matters.

C. If a substantial prohibited or ex parte communication is made to or by the Hearing Examiner, such communication shall be publicly disclosed. If necessary for a fair hearing, the Hearing Examiner shall, at his or her discretion, abstain from participating in any further consideration of the matter. Any party of record may request that the Hearing Examiner abstain from participation in the public hearing, and if the Hearing Examiner, at his or her discretion, feels it is necessary for a fair hearing, a substitute Hearing Examiner shall conduct the public hearing.

D. In cases where the designated Hearing Examiner may have a conflict of interest or foreknowledge that may give the appearance of unfairness, he or she shall

disclose this fact to the respective parties. Upon his or her own motion or objection by either party, the case shall be continued until the appointment of a substitute Hearing Examiner.

1.6 The Whatcom County Prosecuting Attorney shall act as legal counsel to the Office of the Hearing Examiner and shall be consulted in cases where the powers of the Hearing Examiner are not clearly defined.

1.7 At the discretion of the Hearing Examiner, testimony taken at a public hearing may be taken under oath.

1.8 Computation of any period of time described by these rules shall be in calendar days and begin with the first calendar day following the initiation of such period of time. When the last calendar day of the period is a Saturday, Sunday, or National or State holiday, the period shall run until the end of the next business day.

1.9 At the discretion of the Hearing Examiner, a representative of the Whatcom County Prosecuting Attorney shall be present at public hearings or meetings to advise on matters of law and procedure.

1.10 Relevant material and reliable evidence shall be admitted. Irrelevant, immaterial, unreliable, and unduly repetitious evidence may be excluded. The rules of evidence applicable in Washington State Superior Court will not be strictly applied. Specific rules of evidence may be applied at the discretion of the Hearing Examiner for the purpose of facilitating fair and expeditious hearings.

1.11 Hearings shall be electronically recorded and such recordings shall be a part of the official case record. Copies of any written materials in the record may be obtained by any interested person upon payment of the cost of reproduction of such materials.

1.12 Definitions.

The following definitions shall apply, unless context or subject matter otherwise requires:

- A. "Appellant" means the person who files an appeal of a final administrative decision to the Hearing Examiner.
- B. "Applicant" means any person applying for a permit or other regulatory approval.
- C. "Comprehensive Plan" means all development principles and standards adopted by the Whatcom County Council as objectives and goals for the Comprehensive Plan for the County in effect at the time of submission of a petition or application.
- D. "Council" means the Whatcom County Council.
- E. "Examiner" means the Hearing Examiner.
- F. "Person" means an individual, partnership, corporation, association, organization, cooperative, municipal corporation, or government agency.
- G. "Record" means the written and oral information, exhibits, reports, testimony, and other evidence submitted and accepted by the Hearing Examiner. Certified electronic recordings or transcripts of the hearing are part of the record.

- H. "Staff Report means a document prepared by Whatcom County staff pursuant to WCC 22.05.100(2) or other actions or appeals for the purpose of review by the Hearing Examiner in a particular case.
- I. "Standing" is the status required for a person to bring an action before the Hearing Examiner. Standing in Whatcom County conforms to RCW 36.70C.060 and is conferred upon:
 - (1) The applicant and the owner of property to which the land use decision is directed;
 - (2) Another person aggrieved or adversely affected by the land use decision, or who would be aggrieved or adversely affected by a reversal or modification of the land use decision. A person is aggrieved or adversely affected within the meaning of this section only when all of the following conditions are present:
 - (a) The land use decision has prejudiced or is likely to prejudice that person;
 - (b) That person's asserted interests are among those that the local jurisdiction was required to consider when it made the land use decision;
 - (c) A judgment in favor of that person would substantially eliminate or redress the prejudice to that person caused or likely to be caused by the land use decision; and
 - (d) The petitioner has exhausted his or her administrative remedies to the extent required by law.

ARTICLE 2 – HEARING PROCEDURES

PREHEARING

2.1 The Record

Original planning case files of the Whatcom County Planning Department are kept at the Planning Department. In each case before the Hearing Examiner, Whatcom County Planning staff shall forward to the Hearing Examiner's Office an index of the planning file along with copies of all relevant evidence. All evidence forwarded by Planning shall be placed in the record. It shall be the practice of staff to include all evidence that might be relevant to the decision. It shall be the practice of staff to refrain from sending originals and irrelevant/cumulative evidence. The Hearing Examiner and parties with standing may request that any evidence named in the index be included in the record in addition to that Staff has provided.

2.2 Notice

All parties with standing in the case shall receive notice of hearings, decisions, and recommendations from the Hearing Examiner. Persons without standing may also receive notice of hearings, decisions, and recommendations from the Hearing Examiner by submitting their names and addresses to the Hearing Examiner with a request for such notice.

2.3 Staff Reports

Whatcom County Planning staff shall create a Staff Report for each case. A Staff Report shall be submitted to the Hearing Examiner at least 14 days prior to the hearing. Staff Reports may be supplemented with legal briefing. The Hearing Examiner may request legal briefing.

2.4 Prehearing Motions

Parties with standing may file prehearing motions. The Hearing Examiner may allow oral argument on such motions prior to the hearing, allow oral argument at the hearing, or rule on the motion based upon the pleadings without oral argument, as appropriate and at his/her discretion.

A. Purely Legal Issues

Where there are no material facts in dispute, issues of law may be decided by a Summary Judgment motion. With the agreement of the parties, the motion may be decided without a hearing, based upon the record and briefing alone. A briefing schedule shall be set or approved by the Hearing Examiner. At the Hearing Examiner's discretion, superior court rules regarding summary judgment may be used as a guide; strict compliance with CR 56 is not required.

2.5 Briefs

Parties with standing may file briefs. Briefs of an applicant or appellant shall be filed at least 21 days prior to any hearing. Briefs of respondent shall be filed at least 7 days prior to such hearing. The Hearing Examiner may request briefing from parties with standing.

A. Applicant's Brief

An applicant should file a brief if legal issues are anticipated.

B. Appellant's Brief

An appellant must file a brief identifying the issues on appeal. Failure to timely file a brief identifying the issues shall result in dismissal of the appeal. An appeal dismissed under this rule may be reinstated at the discretion of the Hearing Examiner for good cause shown. Pro se appellant briefs shall include substantially the following content: Statement of Facts, Statement of Issues, Explanation of Position, Legal Authority, and Ruling Requested.

2.6 Prehearing Conference

Prior to commencement of a public hearing the Hearing Examiner may order a pre-hearing conference for purposes of marking potential documents and exhibits and resolving questions or procedure.

2.7 Site Inspection

When necessary to a full understanding of the case, the Hearing Examiner shall inspect the site prior or subsequent to the hearing. Failure to inspect the site will not render the Examiner's recommendation of decision void.

HEARING

2.8 Format

The format for a public hearing will be of an informal nature, yet designed such that the evidence and facts relevant to a particular proceeding will be readily and efficiently available to the Hearing Examiner. A public hearing shall include, but need not be limited to, the following elements: a brief introductory statement by the Hearing Examiner; introduction of the official file; a report by the departmental staff; a summary of the recommendations of the departments; testimony by the applicant or petitioner; testimony in support; testimony of opposing parties; opportunity for cross examination and rebuttal; and opportunity for questions by the Hearing Examiner.

2.9 Presentation of the Case

Every party shall have the right of notice, cross examination, rebuttal, presentation of evidence, objection, motion, argument, and all other rights essential to a fair hearing. The Hearing Examiner may impose reasonable limitations on the number of witnesses heard and on the nature and length of their testimony. Cross examination shall be permitted as necessary for a full disclosure of the facts, but may be limited at the discretion of the Examiner.

2.10 Continuances

A continuance may be ordered in any case for good cause shown at the discretion of the Hearing Examiner. Continuances shall be governed by the following provisions:

- A. Continuance of a public hearing shall be to a date and time certain.
- B. If a continuance is granted at a public hearing, no further notice is required. Continuances requested prior to hearing shall be announced at the time and place set for the hearing and said announcement shall constitute proper notice of the continuance to all parties.
- C. If a continuance is granted outside of a public hearing, notice shall be provided to all parties with standing and others who have requested notice not less than five (5) days prior to the newly scheduled hearing. Said notice shall include the date, time, place, and nature of the subsequent hearing.
- D. Where the Hearing Examiner determines that additional information is necessary to form a complete record, the record may be left open for a period of time set by the Hearing Examiner for receipt of only those items specified by the Hearing Examiner.
- E. The applicant may request a continuance of the hearing at any time. Any person with standing may request a continuance at the hearing. Continuances should be granted by the Hearing Examiner, unless it appears that the request is for the purpose of delay only, or there is prejudice to the opposing party. No more than two continuances shall be granted without a showing of just cause.
- F. If a continuance requested by an applicant will result in a hearing date beyond a date specified by the applicable ordinance for a final decision, the applicant shall provide the Hearing Examiner with a written waiver of

that deadline. The Hearing Examiner may deny a request for continuance by a person with standing, other than the applicant, if the applicant will be prejudiced by a delay of decision beyond the date set by the ordinance.

2.11 Post-hearing Evidence

At any time prior to the filing of the recommendation or decision, the Hearing Examiner may reopen the proceeding to receive further evidence. All persons with standing shall be given notice of the consideration of such evidence and granted an opportunity to review such evidence and file rebuttal arguments.

2.12 Burden of Proof and Evidence Rules

Evidence submitted prior to or at a hearing shall be governed by the following:

- A. In each proceeding, the petitioner, applicant, or proponent of an individual petition or application shall have the burden of proof.
- B. The hearing generally will not be conducted according to technical rules relating to evidence and procedure. Any relevant evidence shall be admitted if it is of the type which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. Laws regarding privilege shall apply.
- C. Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original.
- D. The Hearing Examiner may take judicial notice of facts and may take notice of general, technical, or scientific facts within his or her specialized knowledge. When any recommendation or decision of the Hearing Examiner rests, in whole or in part, upon the taking of official notice of a material fact not appearing in evidence of record, opportunity to dispute such fact shall be granted to any party with standing. The Hearing Examiner shall not take judicial notice of disputed facts that are at the center of a proceeding.
- E. If additional evidence is submitted after the public hearing, it will be considered only upon a showing of significance, relevance, and good cause for delay in submission. All parties with standing will be given notice of the consideration of such evidence and granted an opportunity to review such evidence and file rebuttal arguments. This provision shall not apply to evidence requested by the Hearing Examiner under Rule 2.5D above.

2.13 Representation at Hearings

Persons with standing may appear on their own behalf or may be represented by counsel or other agent. In the event that those opposing an application retain legal counsel to represent them at the hearing, such legal counsel shall notify the appellant, applicant, or his/her agent or attorney that s/he has been so retained and will be present to object. Such notice shall be delivered to the office of the Hearing Examiner

and to the applicant or his/her agent or attorney at least seven (7) days prior to the scheduled hearing. If such notices are not given, then the applicant, his/her agent, or her/his attorney shall have the option of postponing the hearing to the next available hearing date.

2.14 Authorization to Act as Agent or Counsel at Hearings

Any person appearing on behalf of any party with standing as agent or counsel shall provide to the Hearing Examiner a written authorization from that party prior to the hearing.

ARTICLE 3 – DISMISSAL OF APPLICATIONS

3.1 Applications may be dismissed by the Hearing Examiner for the following reasons:

- A. By written request for dismissal by the applicant.
- B. For failure of an applicant or his/her authorized representative to appear at the time and place scheduled for the hearing of the application.
 - 1. The Hearing Examiner shall notify in writing the applicant in those cases which are dismissed due to the applicant's failure to appear.
 - 2. The applicant may, within seven (7) days of the date of notice of dismissal, apply for reinstatement of the application. In such cases, the applicant must file a written request for reinstatement. Reinstatement shall be at the discretion of the Hearing Examiner for good cause shown. The applicant shall also be responsible for the payment of any costs associated with the provision of required notice for hearing on the reinstated application.
- C. Upon the filing of applications found to contain false information or incomplete or erroneous property owner's names and addresses.
- D. Where the Hearing Examiner finds that proper notice, as required by the applicable ordinance, has not been given.
- E. Pursuant to other applicable laws, including those found in other Articles of these Hearing Examiner's Business Rules.

ARTICLE 4 – PROCEDURES FOR APPEAL OF ADMINISTRATIVE DECISIONS

4.1 Appeals from administrative decisions may be brought before the Hearing Examiner as provided for by WCC Title 22 and other applicable law—including these business rules. In the case of conflicting code language, Title 22 shall control.

4.2 The Hearing Examiner shall, upon receipt of the appeal, transmit to the administrative official involved and the prosecuting attorney a copy of the appeal for

review.

4.3 Records from the Whatcom County Planning Department shall be provided as specified in section 2.1 of these business rules.

4.4 Upon receipt of a properly completed appeal form, the Hearing Examiner shall assign a case number and place it on the calendar of the Examiner for hearing within requisite time provisions. Appeals shall be assigned for hearing in the order in which they are received. Appeals may be filed with an accompanying application for variance, conditional use permit, or other permit where applicable.

4.5 Filing of an application for appeal shall stay all proceedings in furtherance of the action(s) appealed from unless the Hearing Examiner finds that a stay of decision would cause an undue hardship or danger to persons or property.

4.6 The Hearing Examiner shall, unless the parties with standing have mutually agreed to waive the applicable time limit, render a decision within prescribed time limits with written finding of fact based upon the record.

4.7 The format of the hearing shall be that as set forth elsewhere in these Rules.

4.8 An appellant's appeal may be dismissed for failure to prosecute. It shall be the appellant's responsibility to schedule the appeal with the Hearing Examiner's office. The Hearing Examiner may dismiss an appellant's appeal for:

- appellant's failure to schedule a hearing date within the required time period without good cause, or
- failure to file an appellant's brief identifying the issues within the required time period without good cause, or
- failure to pursue the appeal within a reasonable time without good cause—a delay of one year or more by the appellant shall be presumptively unreasonable.

ARTICLE 5 – FINAL AND RECOMMENDED DECISIONS AND APPEALS THEREFROM

5.1 All decisions of the Hearing Examiner shall include written findings of fact and shall state the reasons for the decision of the Hearing Examiner. If conditions are attached to any application granted by the Hearing Examiner, such conditions shall be referred to in the notice of decision and embodied in the findings of fact. Decisions shall be rendered within the time required by ordinance, unless the applicant has agreed in writing or at the hearing to waive the applicable time limit.

5.2 The decision shall be based upon a consideration of the whole record and supported by reliable, probative, and substantial evidence.

5.3 In those cases where the Hearing Examiner's decision is final (as opposed to recommended), a notice of decision shall be issued to parties with standing, pertinent administrative officials, and all persons who requested said notice in writing. Any of these persons may receive a copy of the Hearing Examiner's decision upon request and upon payment of the costs of reproduction. Provision of a copy of the decision shall constitute notice of decision.

5.4 Unless otherwise specified by the Hearing Examiner or other applicable law, a final decision of the Hearing Examiner authorizing a proposal shall expire if the applicant fails to execute the approval within one (1) year of the date of the decision. An extension of the expiration date may be granted by the Hearing Examiner where the applicant has made a written request for an extension at least thirty (30) days prior to the expiration date. The Hearing Examiner may, at the Examiner's discretion, order that a public hearing be held on the request.

5.5 In cases of final decisions, a request for reconsideration may be filed in writing by an applicant or any opponent of record within three (3) days of the date of decision. The request must be based upon error or omission in the content of the decision. The Hearing Examiner may affirm or modify the decision at the Examiner's discretion, and shall modify the decision if the law so requires. Where the Hearing Examiner determines that the grounds cited for reconsideration do not warrant modification of the decision, he or she shall provide the requesting party with written notice of such determination.

5.6 Appeal of Hearing Examiner Decision

A person aggrieved by a final decision of the Hearing Examiner may appeal to the Whatcom County Superior Court, as provided in RCW 36.70C.040. Such an appeal must be made within twenty-one (21) days of the date of that final decision. Appeals under Title 23, the Shoreline Management Program, must be appealed pursuant to RCW 90.58.180.

5.7 Appeal of Examiner Decision Under Title 23 - The Shoreline Management Program

A person aggrieved by a final decision of the Hearing Examiner issued pursuant to Title 23 - The Shoreline Management Program must appeal to the Shoreline Hearings Board per RCW 90.58:

RCW 90.58.180(1) Any person aggrieved by the granting, denying, or rescinding of a permit on shorelines of the state pursuant to RCW 90.58.140 may seek review from the shorelines hearings board by filing a petition for review within twenty-one days of the date of filing of the decision as defined in RCW 90.58.140(6).

INTRODUCED BY: Consent
PROPOSED BY: Hearing Examiner
DATE: August 7, 1986

RESOLUTION NO. 86-41

A RESOLUTION APPROVING HEARING EXAMINER RULES

WHEREAS, Whatcom County Code 20.92.225 indicates that the Hearing Examiner shall have power to prescribe rules and regulations for the conduct of hearings before him subject to approval by the County Council; and,

WHEREAS, the Whatcom County Hearing Examiner has revised the rules of the Whatcom County Hearing Examiner; and,

WHEREAS, the Whatcom County Council has reviewed those rules and find them to be appropriate;

NOW, THEREFORE, BE IT RESOLVED that the Whatcom County Council hereby approves of the rules which are prescribed by the Hearing Examiner to conduct the hearings before the Hearing Examiner;

BE IT FURTHER RESOLVED that these rules shall take effect immediately and shall apply to hearings which are held both under Title 20 as well under Title 2.24.


PASSED this 7th day of August, 1986.

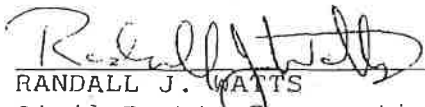
WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON


DONALD G. HANSEY, Chairman

APPROVED AS TO FORM:

ATTEST:


Carol Ebergson


RANDALL J. WATTS
Civil Deputy Prosecuting Attorney

RECEIVED

AUG 18 1998

WHATCOM COUNTY
COUNCIL

EXHIBIT TO RES. 86-41

BUSINESS RULES

OF THE

WHATCOM COUNTY HEARING EXAMINER

ARTICLE 1 - RULES OF GENERAL APPLICATION

1.1 These rules are supplementary to the provisions of the ordinances of Whatcom County as they relate to the procedures of the Hearing Examiner.

1.2 Nothing herein shall be construed to give or grant to the Hearing Examiner the power or authority to alter or change the Zoning Ordinance including the Zoning Map, that authority being fully reserved to the Whatcom County Council.

1.3 The Hearing Examiner shall maintain for public inspection a file containing the various records of his actions, findings and determinations.

1.4 It is the policy of the Hearing Examiner that, to the extent practicable and consistent with requirements of law, public hearings shall be conducted expeditiously. In the conduct of such proceedings, the Hearing Examiner and all parties, or their agents, shall make every effort at each stage of a proceeding to avoid delay.

1.5 In order to ensure the appearance of fairness, ex parte communications shall be proscribed as follows:

- A. No person, nor his or her agent, employee, or representative, who is interested in a particular petition or application which is designated for a public hearing shall communicate ex parte, directly or indirectly, with the Hearing Examiner concerning the merits of that or a factually related petition or application. This rule shall not prohibit ex parte communications concerning procedural matters only.
- B. The Hearing Examiner shall not communicate ex parte directly or indirectly, with any person, nor with his or her agent, employee or representative, interested in a particular application which is designated for a public hearing with regards to the merits of that or a factually related petition or application. This rule shall not prohibit ex parte communications concerning procedural matters nor shall it prohibit the Hearing Examiner from requesting additional information for submission at the hearing.
- C. If a substantial prohibited or ex parte communication is made to or by the Hearing Examiner, such communication shall be publicly disclosed and the Hearing Examiner shall, within his or her discretion, abstain from participating in any consideration of the matter. Any party of record may request that the Hearing Examiner abstain from participation in the public hearing, and if a request is so made a substitute Hearing Examiner shall conduct the public hearing.

D. For purposes of this rule on ex parte communications, "*ex parte communication*" means a written or oral communication not included in the public record and made outside of a public hearing.

E. In cases where the designated Hearing Examiner may have a conflict of interest, or foreknowledge that may give the appearance of unfairness, he shall disclose this fact to the respective parties. Upon objection by either party, the case shall be continued until the appointment of a substitute Hearing Examiner.

1.6 Notice of Hearing shall be provided by the Hearing Examiner as follows:

A. It is the responsibility of the Hearing Examiner to receive applications transmitted by Planning and Development Services, and to mail, publish, or otherwise provide proper notice of time and place of public hearings as provided by Ordinance.

B. It shall be the responsibility of the individual applicant to provide to the Hearing Examiner the names and addresses of all persons or other entities entitled to receive notice under the provisions of the Ordinance relevant to the application, as set forth in said Ordinance. The applicant shall provide to the Hearing Examiner a statement setting forth compliance with this rule on a form provided by Planning and Development Services.

C. A notarized affidavit, or its equivalent, attesting to the written notice of a given public hearing shall be made a part of each official case record.

1.7 The Whatcom County Prosecuting Attorney shall act as legal counsel to the Office of the Hearing Examiner and shall be consulted in cases where the powers of the Hearing Examiner are not clearly defined.

1.8 At the discretion of the Hearing Examiner, testimony taken at a public hearing may be taken under oath.

1.9 Computation of any period of time prescribed or allowed by these rules shall begin with the first business day following that on which the act or event initiating such period of time shall have occurred. When the last day of the period so computed is a Saturday, Sunday, or national or state holiday, the period shall run until the end of the next following business day.

1.10 At the request and discretion of the Hearing Examiner, a representative of the Whatcom County Prosecuting Attorney shall be present at public hearings or meetings to advise on matters of law and procedure.

1.11 Relevant, material and reliable evidence shall be admitted. Irrelevant, immaterial, unreliable and unduly repetitious evidence may be excluded, although the rules of evidence applicable in Washington State Superior Court will not be strictly applied.

1.12 Hearings shall be electronically recorded and such recordings shall be a part of the official case record. Copies of any written materials in the record may be obtained by any interested person upon payment of the cost of reproduction of such materials.

1.13 The following definitions shall apply, unless context or subject matter otherwise requires:

A. "Comprehensive Plan" means all development principles and standards adopted by the Whatcom County Council as objectives and goals for the Comprehensive

Plan for the County which are in effect at the time of submission of a petition or application.

- B. *"Examiner"* means the Hearing Examiner.
- C. *"Interested Person"* means any individual, partnership, corporation, association, or public or private organization of any character, significantly affected by or interested in proceedings before the Hearing Examiner, and shall include any party in a contested case.
- D. *"Party of Record"* means any of the following:
 - 1. Persons who testify at a hearing;
 - 2. The applicant;
 - 3. Persons submitting written arguments, dealing with the merits of the case; provided that persons who do not qualify as a party of record may receive notice of a decision or recommendation by submitting their names and addresses to the Hearing Examiner with a request for such notice.
- E. *"Council"* means the Whatcom County Council.
- F. *"Applicant"* means any person applying for a permit or variance or the appellant in the case of an administrative appeal.

ARTICLE 2 - HEARING PROCEDURES

2.1 The format for a public hearing will be of an informal nature yet designed in such a way that the evidence and facts relevant to a particular proceeding will become the most readily and efficiently available to the Hearing Examiner. A public hearing shall include, but need not be limited to, the following elements: a brief introductory statement by the Hearing Examiner; introduction of the official file; a report by the departmental staff; a summary of the recommendations of the departments; testimony by the applicant or petitioner; testimony in support; testimony of opposing parties; opportunity for cross examination and rebuttal; and opportunity for questions by the Hearing Examiner.

2.2 Prior to commencement of a public hearing, the Hearing Examiner may at his discretion order a pre-hearing conference for purposes of marking potential documents and exhibits and resolving questions or procedure.

2.3 When necessary to a full understanding of the case, the Hearing Examiner shall inspect the site prior or subsequent to the hearing. Failure to inspect the site will not render the Examiner's recommendation of decision void.

2.4 Every party shall have the right of due notice, cross examination, rebuttal, presentation of evidence, objection, motion, argument, and all other rights essential to a fair hearing. The Hearing Examiner may impose reasonable limitations on the number of witnesses heard, and on the nature and length of their testimony. Cross examination is permitted as necessary for a full disclosure of the facts.

2.5 A continuance may be ordered in any case for good cause shown at the discretion of the Hearing Examiner. Continuances shall be governed by the following provisions:

- A. A continuance of the public hearing shall be to a date and time certain.

- B.** If a continuance is granted at a public hearing, no further notice is required. Continuances requested prior to hearing shall be announced at the time and place set for the hearing and said announcement shall constitute proper notice of the continuance to all parties.
- C.** If a continuance is granted outside of a public hearing, notice shall be provided to all parties of record not less than five (5) days prior to the newly scheduled hearing. Said notice shall include the date, time, place and nature of the subsequent hearing.
- D.** Where the Hearing Examiner determines that additional information is necessary to form a complete record, the record may be left open for a determinate period of time by the Hearing Examiner for receipt of only those items specified by the Hearing Examiner.
- E.** The applicant may request a continuance of the hearing at any time. Any party of record may request a continuance at the hearing. Continuances shall be granted unless it appears to the Hearing Examiner that the request is for the purpose of delay only. No more than two continuances shall be granted without a substantial showing of just cause.
- F.** If the granting of a continuance requested by an applicant will set a hearing date that is beyond a date specified by the applicable ordinance for a final decision, the applicant shall provide the Hearing Examiner with a written consent to an extension of that deadline. The Hearing Examiner may deny a request for continuance by a party of record other than the applicant if the applicant will be prejudiced by a continuance which has the effect of delaying a decision beyond the date set by the ordinance.

2.6 At any time prior to the filing of the recommendation or decision, the Hearing Examiner may reopen the proceeding for reception of further evidence. All parties of record shall be given notice of the consideration of such evidence and granted an opportunity to review such evidence and file rebuttal arguments.

2.7 Evidence submitted prior to or at a hearing shall be governed by the following:

- A.** In each particular proceeding, the petitioner, applicant, or proponent of an individual petition or application shall have the burden of proof.
- B.** The hearing generally will not be conducted according to technical rules relating to evidence and procedure. Any relevant evidence shall be admitted if it is of the type which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. The rules of privilege shall be effective to the extent recognized by law.
- C.** Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original.
- D.** The Hearing Examiner may take official notice of judicially cognizable facts and in addition may take notice of general, technical or scientific facts within his or her specialized knowledge. When any recommendation or decision of the Hearing Examiner rests, in whole or in part, upon the taking of official notice of a material fact not appearing in evidence of record, opportunity to disprove such

notices of the fact shall be granted any affected person making timely motion therefor. The Hearing Examiner shall not take notice of disputed adjudicative facts that are at the center of a particular proceeding.

- E.** If additional evidence is submitted after the public hearing, it will be considered only upon a showing of significant relevance and good cause for delay in submission. All parties of record will be given notice of the consideration of such evidence and granted an opportunity to review such evidence and file rebuttal arguments. This provision shall not apply to material submitted under Rule 2.5D, above, but shall apply only to evidence presented other than at the request of the Hearing Examiner.

2.8 The applicant or those in opposition to the application may appear in their own behalf or may be represented by counsel or other agent. In the event that those opposing an application retain legal counsel to represent them at the hearing then such legal counsel shall notify the appellant or the applicant or his agent or attorney that he has been so retained and will be present to object. Such notice shall be delivered to the offices of the Hearing Examiner and the applicant or his agent or attorney at least two (2) days prior to the scheduled hearing. If such notices are not given by counsel retained by party opponents, then the applicant or his agent or attorney shall have the option of postponing the hearing to the next available hearing date.

2.9 Any person appearing on behalf of any party of record as said party's agent or counsel, shall provide to the Hearing Examiner prior to the date of the hearing a written authorization from the party of record authorizing the appearance of agent or counsel on behalf of the party of record.

ARTICLE 3 - DISMISSAL OF APPLICATIONS

3.1 Applications may be dismissed by the Hearing Examiner for the following reasons:

- A.** By written request for dismissal by the applicant.
- B.** For failure of an applicant or his authorized representative to appear at the time and place scheduled for the hearing of the application.
 - 1.** The Hearing Examiner shall notify in writing the applicant in those cases which are dismissed by him due to the applicant's failure to appear.
 - 2.** The applicant may, within seven (7) days of the date of notice of dismissal, apply for reinstatement of the application. In such cases, the applicant must file a written request for reinstatement. Reinstatement shall be at the discretion of the Hearing Examiner for good cause shown and upon payment to the Hearing Examiner a filing fee which may be established by the Whatcom County Council. The applicant shall also be responsible for the payment of any costs associated with the provision of required notice for hearing on the reinstated application.
- C.** Upon the filing of applications found to contain false information or incomplete or erroneous property owners' names and addresses.
- D.** Where the Hearing Examiner finds that proper notice, as required by the applicable ordinance, has not been given.

ARTICLE 4 - PROCEDURES FOR APPEAL OF ADMINISTRATIVE DECISIONS

4.1 Appeals from administrative decisions may be brought before the Hearing Examiner as provided for by ordinance.

4.2 The Hearing Examiner shall, upon receipt of the application for appeal, transmit to the administrative official involved a copy of the application for review, upon receipt of which the administrative official shall transmit to the Hearing Examiner all papers and other materials constituting the record upon which the action appealed from was taken. All materials forwarded shall be available for inspection by the appellant.

4.3 Upon receipt of a properly completed appeal application form, the Hearing Examiner shall assign a case number and place it on the calendar of the Examiner for hearing within requisite time provisions. Applications for appeal shall be assigned for hearing in the order in which they are received. Said application may be filed with an accompanying application for variance, conditional use permit, or other permit where applicable.

4.4 Filing of an application for appeal shall stay all proceedings in furtherance of the action appealed from unless the Hearing Examiner finds that a stay of decision would cause peril to life or property or would otherwise work an undue hardship.

4.5 The Hearing Examiner shall, unless the parties have mutually agreed to waive the applicable time limit, render a decision within prescribed time limits with written findings of fact based upon information provided by the applicant, the Whatcom County Comprehensive Plan, pertinent provisions of the applicable codes and ordinances, site inspection, testimony and other evidence presented at the public hearing.

4.6 The format of the hearing shall be that as set forth elsewhere in these Rules.

ARTICLE 5 - FINAL AND RECOMMENDED DECISIONS AND APPEALS THEREFROM

5.1 All decisions of the Hearing Examiner shall include written findings of fact and shall state the reasons for the decision of the Hearing Examiner. If conditions are attached to any application granted by the Hearing Examiner, such conditions shall be referred to in the notice of decision and embodied in the findings of fact. Decisions shall be rendered with the time required by ordinance, unless the applicant has agreed in writing or at the hearing to waive the applicable time limit.

5.2 The decision shall be based upon a consideration of the whole record and supported by a reliable, probative and substantial evidence.

5.3 In those cases where the Hearing Examiner's decision is final (as opposed to recommended) a notice of decision shall be issued to the applicant, pertinent administrative officials, and all parties of record who request said notice in writing. Any party of record may receive a copy of the Hearing Examiner's decision upon request therefor and upon payment of the costs of reproduction. Provision of a copy of the decision shall constitute notice of decision.

5.4 Unless otherwise specified by the Hearing Examiner, a final decision of the Hearing Examiner authorizing a proposal shall expire if the applicant fails to obtain other necessary permits to commence, if required, or to otherwise take advantage of the approval of the original request within one (1) year of the date of the decision. An extension of the expiration date may be granted by the Hearing Examiner where the applicant has made a written request for an extension in a timely manner, at least thirty (30) days prior to the expiration date. A Hearing Examiner may, at his discretion, order that a public hearing be held on the request.

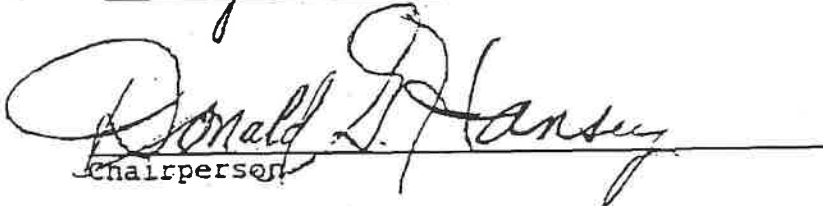
5.5 In cases of final decisions, a request for reconsideration may be filed in writing by an applicant or any opponent of record within three (3) days of the date of decision. The request must be based upon error or omission in the content of the decision, and although the Hearing Examiner is not required to modify his original decision to reflect the comments received thereon, he may initiate such action as is deemed appropriate. Where the Hearing Examiner determines that the grounds cited for reconsideration do not warrant modification of the original notice of decision, he shall provide the requesting party with written notice of his determination prior to the expiration of the time set out herein for the filing of an appeal.

5.6 A person aggrieved by a final decision of the Hearing Examiner may make application for appeal to the Whatcom County Council on a form provided by Planning and Development Services. Such an application for appeal must be made within ten (10) days of date of the decision of the Hearing Examiner. Procedures involved in the conduct of a hearing upon an appeal to the Whatcom County Council shall be those set forth in the business rules of the Whatcom County Council.

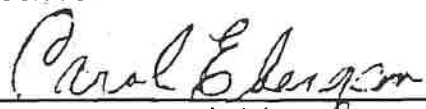
The foregoing rules and regulations are hereby adopted on the 7th day of August, 1986, by the Hearing Examiner of Whatcom County.


Charles R. Snyder, Hearing Examiner

Approved this 7th day of August, 1986 by the Whatcom County Council.


Chairperson

ATTEST:


Clk. of the Council

Approved as to Form:


Deputy Prosecuting Attorney

PROPOSED BY: Consent

INTRODUCTION DATE: _____

RESOLUTION NO.

**AMENDING THE BUSINESS RULES
OF THE WHATCOM COUNTY HEARING EXAMINER**

WHEREAS, Resolution 86-41 approved and established the Business Rules of the Whatcom County Hearing Examiner; and

WHEREAS, Whatcom County Council recently adopted Ordinance 2018-032 that amended the Whatcom County Code (WCC) Title 2 Administration and Personnel; Title 9 Public Peace, Morals and Welfare; Title 16 Environment; Title 20 Zoning; Title 21 Land Division Regulations; Title 23 Shoreline Management Program; and Title 24 Health; and created a new Title 22 Land Use and Development Procedures in order to consolidate and clarify the Whatcom County permit review procedures; and

WHEREAS, Ordinance 2018-032 included some substantive changes to the appeal procedures of final decisions of the hearing examiner; and

WHEREAS, the outdated Business Rules of the Whatcom County Hearing Examiner now conflict with Title 2, Title 9, Title 16, Title 20, Title 21, Title 23, Title 24, the new changes to Title 22;

NOW, THEREFORE, BE IT RESOLVED by the Whatcom County Council that the Business Rules of the Whatcom County Hearing Examiner are amended as indicated in Exhibit A to this resolution.

APPROVED this _____ day of _____, 2018.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Clerk of the Council

Rud Browne, Council Chair

APPROVED AS TO FORM:

Karen Frakes, Civil Deputy Prosecutor

EXHIBIT A

BUSINESS RULES OF THE WHATCOM COUNTY HEARING EXAMINER

ARTICLE 1 – RULES OF GENERAL APPLICATION

- 1.1 These rules are supplementary to the provisions of the ordinances of Whatcom County as they relate to the procedures of the Hearing Examiner.
- 1.2 Nothing herein shall be construed to give or grant to the Hearing Examiner the power or authority to alter or change ~~the Zoning and Whatcom County Ordinance~~, including the Official Zoning Map, or development standards that authority being fully reserved to the Whatcom County Council.
- 1.3 The Hearing Examiner shall maintain for public inspection a file containing the various records of his actions, findings, and determinations.
- 1.4 It is the policy of the Hearing Examiner that, to the extent practicable and consistent with requirements of law, public hearings shall be conducted expeditiously. In the conduct of such proceedings, the Hearing Examiner and all parties, or their agents, shall make every effort at each stage of a proceeding to avoid delay.
- 1.5 In order to ensure the appearance of fairness, *ex parte* communications shall be proscribed as follows:
 - A. ~~A. — No person, nor his or her agent, employee, or representative, who is interested in a particular petition or application which is designated for a public hearing shall communicate ex parte, directly or indirectly, with the Hearing Examiner, nor shall the Hearing Examiner communicate ex parte, directly or indirectly, with any person, concerning the merits of a pending or prospective matter.~~ particular petition or application which is designated for a public hearing that or a factually related petition or application. This rule shall not prohibit *ex parte* communications concerning procedural matters ~~nor shall it prohibit the Hearing Examiner from requesting additional information for submission at the hearing only.~~
 - B. ~~The Hearing Examiner shall not communicate ex parte directly or indirectly, with any person, nor with his or her agent, employee or representative, interested in a particular application which is designated for a public hearing with regards to the merits of that or a factually related petition or application. This rule shall not prohibit ex parte communications concerning procedural matters nor shall it prohibit the Hearing Examiner from requesting additional information for submission at the hearing.~~
 - C. — If a substantial prohibited or *ex parte* communication is made to or by the Hearing Examiner, such communication shall be publicly disclosed, ~~and if necessary for a fair hearing,~~ the Hearing Examiner shall, within at his or her discretion, abstain from participating in any further consideration of the matter. Any party of record with standing may request that the Hearing Examiner abstain from participation in the a public hearing matter, and, if a request is

Comment [RE1]: Conduct at Hearing: Responsibilities of Interested Persons
Parties, witnesses, or observers shall conduct themselves with civility and deal courteously with all who participate in the proceedings. Failure to do so may result in removal from the hearing at the discretion of the Hearing Examiner.

Comment [CES2]: Wouldn't this be true of any of the WCC?

Comment [RE3]: Recommendation making this a separate section.

Comment [CES4]: Doesn't "person" include all these others? And why does it matter only if they're interested in the petition or application? Seems like no one should talk to him about any particular cases.

~~so made~~ If the Hearing Examiner, at his or her discretion, feels it is necessary for a fair hearing, a substitute Hearing Examiner shall ~~conduct the public hearing~~ preside over the matter.

~~1.6 D.~~ For purposes of this rule on ex parte communications, "ex parte communication" means a written or oral communication not included in the public record and made outside of a public hearing.

~~C. E.~~ In cases where the designated Hearing Examiner may have a conflict of interest or foreknowledge that may give the appearance of unfairness, he shall disclose this fact to the respective parties. Upon objection by either party or the Hearing Examiner's own motion, the Hearing Examiner shall rule upon whether the case ~~shall~~ be continued and whether continued until the appointment of a substitute Hearing Examiner shall be appointed.

1.76 The Whatcom County Prosecuting Attorney shall act as legal counsel to the Office of the Hearing Examiner and shall be consulted in cases where the powers of the Hearing Examiner are ~~not clearly defined~~ in dispute.

1.87 At the discretion of the Hearing Examiner, testimony ~~taken at a public hearing~~ may be taken under oath.

1.98 Computation of any period of time ~~prescribed or allowed~~ described by these rules shall be in calendar days and begin with the first calendar business day following ~~that on which the act or event initiating the initiation of~~ such period of time ~~shall have occurred.~~ When the last calendar day of the period ~~so computed~~ is a Saturday, Sunday, or National or State holiday, the period shall run until the end of the next following business day.

1.109 At the request and discretion of the Hearing Examiner, a representative of the Whatcom County Prosecuting Attorney shall be present at public hearings or meetings to advise on matters of law and procedure.

1.110 Relevant, material, and reliable evidence shall be admitted. Irrelevant, immaterial, unreliable, ~~and or~~ unduly repetitious evidence may be excluded, ~~although~~ The rules of evidence applicable in Washington State Superior Court will not be strictly applied. Specific rules of evidence may be applied at the discretion of the Hearing Examiner for the purpose of facilitating fair and expeditious hearings.

1.121 Hearings shall be electronically recorded, ~~and~~ such recordings shall be a part of the official case record. Copies of any written materials in the record may be obtained by any interested person upon payment of the cost of reproduction of such materials.

1.132 Definitions.

The following definitions shall apply, unless context or subject matter otherwise requires:

A. "Appellant" means the person who files an appeal of a final administrative decision to the Hearing Examiner.

B. "Applicant" means any person applying for a permit or other regulatory approval.

C. "Comprehensive Plan" means all development principles and standards adopted by the Whatcom County Council as objectives, and goals, and policies for of the Whatcom County Comprehensive Plan for the County which are in effect at the time of submission of a petition or application has been determined to be complete.

Comment [RE5]: All should be under testimony. Such as All testimony before the Hearing Examiner shall be given under oath or affirmation to tell the truth.
An interpreter acting on behalf of any interested person shall take an oath that a true interpretation of the interested person's testimony shall be made.

Comment [RE6]: Such including "by the County"

A-D. "Council" means the Whatcom County Council.

E. B. "Examiner" means the Hearing Examiner.

B-F. "Ex parte communication" means a written or oral communication not included in the public record and made outside of a public hearing.

C. C. "Interested Person" means any individual, partnership, corporation, association, or public or private organization of any character, significantly affected by or interested in proceedings before the Hearing Examiner, and shall include any party in a contested case.

D. "Party of Record" means any of the following:

1. The applicant; Persons who testify at a hearing;

2. The applicant;

3. 3. Persons submitting written arguments, dealing with the merits of the case, provided that persons who do not qualify as a party of record may receive notice of a decision or recommendation by submitting their names and addresses to the Hearing Examiner with a request for such notice.

G. ED. "Person" means an individual, partnership, corporation, association, organization, cooperative, municipal corporation, or government agency.

H. "Person with standing" is a person who may bring an action before the Hearing Examiner. Standing in Whatcom County conforms to RCW 36.70C.060 and is conferred upon:

(1) The applicant and the owner of property to which the land use decision is directed;

(2) Another person aggrieved or adversely affected by the land use decision, or who would be aggrieved or adversely affected by a reversal or modification of the land use decision. A person is aggrieved or adversely affected within the meaning of this section only when all of the following conditions are present:

(a) The land use decision has prejudiced or is likely to prejudice that person;

(b) That person's asserted interests are among those that the local jurisdiction was required to consider when it made the land use decision;

(c) A judgment in favor of that person would substantially eliminate or redress the prejudice to that person caused or likely to be caused by the land use decision; and

(d) The petitioner has exhausted his or her administrative remedies to the extent required by law.

y "Council" means the Whatcom County Council.

(3) Whatcom County.

Comment [CES7]: Shouldn't this just be if they submit written testimony? Why a stricter standard for written testimony than for oral testimony? Besides, even if they just say they don't like a particular project, they are interested, so shouldn't they be a party of record?

Comment [CES8]: What about other expert staff, who may not have reviewed the project, but can better explain a technical issue (i.e., the engineering lead vs. reviewer)?

Comment [CES9]: The WCC may not specify that a staff report is required.

- I. ~~FE~~ "Applicant" means any person applying for a permit or variance or the appellant in the case of an administrative appeal. "Record" means the written and oral information, exhibits, reports, testimony, and other evidence submitted and accepted by the Hearing Examiner. Certified electronic recordings or transcripts of the hearing are part of the record.
- J. "Staff Report" means a document prepared by Whatcom County staff for the purpose of review by the Hearing Examiner in a particular matter.

Comment [CE510]: The WCC may not specify that a staff report is required.

ARTICLE 2 – HEARING PROCEDURES FOR APPLICATIONS

PRE-HEARING

2.1 Scheduling a Hearing.

(need content)

Comment [RE11]: Add that hearings should be scheduled through county staff with the hearing examiner

Comment [RE12]: Add noticing of Hearing. point to WCC 22 and add affidavit: Affidavit of Notice: An affidavit attesting to the notice given of a hearing (including dates and places of publication, posting on the property if required, and list of addressees) shall be part of each record.

2.2 Notice.

(need content)

2.3 The Record.–

Original planning case files of the Whatcom County Planning and Development Services Department (PDS) are kept at the Planning Department. In each case before the Hearing Examiner, Whatcom County PlanningPDS staff shall forward to the Hearing Examiner's Office an index of the planning case file along with copies of all relevant evidence. All evidence forwarded by PlanningPDS shall be placed in the record. It shall be the practice of staff to include all evidence that might be relevant to the decision but, it shall be the practice of staff to refrain from sending originals and/or irrelevant/cumulative evidence. The Hearing Examiner and parties with standing may request that any evidence named in the index be included in the record in addition to that staff has provided.

2.4– —When to Submit Exhibits.

All material the applicant wishes to be admitted as an exhibit by the Hearing Examiner shall be submitted to the Hearing Examiner no later than ten (10) calendar days prior to the hearing, with copies to County Staff, if not previously provided. Material submitted to the Hearing Examiner later than ten (10) calendar days prior to the hearing shall be considered at the discretion of the

Hearing Examiner. Further, any newly submitted material that proposes significant substantive changes to the project shall result in a continuation of the hearing to provide time for additional review if requested by Whatcom County.

2.5 Staff Reports.

~~Whatcom County Planning~~PDS staff shall create a Staff Report for each case. A Staff Report shall be submitted to the Hearing Examiner at least 14 days prior to the hearing. Staff Reports may be supplemented with legal briefing. The Hearing Examiner may request legal briefing. If the staff report is not submitted within the time frame, the Hearing Examiner may continue the hearing.

2.6 Pre-hearing Motions.

Parties with standing may file prehearing motions. The Hearing Examiner may allow oral argument on such motions prior to the hearing, allow oral argument at the hearing, or rule on the motion based upon the pleadings without oral argument, as appropriate and at his/her discretion.

2.74 Briefs.

Parties with standing may file briefs. Briefs of an applicant or appellant shall be filed at least 21 days prior to any hearing. Briefs of respondents shall be filed at least 7 days prior to such hearing. The Hearing Examiner may request briefing from parties with standing.

—Applicant's Brief—

A. An applicant should file a brief if legal issues are anticipated.

—Appellant's Brief—

B. An appellant must file a brief identifying the issues on appeal. Failure to timely file a brief identifying the issues shall result in dismissal of the appeal. An appeal dismissed under this rule may be reinstated at the discretion of the Hearing Examiner for good cause shown.

C. Appellant briefs shall include substantially the following content: Statement of Facts, Statement of Issues, Explanation of Position, Legal Authority, and Ruling Requested.

2.14 The format for a public hearing will be of an informal nature yet designed in such a way that the evidence and facts relevant to a particular proceeding will become the most readily and efficiently available to the Hearing Examiner. A public hearing shall include, but need not be limited to, the following elements: a brief introductory statement by the Hearing Examiner; introduction of the official file; a report by the departmental staff; a summary of the recommendations of the departments; testimony by the applicant or petitioner; testimony in support; testimony of opposing parties; opportunity for cross-examination and rebuttal; and opportunity for questions by the Hearing Examiner.

2.28 Pre-hearing Conference.

Comment [RE13]: Applicants should have deadline for material submittal such as: To promote due process and efficiency, all material the applicant wishes to be admitted as an exhibit by the Hearing Examiner shall be submitted to the Hearing Examiner no later than ten (10) calendar days prior to the hearing, with copies to County Staff if not previously provided. Material submitted to the Hearing Examiner later than ten (10) calendar days prior to the hearing shall be considered at the discretion of the Hearing Examiner. Further, any newly submitted material that proposes major substantive changes to the project shall result in a continuation of the hearing to provide time for additional review.

Comment [RE14]: WCC 22 this is 10 days

Comment [RE15]: Is this for appeals only? Time frame not achievable for

Prior to commencement of a public hearing the Hearing Examiner may, at his discretion, order a pre-hearing conference for purposes of marking potential documents and exhibits and resolving questions of procedure.

2.39 Site Inspection.

~~When necessary to a full understanding of the case, the The~~ Hearing Examiner ~~shall~~ may inspect the site prior or subsequent to the hearing. ~~Failure to inspect the site will not render the Examiner's recommendation of decision void/invalid.~~

HEARING

2.410 Conduct at Hearing.

Parties, witnesses, and observers shall conduct themselves with civility and deal courteously with all who participate in the proceedings. Failure to do so may result in removal at the discretion of the Hearing Examiner.

2.11 Format.

The format for a hearing will be of an informal nature, yet designed in such a way that the evidence and facts relevant to a particular proceeding will become the most readily and efficiently available to the Hearing Examiner. A hearing shall include, but need not be limited to, the following elements: a brief introductory statement by the Hearing Examiner; introduction of the official file; a report by the departmental PDS staff; a summary of the recommendations of the departments; testimony by the applicant or petitioner; testimony in support; testimony of opposing parties; opportunity for cross examination and rebuttal; and opportunity for questions by the Hearing Examiner.

2.128 Presentation of the Case.

Every party shall have the right of due notice, cross examination, rebuttal, presentation of evidence, objection, motion, argument, and all other rights essential to a fair hearing. The Hearing Examiner may impose reasonable limitations on the number of witnesses heard, and on the nature and length of their testimony. Cross examination is permitted as necessary for a full disclosure of the facts.

2.58139 Continuances.

A continuance may be ordered in any case for good cause shown at the discretion of the Hearing Examiner. Continuances shall be governed by the following provisions:

- A. ~~A.~~ ~~CA~~ A continuance of ~~the a~~ public hearing shall be to a ~~date~~ and time certain.
- B. ~~B.~~ If a continuance is granted at a public hearing, no further notice is required. Continuances requested prior to hearing shall be announced at the time and place set for the hearing and said announcement shall constitute proper notice of the continuance to all parties.
- C. ~~C.~~ If a continuance is granted outside of a public hearing, notice shall be provided to all parties of record not less than five (5) days prior to the newly scheduled hearing. Said notice shall include the date, time, place, and nature of the subsequent hearing.
- D. ~~D.~~ Where the Hearing Examiner determines that additional information is necessary to form a complete record, the record may be left open for a ~~determinant~~ period of time ~~set~~ by the Hearing Examiner for receipt of only those items specified by the Hearing Examiner.
- E. ~~E.~~ The applicant may request a continuance of the hearing at any time. Any ~~party of record person with standing~~ may request a continuance at the hearing. Continuances ~~shall~~ ~~should~~ be granted ~~by the Hearing Examiner~~, unless it appears ~~to the Hearing Examiner~~ that the request is for the purpose of delay only, ~~or there is substantial prejudice to the opposing party~~. No more than two continuances shall be granted without a substantial showing of just cause.
- F. ~~F.~~ If the granting of a continuance requested by an applicant will set a hearing date that is beyond a date specified by the applicable ordinance for a final decision, the applicant shall provide the Hearing ~~examiner~~ ~~Examiner~~ with a written consent to an extension of that deadline. The Hearing Examiner may deny a request for continuance by a ~~party person of record with standing~~, other than the applicant, if the applicant will be prejudiced by a continuance which ~~will~~ ~~has the effect of~~ ~~delaying~~ a decision beyond the date set by the ordinance.

2. ~~69104~~ Post-hearing Evidence.

- A. At any time prior to the filing of the recommendation or decision, the Hearing Examiner may ~~keep the record open or~~ ~~reopen the proceeding for reception of to receive~~ further evidence. All ~~parties of record persons with standing~~ shall be given notice of the consideration of such evidence and granted an opportunity to review such evidence and file rebuttal arguments.
- B. ~~If additional evidence is submitted after the hearing, it will be considered only upon a showing of significance, relevance, and good cause for delay in submission. This provision does not apply to evidence specifically requested by the Hearing Examiner.~~

Comment [CES16]: What if in doing this it extends the process beyond a date specified by the applicable ordinance for a final decision?

2. ~~71150~~ Burden of Proof and Evidence Rules.

Comment [RE17]: Good place for preference given to material pre 10 day deadline and post. Hearing Examiner later than seven (7) calendar days prior to the hearing shall be considered at the discretion of the Hearing Examiner.

Evidence submitted prior to or at a hearing shall be governed by the following:

~~A. A.~~ In each particular proceeding regarding an application, the petitioner, applicant, or proponent of an individual petition or the application shall have the burden of proof.

~~A. B.~~

B. The hearing generally will not be conducted according to technical rules relating to evidence and procedure. Any relevant evidence shall be admitted if it is of the type which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. ~~The Laws rules of regarding privilege shall be effective to the extent recognized by law apply.~~

Comment [CES18]: what does this mean? should it be defined in the definitions section?

C. ~~C.~~ Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original.

D. ~~D.~~ The Hearing Examiner may take official notice of judicially cognizable judicial notice of facts in the same manner as a judge, and in addition may take notice of general, technical, or scientific facts within his or her specialized knowledge, except ~~When any recommendation or decision of the Hearing Examiner rests, in whole or in part, upon the taking of official notice of a material fact not appearing in evidence of record, opportunity to disprove such notices of the fact shall be granted any affected person making a timely motion therefor. The Hearing Examiner shall not take notice of disputed adjudicative facts that are at the center of central to a the particular proceeding matter. Parties with standing may dispute facts of which the Hearing Examiner has taken judicial notice.~~

E. ~~E.~~ If additional evidence is submitted after the public hearing pursuant to §2.10, it will be considered only upon a showing of significant relevance and good cause for delay in submission. All parties of record will be given notice of the consideration of such evidence and granted an opportunity to review such evidence and file rebuttal arguments. This provision shall not apply to material submitted under Rule 2.5D, above, but shall apply only to evidence presented other than at the request of the Hearing Examiner.

Comment [CES19]: This repeats language in 2.10

Comment [CES20]: Check X-ref

2.81126 Representation at Hearings.

Comment [RE21]: This a very confusing paragraph can we simply: or break out into separate

Comment [RE22]: Should we add conduct for Attorney's: Attorneys engaged in the representation of clients before the Hearing Examiner shall conduct themselves in accordance with all applicable Rules of Professional Conduct, including the display of courtesy to other members of the bar, witnesses, and all other persons present in the hearing room.

~~The a~~ Parties with standing applicant or those in opposition to the application may appear in on their own behalf or may be represented by counsel or other an agent. In the event that those opposing appearing in opposition an application retain legal counsel to represent them at the hearing, then such legal counsel shall notify the appellant, or the applicant, or his/her agent or attorney that s/he has been so retained and will be present to object. Such notice shall be delivered to the offices of the Hearing Examiner and to the applicant or his/her agent or attorney at least two (2) days prior to the scheduled hearing. If such notices are not given by counsel retained by party opponents, then the applicant or his agent or attorney shall have the option of postponing the hearing to the next available hearing date other party may continue the hearing.

2.91237 Authorization to Act as Agent or Counsel at Hearings.

Any person appearing on behalf of any party with standing of record as said party's agent or counsel shall provide to the Hearing Examiner Examiner prior to the date of the hearing, a written

authorization from ~~the-that~~ party ~~prior to the date of the hearing. of record authorizing the appearance of agent or counsel on behalf of the party of record.~~

ARTICLE 3 – DISMISSAL OF APPLICATIONS

3.1 Applications may be dismissed by the Hearing Examiner for the following reasons:

- A. ~~A.~~ By written request for dismissal by the applicant.
- B. ~~B.~~ For failure of an applicant or his authorized representative to appear at ~~the~~ time and place scheduled for the hearing of the application.
 - 1. The Hearing Examiner shall notify in writing the applicant in those cases which are dismissed ~~by him~~ due to the applicant's failure to appear.
 - 2. The applicant may, within seven (7) days of the date of notice of dismissal, apply for reinstatement of the application. In such cases, the applicant must file a written request for reinstatement. Reinstatement shall be at the discretion of the Hearing Examiner for good cause shown ~~and upon payment to the Hearing Examiner a filing fee which may be established by the Whatcom County Council.~~ The applicant shall also be responsible for the payment of any costs associated with the provision of required hearing notice ~~for hearing~~ on the reinstated application.
- C. ~~C.~~ Upon the filing of applications found to contain false information or incomplete or erroneous property owner's names and addresses.
- ~~D. D.~~ Where the Hearing Examiner finds that proper notice, as required by the applicable ordinance, has not been given.
- ~~E. E.~~ Pursuant to other applicable laws, including Article 2.5 of these Hearing Examiner's Business Rules.

Comment [RB23]: Not sure there exists a filing fee for "reinstatement" under #2. I did not see one in the Unified Fee Schedule.

ARTICLE 4 – ~~PROCEDURES FOR APPEAL OF ADMINISTRATIVE DECISIONS~~ HEARING PROCEDURES FOR APPEALS

- 4.1 Appeals from administrative decisions may be brought before the Hearing Examiner as provided for by WCC Title 22 and other applicable law~~ordinance. In the case of conflicting statutory or rule language, Title 22 shall control.~~
- 4.2 The Hearing Examiner shall, upon receipt of the ~~application for~~ appeal, transmit to the administrative official involved a copy of the ~~application appeal~~ for review.
- 4.3 Original planning case files of the Whatcom County Planning and Development Services Department (PDS) are kept at the Planning Department. In each case before the Hearing Examiner, Whatcom County PDS staff shall forward to the Hearing Examiner's Office an index of the planning case file along with copies of all relevant evidence. All evidence forwarded by PDS shall be placed in the record. It shall be the practice of staff to include all evidence that might be relevant to the decision but to refrain from sending originals or irrelevant/cumulative evidence. The Hearing Examiner and parties with standing may request that any evidence named in the index be included in the record in addition to that staff has provided. Original planning case files of the Whatcom County Planning Department are kept at the Planning Department. In each case.

Comment [RE24]: Clear direction on what the County must provide and Appellant including time frame(s).

~~before the Hearing Examiner, Whatcom County Planning staff shall forward to the Hearing Examiner's Office an index of the planning file along with copies of all relevant evidence. All evidence forwarded by Planning shall be placed in the record. It shall be the practice of staff to include all evidence that might be relevant to the decision. It shall be the practice of staff to refrain from sending originals and irrelevant/cumulative evidence. The Hearing Examiner and parties with standing may request that any evidence named in the index be included in the record in addition to that Staff has provided.~~

~~upon receipt of which the administrative official shall transit to the Hearing Examiner all papers and other materials constituting the record upon which the action appealed from was taken. All materials forwarded shall be available for inspection by the appellant.~~

Comment [CES25]: this is a repeat of section 2.1. Is it needed here, too?

4.34 Upon receipt of a properly completed appeal application ~~form~~, the Hearing Examiner shall assign a case number and place it on the calendar of the Examiner for hearing within requisite time provisions. Applications for appeal shall be assigned for hearing in the order in which they are received. ~~Said~~ Such applications may be filed with an accompanying application for variance, conditional use permit, or other permit where applicable.

4.45 Filing of an ~~application for~~ appeal shall stay all ~~proceedings action~~ in furtherance of the ~~action-matter~~ appealed, ~~unless planning staff or the Hearing Examiner determine there is good cause or a legal requirement to proceed from unless the Hearing Examiner finds that a stay of decision would cause peril of life or property or would otherwise work cause an undue hardship.~~

Comment [CES26]: on whom?

4.56 ~~Unless the parties with standing have mutually agreed to waive the applicable time limit, T~~he Hearing Examiner shall, ~~unless the parties with standing have mutually agreed to waive the applicable time limit,~~ render a decision within prescribed time limits with written findings of fact based upon information provided by the applicant, the Whatcom County Comprehensive Plan, pertinent provisions of the applicable codes and ordinances, site inspection, testimony and other evidence presented at the public hearing.

4.67 The format of the hearing shall be that as set forth elsewhere in these Rules.

~~4.8 The appellant shall have the burden of proof.~~

~~4.89 E.~~The Hearing Examiner may dismiss an appellant's appeal for (1) failure to prosecute; (2) ~~for failure to file an appellant's brief within the required time period without good cause, or (3) for appellant's delay of, or failure to schedule, the hearing date within the required time period without good cause.~~

ARTICLE 5 – FINAL AND RECOMMENDED DECISIONS AND APPEALS THEREFROM

5.1 All decisions of the Hearing Examiner shall include written findings of fact and shall state the reasons for the decision ~~of the Hearing Examiner~~. If conditions are attached to any application granted by the Hearing Examiner, such conditions shall be ~~referred to~~ included in the notice of decision ~~and embodied in the findings of fact~~. Decisions shall be rendered with~~in~~ the time required by ordinance, unless the applicant has agreed in writing or at the hearing to waive the applicable time limit.

5.2 The decision shall be based upon a consideration of the whole record and supported by reliable, probative, and substantial evidence.

- 5.3 In those cases where the Hearing Examiner's decision is final (as opposed to recommended), a notice of decision shall be issued to ~~the applicant~~parties with standing, pertinent administrative officials, and all ~~parties of record~~persons who request said notice in writing. Any ~~party of record~~person may receive a copy of the Hearing Examiner's decision upon written request therefor and upon payment of the costs of reproduction. Provision of a copy of the decision shall constitute notice of decision.

5.4 Reconsideration.

~~A. Within three (3) business days of the Hearing Examiner's recommendation or decision, a party may file a motion for reconsideration. The motion shall set forth alleged errors of law or fact, or the discovery of new evidence that was not available at the time of the hearing.~~

~~B. The hearing Examiner shall respond to the motion for reconsideration in writing within five (5) business days by either denying the request or approving the request. If the Hearing Examiner grants the motion, the Hearing Examiner shall issue a revised decision within ten (10) business days of the date of the approval, unless additional information is required.~~

- ~~5.4 Unless otherwise specified by the Hearing Examiner, a final decision of the Hearing Examiner authorizing a proposal shall expire if the applicant fails to obtain other necessary permits to commence, if required, or to otherwise take advantage of the approval of the original request within one (1) year of the date of the decision. An extension of the expiration date may be granted by the Hearing Examiner where the applicant has made a written request for an extension in a timely manner, at least thirty (30) days prior to the expiration date. A Hearing Examiner may, at his discretion, order that a public hearing be held on the request.~~

- ~~5.5 In cases of final decisions, a request for reconsideration may be filed in writing by an applicant or any opponent of record within three (3) days of the date of decision. The request must be based upon error or omission in the content of the decision, and although the Hearing Examiner is not required to modify his original decision to reflect the comments received thereon, he may initiate such action as is deemed appropriate. Where the Hearing Examiner determines that the grounds cited for reconsideration do not warrant modification of the original notice of decision, he shall provide the requesting party with written notice of his determination prior to the expiration of the time set out herein for the filing of an appeal.~~

5.65 Appeal of Hearing Examiner Decision.

~~A person aggrieved by a final decision of the Hearing Examiner may make application for appeal to the Whatcom County Superior Court. Such an application for appeal must be made within twenty-one (21) days of the date of the decision of the Hearing Examiner, as provided in RCW 36.70C.040.~~

5.6 Appeal of Hearing Examiner Decision Under Title 23 — The Shoreline Management Program.

~~A person aggrieved by a final decision of the Hearing Examiner issued pursuant to Title 23, —The Shoreline Management Program, must appeal to the Shoreline Hearings Board per RCW 90.58.180(1).~~

Any person aggrieved by the granting, denying, or rescinding of a permit on shorelines of the state pursuant to RCW 90.58.140 may seek review from the shorelines hearings

Comment [RB27]: Not sure about the expiration language in this section.

Comment [CES28]: What does execute mean? Start a project? Finish a project? What if it's, say, a plat that might take a couple of years to complete? This type of expiration of permits is usually tied to substantial completion or a percentage of costs expended. There are lengthy sections of code that define this in most jurisdictions.

Comment [CES29]: I thought under T22, permits were good for 2 years?

Comment [RE30]: Remove WCC 22 contains expiration for all permit decisions.

Comment [RB31]: Does the appeal period run from the time of the decision if reconsideration is requested? Or does the request for reconsideration stay the appeal period so that it runs from the time that the reconsideration is decided?

Comment [RE32]: Suggested change for Reconsideration.
Request for Reconsideration
a. Within five (5) business days of the Hearing Examiner's recommendation or decision, a Party may file a motion for Request for Reconsideration. The motion shall explicitly set forth alleged errors of law or fact, or the discovery of new evidence which was not available at time of the hearing.
b. The Hearing Examiner shall respond to the Request for Reconsideration, in writing, within five (5) business days, by either denying the request or approving the request. If the Hearing Examiner approves the request, the Hearing Examiner shall issue a response to the request within ten (10) business days of the date of the response unless additional information is required.

Comment [CES33]: This says the same thing as below. Is it needed?

board by filing a petition for review within twenty-one days of the date of filing of the decision as defined in RCW 90.58.140(6).

Comment [CES34]: Not sure why we need this, since the rule cites this section.



Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2019-472

File ID:	AB2019-472	Version:	1	Status:	Introduced for Public Hearing
File Created:	09/05/2019	Entered by:	DBrown@co.whatcom.wa.us		
Department:	Council Office	File Type:	Ordinance		
Assigned to:	Council			Final Action:	
Agenda Date:	10/08/2019			Enactment #:	

Primary Contact Email: dbrown@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Ordinance amending Whatcom County Code 9.32, Unlawful Discharge of Firearms, to establish a no shooting zone in the Drayton Harbor area of Whatcom County

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

At the request of the City of Blaine, this ordinance would establish a no shooting zone in the Drayton Harbor area of Whatcom County. The boundaries of the proposed zone are as follows: That portion of Sections 7 and 18, Township 40 North, Range 1 East and Sections 1, 2, 11, 12 and 13, Township 40 North, Range 1 West, W.M., Whatcom County, Washington described as follows: Beginning along Drayton Harbor Road (Co. Rd. No. 37) at the intersection of the ordinary high water mark of Drayton Harbor with the limits of the city of Blaine, Whatcom County, Washington; thence easterly along said ordinary high water mark to the intersection with the northerly face of an existing bridge over California Creek; thence easterly along said northerly bridge face to the intersection with said ordinary high water mark; thence northerly along said ordinary high water mark to the intersection with said city limits; thence along said city limits westerly, northerly and southerly to the point of beginning.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
09/24/2019	Council	INTRODUCED FOR PUBLIC HEARING	Council

ORDINANCE NO. _____

AMENDING WHATCOM COUNTY CODE 9.32, UNLAWFUL DISCHARGE
OF FIREARMS, TO ESTABLISH A NO SHOOTING ZONE IN THE
DRAYTON HARBOR AREA OF WHATCOM COUNTY

WHEREAS, pursuant to Whatcom County Code 9.32.050, the County Council may, upon its own initiative, pass a resolution declaring its intent to form a no shooting zone; and

WHEREAS, on July 23, 2019, the County Council approved Resolution #2019-035, declaring its intent to conduct a hearing in consideration of creating a no shooting zone in the Drayton Harbor area of Whatcom County, as requested by the City of Blaine; and

WHEREAS, pursuant to Whatcom County Code 9.32.020 and RCW 36.32.120, the County Council has the authority and power to establish no shooting zones; and

WHEREAS, a “no shooting zone” is an area designated by the County Council in which the discharge of firearms is prohibited; and

WHEREAS, RCW 9.41.300 (2) specifically states that counties may enact laws and ordinances restricting the discharge of firearms in any portion of their respective jurisdiction where there is a reasonable likelihood that humans, domestic animals, or property will be jeopardized; and

WHEREAS, according to the request submitted by the City of Blaine (see City of Blaine Resolution No. 1765-19, attached as Exhibit A to this resolution):

- It is difficult for members of the public to distinguish between incorporated and unincorporated areas, particularly on open water, which causes numerous hunters to inadvertently move into areas where hunting and discharge of firearms is illegal;
- Citizens have expressed concerns about gunfire near homes and property and repeatedly call for police response to such incidents;
- Unincorporated portions of Drayton Harbor aquatic area, tidelands, and shoreline are within and adjacent to urban growth areas;
- Population is expanding and housing density is increasing within the areas surrounding Drayton Harbor both within the City and in areas of unincorporated Whatcom County; and

WHEREAS, twenty three other “no shooting” zones have been established throughout Whatcom County as a means to protect the public.

NOW THEREFORE, BE IT ORDAINED by the Whatcom County Council that a new section of Whatcom County Code 9.32 shall be added to create a no-shooting zone in the Drayton Harbor area as outlined in Exhibit B to this ordinance.

ADOPTED this ____ day of _____, 2019.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Clerk of the Council

Rud Browne, Council Chair

APPROVED AS TO FORM:

() Approved () Denied

Civil Deputy Prosecutor

Jack Louws, Executive

Date: _____

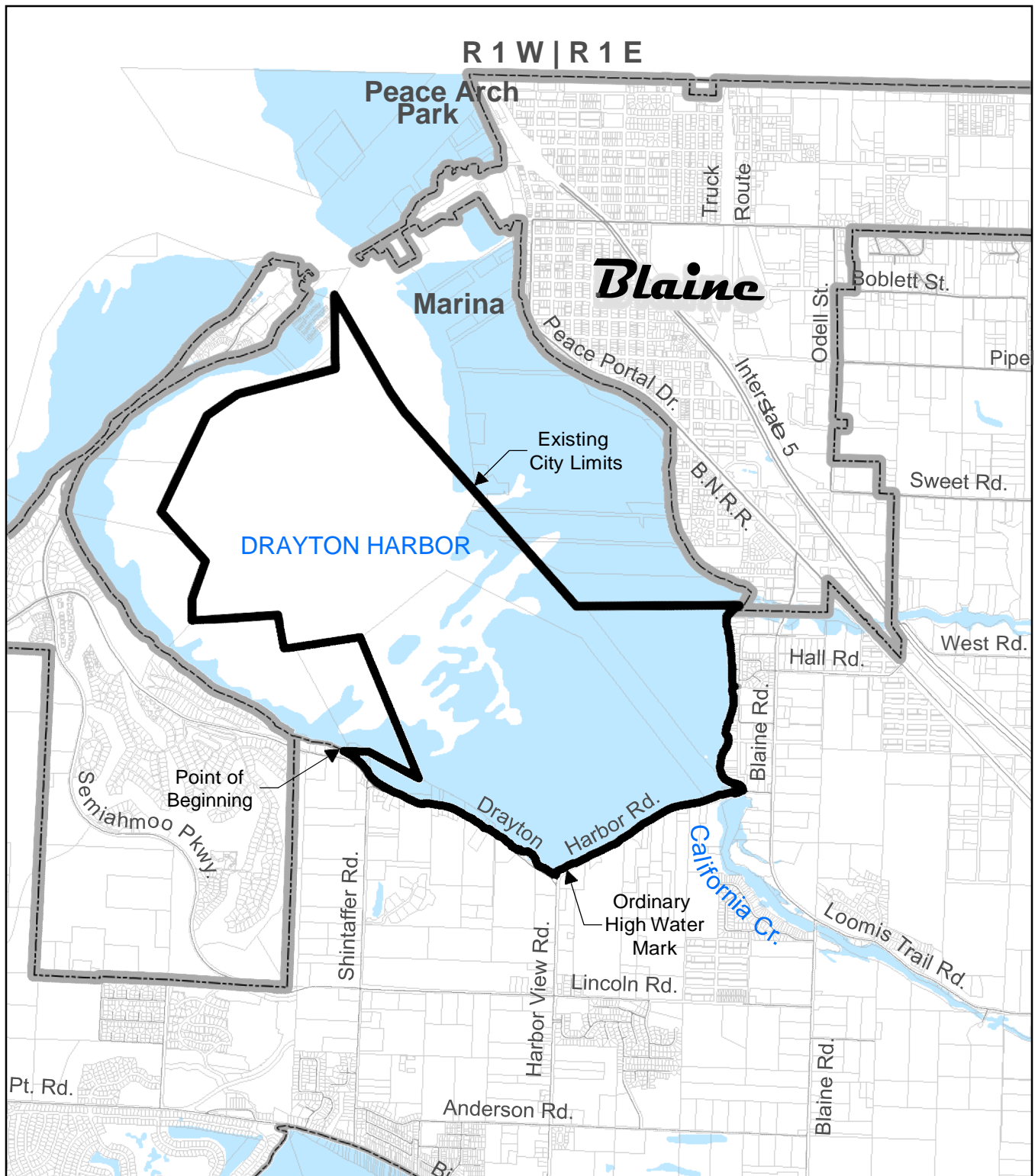
Exhibit A
(Drayton Harbor No Shooting Zone)

9.32.350 No shooting zone number 24 established.

A. No shooting zone number 24 is also known as the Drayton Harbor area.


B. The boundaries are described as follows:

That portion of Sections 7 and 18, Township 40 North, Range 1 East and Sections 1, 2, 11, 12 and 13, Township 40 North, Range 1 West, W.M., Whatcom County, Washington described as follows: Beginning along Drayton Harbor Road (Co. Rd. No. 37) at the intersection of the ordinary high water mark of Drayton Harbor with the limits of the city of Blaine, Whatcom County, Washington; thence easterly along said ordinary high water mark to the intersection with the northerly face of an existing bridge over California Creek; thence easterly along said northerly bridge face to the intersection with said ordinary high water mark; thence northerly along said ordinary high water mark to the intersection with said city limits; thence along said city limits westerly, northerly and southerly to the point of beginning.



Drayton Harbor No Shooting Zone

Legend

 Drayton Harbor No Shooting Zone

3

Date: 8/30/2019

0 1,500 3,000 4,500 6,000 Feet
1 inch = 3,000 feet



USE OF WHATCOM COUNTY'S GIS DATA IMPLIES THE USER'S AGREEMENT WITH THE FOLLOWING STATEMENT:

Whatcom County Disclaims any warranty of merchantability or warranty of fitness of this map for any particular purpose, either express or implied. No representation or warranty is made concerning the accuracy, currency, completeness or quality of data depicted on this map. Any user of this map assumes all responsibility for use thereof, and further agrees to hold Whatcom County harmless from and against any damage, loss, or liability arising from any use of this map.

PROPOSED DRAYTON HARBOR NO SHOOTING ZONE ORDINANCE (CITY OF BLAINE PROPOSAL) - COMMENTS FROM WHATCOM COUNTY DEPARTMENTS

Per Whatcom County Code 9.32.060(B), the proposed ordinance to establish a no shooting zone in Drayton Harbor (City of Blaine proposal) was routed to the following County departments for comment: Prosecuting Attorney, Sheriff, Executive, Planning and Development Services, and Public Work.

As of today, October 1, the following comments have been received:

Public Works (Administration and Engineering): "Public Works has no comment."

Planning and Development Services: "No comments from PDS."



LUMMI INDIAN BUSINESS COUNCIL

2665 KWINA ROAD BELLINGHAM, WASHINGTON 98226 (360) 312-2000

DEPARTMENT _____

DIRECT NO. _____

September 30, 2019

Whatcom County Council
311 Grand Avenue, Suite 105
Bellingham, WA 98225

Re: Lummi Nation's opposition to the proposed No Shooting Zone in Drayton Harbor and request for deferral of the same pending further discussion.

Dear Members of the Whatcom County Council,

On behalf of the Lummi Indian Business Council (LIBC), we would like to make it clear, in no uncertain terms, our opposition to the establishment of a "No Shooting Zone" in the Drayton Harbor *via* a proposed ordinance currently under consideration by the County Council, which would regulate the discharge of firearms for all purposes and applies to all people, including Lummi tribal members. You have every right to mandate your citizens, but we hope that you understand that our tribal members do not fall under your jurisdiction when it comes to treaty reserved rights. In instances such as this, you must include tribal exemption.

Protecting public health and safety is a top priority of the Lummi Nation. As such, our law enforcement already imposes strict regulations on hunting in Drayton Harbor. For example, our hunting regulations promulgated under Title 10 of the Lummi Nation's Code of Laws prohibit hunting in locations within 1,000 feet of an occupied building or area.

The unilateral enactment of a "No Shooting Zone" ordinance is an egregious overreach of the County Council's legal authority and displays a surprising lack of understanding of the legal, political, and historical context of our treaty rights. The enforcement of this ordinance against Lummi tribal members is a direct violation of our treaty-reserved rights of hunting on open and unclaimed lands. Furthermore, any attempt to enforce such an ordinance against our tribal members, when they are engaged in treaty-reserved rights and practices, is clearly illegal. As elected officials, I am sure you are aware of Article 6, Section 2 (the "Supremacy Clause") of the Constitution of the United States that identifies treaty law as the "Supreme Law of the Land". It must be remembered that our ancestors explicitly secured fishing, hunting, and gathering rights in the Point Elliott Treaty of 1855. We have never relinquished these rights and we will not allow them to be redefined, diminished or taken away.

We strongly encourage the County Council to defer action on the proposed ordinance. It is imperative that we meet and devise a pathway forward through which we collectively address the stated need and intention of the ordinance of protecting public safety while simultaneously respecting and protecting our treaty-reserved rights. Our future generations depend on us working together. We look forward to your reply and are ready to begin this important work with you.

Sincerely,

Jeremiah Julius, Chairman
Lummi Indian Business Council

Hello Respected members of the Council,

My name is Tino Villaluz and I represent the Swinomish Tribe in their wildlife program. I am writing concerning a potential shooting ban in Drayton Harbor. Public health and safety are at the forefront of all of our respected agendas. Absent a public safety risk that can be validated we are opposed to limiting our ability to exercise our Treaty Rights without valid content. We would like to engage in further discussion with the Council and our tribal and state partners at the soonest convenience. I thank you for your time and look forward to making progress on this topic. I can be reached via email or phone anytime, my phone number is (360)630-9544.

Kind regards.

Tino

Tino Villaluz

Hunting and Gathering Program Manager

Swinomish Indian Tribal Community



DISTRIBUTED TO

SEP 30 2019

ALL COUNCIL MEMBERS
WHATCOM COUNTY COUNCIL

DRAYTON HARBOR NON SHOOTING ZONE

Rud Browne:

This letter is in regard to the City of Blaine's application to set up a none shooting zone in Drayton Harbor.

Waterfowl hunting at Drayton Harbor has a long history. Sea ducks, puddle ducks, geese and Brandt being the birds of choice. This tradition needs to continue for our upcoming generation of sportsman.

This proposal is in violation of the 2nd amendment to the Constitution of the United States of America. What about our rights as stated in the Bill of Rights. Life, Liberty and the pursuit of happiness.

The economics of sportsman spending in a community is something that needs to be looked upon. The sportsman spends monies in the community purchasing food, fuel and lodging.

Has there been any discussion to what agency is going to enforce this proposed no shooting zone. Is the city of Blaine going to use their police to enforce this plan. The Whatcom county sheriffs? The WDFW?

Has there been a feasibility study?

I have talked with a WDFW game warden who has been assigned area four for 16 years. I asked him the nature of the complaints. The complaints were concerning noise. Not one had any issue with public safety. Had any shot him landed on their homes or property. The response was no, but they did not like the noise as they were being awakened at an early hour. Let's call this what this. A noise issue plain and simple. Are boats next? The warden also told me that the WDFW does not endorse this plan.

Thank you

Richard Holt WWA President



DISTRIBUTED TO

SEP 30 2019

ALL COUNCIL MEMBERS
WHATCOM COUNTY COUNCIL

9/25/2019

Dear Members of the Whatcom County Council,

We are writing to express our opposition to resolution 2019-035, related to creating a no shooting zone in and around Drayton Harbor. Delta Waterfowl is a waterfowl hunting and conservation organization with significant membership in and around your community and across Washington.

Legal and regulated hunting has long been demonstrated to be incredibly safe and as such, we are opposed to any new regulations that compromise hunting opportunity for unspecified benefit to public safety. We are not aware of any instances where legal hunting in the community has resulted in threats to public safety and or property damage.

Furthermore, firearm noise as a result of hunting activity is protected by WAC 173-60-050(4)(j). We believe that firearm noise also pales in comparison, in both frequency and sound level, to other noises present in the area (such as car alarms, construction work, etc.). Therefore, this resolution should not be passed based on the perspective that firearm discharge noise as a result of hunting activity significantly disturbs the peace during the short waterfowl hunting season.

Passage of this resolution would end a long tradition of waterfowl hunting on Drayton Harbor that families have participated in for generations. We are eager to work with you to find a solution that appropriately protects public safety while not unnecessarily impeding hunting access and opportunity.

Sincerely,

Joel Brice

Vice President of Waterfowl and Hunter Recruitment Programs



Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2019-452

File ID:	AB2019-452	Version:	1	Status:	Agenda Ready
File Created:	08/27/2019	Entered by:	JKorn@co.whatcom.wa.us		
Department:	Sheriff's Office	File Type:	Special Council Only Item		
Assigned to:	Council			Final Action:	
Agenda Date:	10/08/2019			Enactment #:	

Primary Contact Email: jkorn@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and the City of Bellingham for the 2019 Byrne Justice Assistance Grant to purchase ballistic resistant vests for a total of \$13,391

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See Attachment

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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**WHATCOM COUNTY
SHERIFF'S OFFICE**

BILL ELFO
SHERIFF



PUBLIC SAFETY BUILDING
311 Grand Avenue
Bellingham, WA 98225-4038
(360) 778-6600

MEMORANDUM

TO: Jack Louws, County Executive
FROM: Bill Elfo, Sheriff 
DATE: August 26, 2019
RE: Interlocal Agreement Between the City of Bellingham, and County of Whatcom
2019 Byrne Justice Assistance Grant (JAG) Program Award

Enclosed for review and signature are two (2) originals of the Interlocal Agreement between the City of Bellingham and Whatcom County for Edward Byrne Memorial Justice Assistance Grant (JAG) Program FY2019.

Total Whatcom County Jurisdiction allocation is \$36,076 (with \$22,685 for the City of Bellingham and \$13,391 for Whatcom County). The City of Bellingham will administer the grant and provide \$13,391 to the Whatcom County Sheriff's Office to purchase ballistic resistant vests.

Please contact Undersheriff Chadwick at extension 6618 with any questions or concerns.

Thank you.

enclosure

WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No. _____

Originating Department:	35 Sheriff's Office
Division/Program: (i.e. Dept. Division and Program)	3520 Bureau of LE & Investigations/ 352020 Patrol and OT
Contract or Grant Administrator:	Doug Chadwick, Undersheriff
Contractor's / Agency Name:	City of Bellingham

Is this a New Contract? Yes ☒ No ☐ If not, is this an Amendment or Renewal to an Existing Contract? 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#: 16.738

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

Is this agreement excluded from E-Verify? No ☐ Yes ☒ 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 for Commercial off the shelf items (COTS). |
| <input checked="" 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). | |

Contract Amount:(sum of original contract amount and any prior amendments):
 \$ 13,391
 This Amendment Amount:
 \$ _____
 Total Amended Amount:
 \$ 13,391

Summary of Scope:

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.

Interlocal Agreement between City of Bellingham and Whatcom County for U.S. Department of Justice Edward Byrne Memorial Justice Assistant Grant (JAG) Program FY2019. The Whatcom County jurisdiction allocation is \$36,076 (with \$22,685 for the City of Bellingham and \$13,391 for Whatcom County). The City of Bellingham will administer the grant and provide \$13,391 to Whatcom County Sheriff's Office to purchase ballistic resistant vests.

Term of Contract: 9/27/19

Expiration Date: 12/31/20

Contract Routing:	1. Prepared by: J. Korn <i>JL</i>	Date: 8/26/19
	2. Attorney signoff: _____	Date: _____
	3. AS Finance reviewed: _____	Date: _____
	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: _____

THE STATE OF WASHINGTON

COUNTY OF WHATCOM

**INTERLOCAL AGREEMENT
BETWEEN THE CITY OF BELLINGHAM, AND COUNTY OF WHATCOM
2019 BYRNE JUSTICE ASSISTANCE GRANT (JAG) PROGRAM AWARD**

This Agreement is made and entered into this 27th day of September, 2019, by and between The COUNTY of Whatcom, acting by and through its governing body, the County Council, hereinafter referred to as COUNTY, and the CITY of Bellingham, acting by and through its governing body, the City Council, hereinafter referred to as CITY, both of Whatcom County, State of Washington, witnesseth:

WHEREAS, each governing body, in performing governmental functions or in paying for the performance of governmental functions hereunder, shall make that performance or those payments from current revenues legally available to that party: and

WHEREAS, each governing body finds that the performance of this Agreement is in the best interests of both parties, that the undertaking will benefit the public, and that the division of costs fairly compensates the performing party for the services or functions under this agreement: and

WHEREAS, per the grant, Whatcom County Jurisdiction is allocated \$36,076 in grant funding, \$22,685 for the City and \$13,391 for Whatcom County: and

WHEREAS, the CITY agrees to provide the COUNTY \$13,391 from the JAG award for the purchase of body armor (ballistic resistant vests): and

WHEREAS, the CITY and COUNTY believe it to be in their best interests to reallocate the JAG funds.

NOW THEREFORE, the COUNTY and CITY agree as follows:

Section 1.

CITY agrees to pay COUNTY a total of \$13,391 of JAG funds.

Section 2.

COUNTY agrees to use \$13,391 for the purchase of ballistic vests until 2020.

Section 3.

Nothing in the performance of this Agreement shall impose any liability for claims against the "CITY" or "COUNTY"

Section 4.

Each party to this agreement will be responsible for its own actions in providing services under this agreement and shall not be liable for any civil liability that may arise from the furnishing of the services by the other party.

Section 5.

The parties to this Agreement do not intend for any third party to obtain a right by virtue of this Agreement.

Section 6.

By entering into this Agreement, the parties do not intend to create any obligations express or implied other than those set out herein; further, this Agreement shall not create any rights in any party not a signatory hereto.

CITY OF Bellingham, WA

COUNTY OF Whatcom, WA

Kelli Linville, Mayor

Sheriff

ATTEST:

APPROVED AS TO FORM:

Brian Henshaw, Finance Department

Prosecuting Attorney

APPROVED AS TO FORM:

City Attorney

Jack Louws, Whatcom County Executive

Chief of Police

Whatcom County Sheriff's Office
2019 Edward Bryne Memorial JAG Program
FY 2019 Local Solicitation

Applicant Disclosure of Pending Applications

The Whatcom County Sheriff's Office does have a pending application within the last 12 months for federal funding to cover some costs of the proposed program under this solicitation.

The Whatcom County Sheriff's Office has applied for the 2019 DOJ Bulletproof Vest Partnership grant.

Federal Funding Agency	Solicitation Name	Name/Phone/Email for Point of Contact
USDOJ	Bulletproof Vest Partnership	1-877-758-3787/owner-bvp-list@ojp.usdoj.gov

Budget Summary

Note: Any errors detected on this page should be fixed on the corresponding Budget Detail tab.

Budget Category	Year 1		Year 2 (if needed)		Year 3 (if needed)		Year 4 (if needed)		Year 5 (if needed)		Total(s)
	Federal Request	Non-Federal Request	Federal Request	Non-Federal Request	Federal Request	Non-Federal Request	Federal Request	Non-Federal Request	Federal Request	Non-Federal Request	
A. Personnel	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
B. Fringe Benefits	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
C. Travel	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
D. Equipment	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
E. Supplies	\$13,391	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$13,391
F. Construction	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
G. Subawards (Subgrants)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
H. Procurement Contracts	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
I. Other	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Direct Costs	\$13,391	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$13,391
J. Indirect Costs	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Project Costs	\$13,391	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$13,391
Does this budget contain conference costs which is defined broadly to include meetings, retreats, seminars, symposia, and training activities? - Y/N											No

**Whatcom County Sheriff's Office
Program Abstract**

Abstract

Enhanced officer safety and ballistic protection for first responders – In response to continued violent critical incidents at schools and public venues, the Whatcom County Sheriff's Office has developed enhanced training for Active Shooter scenarios. In an effort to prepare for and provide an enhanced response to critical violent incidents, the Whatcom County Sheriff's Office conducts ongoing training to deal with these threats and unusual situations that require an expedited response in order to save lives.

In addition to training, law enforcement must be prepared and equipped to deal with armed suspects in order to effectively mitigate the threat posed to the public. It is essential that all members of the Sheriff's Office have sufficient ballistic resistant vests to protect them from gunfire. The Sheriff's Office objective is to utilize allocated funds to purchase and replace current ballistic vests and improve officer safety.

Project identifiers – Equipment – Tactical, Body Armor – Ballistic Resistant, Counter Terrorism and Officer Safety.

Whatcom County Sheriff's Office
2019 Byrne JAG grant
Program Narrative

Narrative

The continued trend of violent attacks nationwide and abroad has reaffirmed why it is imperative that responders be trained and prepared to respond to incidents of active violence in a safe, efficient, and effective manner. The Sheriff's Office is uniquely positioned on the international border between the US and Canada, and is subject to both domestic and international threats. This includes not only schools and public venues, but multiple federal facilities and critical infrastructure that may be the targets of violent attacks and/or terrorism. The Sheriff's Office continues to train all deputies to deal with critical incidents, to include terrorist attacks, active shooter scenarios, and high-risk operations.

In addition to training, law enforcement officers must be provided necessary equipment that enhances their officer safety and increases the likelihood that they will be able to carry out their duties without serious injury or loss of life. In order to provide enhanced ballistic protection and increase officer safety, the Whatcom County Sheriff's Office intends to purchase ballistic vests. Ballistic vests are essential personal protective equipment that utilized by members of the Whatcom County Sheriff's Office. The use by deputies allows them to carry out their duties while protecting them from sudden violent attacks from gunfire.

The Sheriff's Office intends to utilize JAG funding to purchase ballistic vests, to improve officer safety/wellness and operational performance.

Whatcom County Sheriff's Office
2019 Edward Bryne Memorial JAG Program
FY 2019 Local Solicitation

Review Narrative

The Whatcom County Sheriff's Office intends to make its Fiscal Year 2019 JAG application available to the Whatcom County Council for its review and comment on September 10th, 2019.

The application has not yet been made available for public review and comment. The Whatcom County Sheriff's Office will make its Fiscal Year 2019 JAG application available to citizens for comment at the Whatcom County Council meeting on September 24th, 2019.

Whatcom County Sheriff's Office

2019 Bryne JAG program

Budget and Narrative

BUDGET

E. Supplies

Ballistic resistant vests	\$13,391.00
Total	\$13,391.00
Total project costs	\$13,391.00

BUDGET NARRATIVE

EQUIPMENT: In order to provide enhanced ballistic protection and increase officer safety, the Whatcom County Sheriff's Office intends to purchase ballistic vests. Ballistic vests are essential personal protective equipment utilized by members of the Whatcom County Sheriff's Office. The use by deputies allows them to carry out their duties while protecting them from sudden violent attacks from gunfire.

Ballistic Vests- The intent is to equip deputies with NIJ certified ballistic vests that are rated to stop handgun rounds, as well as some shotgun rounds. The Whatcom County Sheriff's Office intends to purchase vests which are made in America. These vests are worn by all deputies when responding to incidents where weapons are known to be present or the use of firearms is suspected. The use of ballistic vests by all deputies allows them to respond quickly to an active shooter incident, while providing ballistic protection and improving officer safety. The recent mass shootings throughout the United States highlights the use and role ballistic vests play in protecting those who protect others. The use of ballistic vests serves to increase the likelihood that they can carry out their duties and save lives, while improving the chances that they go home at the end of the day.

E. Supplies		Computation				
Supply Items		Describe the item and the compute the costs. Computation: The number of each item to be purchased X the cost per item.				
Add Supply Item	Delete Selected	# of Items	Unit Cost	Total Cost	Non-Federal Contribution	Federal Request
Ballistic Vests		14	\$956.50	\$13,391		\$13,391
				\$0		\$0
			Total(s)	\$13,391	\$0	\$13,391
Add Additional Narrative Text						
Narrative The Whatcom County Sheriff's Office has a current need for ballistic vests which are designed for their assignment and operational needs, and allows them to perform their duties in a safe and effective manner. The ballistic vests are worn by all patrol deputies and the vests allow the deputies to respond to an active shooter incident while providing ballistic protection and improving officer safety.						
F. Construction						



Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2019-509

File ID:	AB2019-509	Version:	1	Status:	Agenda Ready
File Created:	09/27/2019	Entered by:	SMildner@co.whatcom.wa.us		
Department:	County Executive's Office	File Type:	Executive Appointment		
Assigned to:	Council			Final Action:	
Agenda Date:	10/08/2019			Enactment #:	

Primary Contact Email: smildner@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Request confirmation of the County Executive's appointment of Steve Bennett and Galen Herz to the Public Health Advisory Board

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attached staff memorandum and applications

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Memorandum

RECEIVED

SEP 27 2019

JACK LOUWS
COUNTY EXECUTIVE

TO: JACK LOUWS, COUNTY EXECUTIVE

FROM: Regina Delahunt, Director
Health Department

DATE: September 26, 2019

RE: Public Health Advisory Board (PHAB) Member Recommendation

I, along with current Public Health Advisory Board (PHAB) members, would like to recommend the following candidates for appointment to the board in the noted positions:

- Steve Bennett to fill the partial term which was vacated by Ray Wolpov in Communities that Experience Health Inequities, with a term end date of 1/31/21.
- Galen Herz to the position for Social and Economic. Since this is a new position, we would like him to finish out this year, and start a full 3-year term on 2/1/20, running through 1/31/23.

Thank you for your consideration.





Application for Appointment to Whatcom County Boards and Commissions

Public Statement

THIS IS A PUBLIC DOCUMENT: As a candidate for a public board or commission, the information provided will be available to the County Council, County Executive, and the public. All board and commission members are expected to be fair, impartial, and respectful of the public, County staff, and each other. Failure to abide by these expectations may result in revocation of appointment and removal from the appointive position.

First Name	Steve
Last Name	Bennett
Date	1/7/2019
Street Address	6075 monument dr
City	Ferndale
Zip	98248
Do you live in & are you registered to vote in Whatcom County?	Yes
Do you have a different mailing address?	Field not completed.
Primary Telephone	6125624943
Secondary Telephone	Field not completed.
Email Address	bennet63@wwu.edu
1. Name of Board or Committee	Public Health Advisory Board
Public Health Advisory Board Position:	Education field Referred to: Communities that Experience Health Inequities.
2. Do you meet the residency, employment, and/or affiliation requirements of the position for which you're applying?	Yes
3. Which Council district do you live in?	District 5
4. Are you a US citizen?	Yes

5. Are you registered to vote in Whatcom County?	Yes
6. Have you declared candidacy (as defined by RCW 42.17A.055) for a paid elected office in any jurisdiction within the county?	No
7. Have you ever been a member of this Board/Commission?	No
8. Do you or your spouse have a financial interest in or are you an employee or officer of any business or agency that does business with Whatcom County?	No
You may attach a resume or detailed summary of experience, qualifications, & interest in response to the following questions	Bennett-CV.pdf - attached
9. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education	Please see attached CV
10. Please describe why you're interested in serving on this board or commission	I am passionate about public health and have made it my lifes work. Serving on this board would allow me to continue to learn about the challenges facing the people of Whatcom county and to be involved in assisting public health locally. I feel I have a breadth of knowledge and experience from epidemiology to health education that is useful for working with the board. Additionally, I can take what I learn from the board and my experiences and incorporate it into my teaching thus helping to educate current and future residents of Whatcom county.
References (please include daytime telephone number):	Dr. Keith Russel (360) 650-3529 Dr. Liz Mogford- (360) 650-3002
Signature of applicant:	Steve Bennett
Place Signed / Submitted	Bellingham, WA

STEVE BENNETT

Steve.Bennett@wwu.edu

6075 Monument Dr. Ferndale, WA 98248

612-562-4943

RESEARCH INTEREST:

To teach undergraduate students the basics of modern public health knowledge and practice.

To study the social determinants of health and their impacts on the health of marginalized populations, locally and globally.

To study the epidemiological and ecological relationships between the environment, land use, population issues, social issues and the emergence and spread of infectious disease with public health outcomes.

EDUCATION:

University of Minnesota School of Public Health

Doctor of Philosophy in Public Health, Environmental Infectious Disease
Completed 2017

Tulane University School of Public Health & Tropical Medicine

Master of Science in Public Health in Tropical Medicine & Parasitology,
May 2009

Awarded the *Tulane 34 Award* for excellence in academics, and leadership within the school and the community

Southwest Texas State University

Bachelor of Fine Arts in Theatre, December 2004

EXPERIENCE:

Assistant Professor- Western Washington University

Community Health

August 2018- Current

Non-Tenure Track Faculty- Western Washington University

Community Health, International Studies

September 2017- May 2018

Visiting Faculty- Biology- University of St. Thomas (previously Adjunct)

Biology of Global Health

January 2014 – August 2015- Adjunct

August 2015- August 2017 – Visiting Faculty

Researcher- Minnesota Twin Cities Metropolitan Mosquito Control Study

July 2014- August 2017

- Collected data on rodent and tick population
- Analyzing rodent and tick population data and environmental influences
- Analyzing tick samples for infectious disease
- DNA extraction, PCR, and microbiome analysis of samples

Field Researcher- Cedar Creek Rodent Pilot Project

May 2012- 2015

University of Minnesota PI: Dr. Katey Pelican

- Collaborated on study design of project linking biodiversity to infectious disease
- Trapped multiple species of rodents
- Collected data including tissue and blood samples as well as ticks from trapped animals
- Analyzed samples for infectious disease

Research Assistant- Economically Motivated Adulteration

December 2011- June 2012

National Center for Food Protection and Defense, St. Paul, MN

- Organized data collection for EMA research program
- Researched food safety issues
- Researched and compiled EMA events from scientific literature for nutraceuticals
- Wrote a manuscript for publication on EMA of nutraceuticals
- Conducted preliminary analysis of U.S. customs and Border Protection data for dairy proteins

Student Worker Para-Professional- Foodborne Disease Unit ‘Team D’

August 2011- December 2011

Minnesota Department of Health, St. Paul, MN

- Assisted in Epidemiologic investigations
- Supported food safety programs
- Performed case history interviews
- Collected and entered data from laboratory and hospital reports

Technical Advisor- Epidemiologist- Community Health Organizer- South Sudan Guinea Worm Eradication Program

May 2009- May 2010

The Carter Center, Kauto Payam, South Sudan

- Managed the Guinea worm eradication program for Kauto West in South Sudan, an area including over 240 villages
- Predicted outbreaks and risk areas using epidemiological information
- Planned for future outbreaks including treatment of water sources with pesticides and distribution of water filters to at-risk communities
- Performed community education and case searches amongst villages with volunteer staff
- Treated cases and supervised all case management and case containment
- Coordinated and completed a mass distribution of antibiotics for Trachoma in Kauto West as well as mobilization for Trachoma surgeries

Peace Corps Masters International Program Coordinator

March 2008 – May 2009

*Tulane University School of Public Health and Tropical Medicine
New Orleans, LA*

- Oversaw and mentored Masters International (MI) students while in school and in the field

- Liaison between U.S. Peace Corps, Louisiana Returned Peace Corps Association and Tulane University

Public Health Peace Corps Volunteer

June 2005 - September 2007

United States Peace Corps, Kenya

- Underwent intensive 10 week training in language, culture, health and community entry
- Performed development specifically with HIV and Malaria
- Supported Community Based Organizations through education, training and grant writing

**Community Based Organization Development Consultant
(Peace Corps Volunteer)**

August 2006 - August 2007

Family Health International, under the APHIA II project, Narok, Kenya

- Oversaw the activities of two community based groups (one youth drama group and one group for sex workers)
- Worked with the local Voluntary Counseling and Testing center on outreach and HIV testing
- Organized training of trainers and sex worker outreach
- Built and distributed over 100 condom dispensers and thousands of free government and CDC condoms

Assistant District Coordinator (Peace Corps Volunteer)

August 2005 - July 2006

Population Services International, Busia District, Kenya

- Developed and implemented a school reproductive health program in 50 district schools, reaching over 2500 primary school students
- Oversaw training of trainers, pre and post testing, monitoring and evaluation, and logistics
- Managed educational theatre group to increase use of mosquito nets

ARTICLES:

Oliver JD, **Bennett SW**, Adolfs H, Bartholomay LC, 2017. Range expansion and increasing *Borrelia burgdorferi* infection of the tick *Ixodes scapularis* in Iowa, 1990-2013. *J Med Entomol*

POSTERS:

Ixodids Ticks from Three Agroecosystems in Uganda: An Insight into Tick Borne Coxiella spp. from Rural Uganda Omar Jiménez L, Katey Pelican, Innocent Rwego, Lawrence Mugisha, Jessica Evanson, Dominic Travis' Steve Bennett, Michael Mahero iCOMOS 3rd International Conference, 2018

Small mammal abundance across a vegetative successional gradient: Using long-term ecological research sites to better understand wildlife ecology

Sarah Stafford, **Steve Bennett**, Shelby Williams, Meggan Craft, Katey Pelican
College of Veterinary Medicine, Summer Scholars Program
University of Minnesota, St. Paul

TEACHING:**HLED 150- Drugs and Society**

Western Washington University- Bellingham WA

HLED 210- Intro to Public Health

Western Washington University- Bellingham WA

HLED 350- Nutrition

Western Washington University- Bellingham WA

HLED 397B Justice, Equity, Oppression and Health

Western Washington University- Bellingham, WA

HLED 407- Principles and Foundations of Public Health

Western Washington University- Bellingham WA

HLED 410- Health Communication and Social Marketing

Western Washington University- Bellingham WA

HLED 455- Health Education K-8

Western Washington University- Bellingham WA

INTL 401- Global Issues

Western Washington University- Bellingham, WA

INTL 437H- International Study- Kenya

Western Washington University- Bellingham, WA/ Kenya

BIOL 490- Ecology of Infectious Disease (lecture and lab)

University of St. Thomas, St. Paul, Minnesota

Developed course and lab

BIOL 480- Global Health Senior Capstone (Lecture and lab)

University of St. Thomas, St. Paul, Minnesota

Developed Course and lab

BIOL 467- Biology of Emerging Infectious Diseases (lecture and lab)

University of St. Thomas, St. Paul, Minnesota

BIOL 398- Parasitology (lecture and lab)

University of St. Thomas, St. Paul, Minnesota

Developed course lecture and lab materials

BIOL 209- Biology of Sustainability (core course)

University of St. Thomas, St. Paul, Minnesota

BIOL 208 Biological Communication and Energetics (core course)

University of St. Thomas, St. Paul, Minnesota

BIOL 198- Emerging Infectious Disease/ Global Health Lab
University of St. Thomas, St. Paul, Minnesota
Co-developed lab course (Non-majors course)

BIOL 363- Immunology Lab
St. Thomas University, St. Paul, Minnesota

Teaching Assistant- PUBH 3102- Environmental and Occupational Health
Fall 2012- Spring 2015
University of Minnesota, Minneapolis/St.Paul

Teaching Assistant- PUBH 6101- Issues in Environmental Health
University of Minnesota, Minneapolis, St.Paul
Co-developed course/materials

Teaching Assistant- PUBH 6102- Environmental and Occupational Health
University of Minnesota, Minneapolis, St.Paul
Co-developed course/ materials

Guest Lecturer- PUBH 7200 Public Health Systems in Developing Countries
Part of the Summer Public Health Institute
"The Role of Surveillance and Community Involvement in Disease Eradication"
5/25/12 University of Minnesota, Minneapolis

Guest Lecturer- PUBH 6342 Epidemiologic Methods II
"The Role of Surveillance in Disease Eradication"
4/24/12 University of Minnesota, Minneapolis

WORKSHOPS and EVENTS:

**Epidemiology Trainings-
Trainer (6 sessions)**
Whatcom County Health Department
Communicable Disease Unit 2019

15th Annual Western Regional Global Health Conference
"Criminalization of the Body": the health implications of oppression
Faculty Coordinator
Western Washington University, 2019

Sustainability Fellow
Western Washington University 2017-2018

Organizer- Global Health World Café: The Making of the HIV Epidemic
An Interdisciplinary workshop for students
University of St. Thomas April 2016

Writing Across the Curriculum (WAC)
University of St. Thomas 2016

Participant- Boreas Leadership Program

"Systems Thinking and Tools"

11/09/12-11/10/12 University of Minnesota, St. Paul

Participant- Ecology and Evolution of Infectious Disease 2012

"Ecology Workshop"

5/19/12- 5/23/12 University of Michigan, Ann Arbor

-Received \$1,000.00 NSF funding for participation-

Participant- Researching and Writing the Literature Review

4/06/12, University of Minnesota, Minneapolis

Boreas Leadership Program

"Building Better Presentations and Posters"

2/22/12 University of Minnesota, St. Paul

Community Partnerships: Oversaw Community Partnerships and Student Projects with the following organizations

- **Viva Farms**
- **Whatcom County Health Department**
- **United General**
- **American Cancer Society**
- **Skookum Kids**
- **Lummi Nation Schools**
- **Lummi Nation Health Clinic**
- **Bellingham School District**
- **Children's Council of Skagit County**
- **Island hospital**
- **PeaceHealth**
- **Swedish Cancer Institute**

ACTIVITIES:

Student Committee Chair, Minnesota Environmental Health Association 2012

Organizer and Moderator, Environmental Health Sciences Journal Club 2012

Presenter and Member, American Society of Tropical Medicine and Hygiene Annual Conference, New Orleans, LA, December 2008

Board Member, Louisiana Returned Peace Corps Association 2008-2009

Special Events Coordinator, Student Government, Tulane University 2008-2009

Member, Alpha Psi Omega, honor fraternity, Southwest Texas State 2002-2004



Application for Appointment to Whatcom County Boards and Commissions

Public Statement

THIS IS A PUBLIC DOCUMENT: As a candidate for a public board or commission, the information provided will be available to the County Council, County Executive, and the public. All board and commission members are expected to be fair, impartial, and respectful of the public, County staff, and each other. Failure to abide by these expectations may result in revocation of appointment and removal from the appointive position.

Title	Mr.
First Name	Galen
Last Name	Herz
Today's Date	8/22/2019
Street Address	1106 W Holly St. Apt B1
City	Bellingham
Zip	98225
Do you live in & are you registered to vote in Whatcom County?	Yes
Do you have a different mailing address?	Field not completed.
Primary Telephone	3607286543
Secondary Telephone	Field not completed.
Email Address	galenherz@kulshanc.lt.org
1. Name of Board or Committee	Public Health Advisory Board
Public Health Advisory Board Position:	Physical (Built) Environment → referred to: Social and Economic position.
2. Do you meet the residency, employment, and/or affiliation requirements of the position for which you're applying?	Yes
3. Which Council district do you live in?	District 2

4. Are you a US citizen?	Yes
5. Are you registered to vote in Whatcom County?	Yes
6. Have you declared candidacy (as defined by RCW 42.17A.055) for a paid elected office in any jurisdiction within the county?	No
7. Have you ever been a member of this Board/Commission?	No
8. Do you or your spouse have a financial interest in or are you an employee or officer of any business or agency that does business with Whatcom County?	No
You may attach a resume or detailed summary of experience, qualifications, & interest in response to the following questions	<u>GalenHerzResume071719-PC.pdf</u> - attached
9. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education	I work for the Kulshan Community Land Trust as their Special Projects and Policy Coordinator. I advocate and organize for policies that lead to the creation of permanently affordable homes, expand homeownership opportunities, and improve housing security for Whatcom residents. I have been involved in affordable housing issues for the past three years, beginning with my involvement in the Bellingham Tenants Union. I served as the Campaign Manager for the successful Bellingham Home Fund renewal campaign.
10. Please describe why you're interested in serving on this board or commission	A safe and stable home is fundamental to living a healthy and secure life. I appreciate the Public Health Advisory Board's holistic approach to public health and focus on root causes, which includes poverty and housing insecurity. I believe my background and community connections in the housing world can help inform the Board's work on solving the housing challenge in Whatcom County. I also welcome the opportunity to learn about and work on the other issues affecting public health in Whatcom County, such as reducing incarceration, access to healthy foods, and economic opportunity.
References (please include daytime telephone number):	Dean Fearing, Executive Director of KulshanCLT, 360-383-7274 Greg Winter, Executive Director of Opportunity Council, 360-220-3788
Signature of applicant:	Galen Herz
Place Signed / Submitted	Bellingham, WA

GALEN M. HERZ

1106 W. Holly St, Apt B1 • Bellingham, WA 98225 • gmherz@gmail.com • (360) 728-6543

Education

WESTERN WASHINGTON UNIVERSITY
B. A. in Anthropology and B. S. in Biochemistry

Bellingham, WA
Graduated December 2017

Honors: Chemistry Department Chair's Inaugural Science for the Greater Good Award, Dan L. Smith Scholarship, and 350.org Fossil Free Summer Fellowship

Professional Experience

KULSHAN COMMUNITY LAND TRUST
Special Projects and Policy Coordinator

Bellingham, WA
June 2019 – Present

- Developing policy to expand permanently affordable, community led housing in Bellingham.
- Building relationships with local and state elected officials to collaborate on solving the housing crisis.
- Assisting with community led development of permanently affordable homes.

NATIONAL COMMUNITY LAND TRUST NETWORK
Intern

London, UK
April 2019 – May 2019

- Studied the UK community led housing sector's infrastructure, political strategy, and development practices. Articles and presentations on what I learned are forthcoming.
- Led outreach to NCLTN membership for the 'Winning Over Your Council' campaign, sharing local organizing resources and providing campaigning advice.

NEIGHBORS FOR BELLINGHAM HOME FUND
Campaign Manager

Bellingham, WA
April 2018 – November 2018

- Successfully renewed the Bellingham Home Fund with a historic 66.8% of the vote, securing \$40 million over ten years for affordable housing and housing services.
- Recruited, trained, and managed a team of 165 volunteers as part of a grassroots field campaign that made 3,014 calls and knocked on 7,436 doors.
- Built a diverse coalition of 63 community organizations and businesses supporting the Home Fund.
- Developed and executed a campaign plan that included messaging, social media strategy, community events, and volunteer-led organizing.

DR. WOLCOTT RESEARCH GROUP, WA. STATE UNIVERSITY
Research Assistant

Pullman, WA
June 2017 – September 2017

- Investigated the efficiency of a novel mechanochemo pretreatment designed to enhance sugar yields and value-added products in the development of second-generation lignocellulosic biofuels.

WESTERN WASHINGTON UNIVERSITY ASSOCIATED STUDENTS
Local Issues Coordinator

Bellingham, WA
September 2016 – June 2017

- Represented 15,000 undergraduate students at Bellingham City Council meetings and was invited to testify before the City Council Planning Committee on housing affordability and accessibility.
- Organized 2nd Annual Local Lobby Day in which I coordinated meetings with over 14 local elected leaders to advance student interests and recruited 35 students to participate, a 40% increase over the previous year.
- Built and maintained relationships with City Councilmembers, including programming two successful campus-community events with City Councilmembers April Barker and Pinky Vargas.

EMS SAVES LIVES CAMPAIGN
Field Manager

Bellingham, WA
August 2016 – November 2016

- Successfully passed Whatcom County Proposition 2016-1, Emergency Medical Services Levy.
- Managed staff of five field organizers and 40 volunteers that knocked on 14,165 doors and talked to 6,195 voters.

WHATCOM DEMOCRATS' COORDINATED CAMPAIGN

Bellingham, WA

Field Organizer

August 2015 – November 2015

- Contributed to the successful election of progressives Todd Donovan and Satpal Sidhu for County Council, and Bobby Briscoe for Port Commissioner through canvassing and community organizing.

350.org

Seattle, WA

Fossil Free Summer Fellow, *Organizer partnered with SEIU 925*

June 2015 – August 2015

- Collaborated with union staff to identify, recruit and mobilize work-site leaders as part of the University of Washington Faculty Forward campaign.

WESTERN WASHINGTON UNIVERSITY ASSOCIATED STUDENTS

Bellingham, WA

Environmental Center Coordinator

September 2014 – July 2015

- Provided environmental programming to the campus community including a guided environmental justice bike tour of Bellingham and the Annual Earth Day Festival attended by 520 students, compared to the previous year's 300.
- Managed \$6,300 departmental budget, publicity efforts on social media, and all other event logistics.

Leadership and Activities

BELLINGHAM TENANTS UNION

Bellingham, WA

Co-Founder and Co-Chair

January 2017 – Present

- Organizing a rapidly growing tenants' union with over 180 members to address the housing crisis in Bellingham.
- Led our union's municipal policy advocacy to secure victories for renters: legalized Accessory Dwelling Units (ADUs) city-wide, banned discrimination by landlords against people with housing assistance, required 60-day notice required for all rent increases over 10% and no-cause evictions.
- Led the union's incorporation as a 501c4, website creation, database management, and bylaws formation.

WWU STUDENTS FOR RENEWABLE ENERGY

Bellingham, WA

Member and President ('16-'17)

September 2012 – December 2017

- Led efforts to divest the WWU Foundation from fossil fuel companies by coordinating non-violent protests including a 137-person 24 hour sit-in and successfully co-sponsoring a divestment resolution with the student body president.
- Organized educational events including a 280+ person Women of Color Speak Out event by recruiting six different offices on campus to collaborate and secure \$1,200 in grant funding.

Other Community Involvement

Vice-Chair, Lettered Streets Neighborhood Association (2018-present)

Co-Organizer, Vienna Model Exhibition in Bellingham (2018)

Commissioner, City of Bellingham Mayor's Neighborhood Advisory Commission (2016–2017)

Member, Associated Students Legislative Affairs Council (2016–2017)

Volunteer, York Community Farm (2013–2016)

Skills, Technology, & Interests

Skills: Community organizing, database management, public speaking, event planning, website creation, record management, policy research, social media management, and conversational in Spanish.

Technology: Adobe Lightroom, Google Suite, Squarespace, Typeform, Zapier, and Microsoft Office Suite.

Interests: Photography, backpacking, board games, gardening, local politics, and housing/climate policy.



Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2019-489

File ID:	AB2019-489	Version:	1	Status:	Agenda Ready
File Created:	09/20/2019	Entered by:	SMurdoch@co.whatcom.wa.us		
Department:	Health Department	File Type:	Ordinance		
Assigned to:	Council			Final Action:	
Agenda Date:	10/08/2019			Enactment #:	

Primary Contact Email: adeacon@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Ordinance establishing the Affordable and Supportive Housing Fund

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Ordinance pursuant to RCW 82.14.540 to receive an additional tax distribution from the state sales and use tax to be used for affordable and supportive housing

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Memorandum

TO: JACK LOUWS
FROM: Anne Deacon
DATE: September 12, 2019
RE: Ordinance for Affordable and Supportive Housing

An ordinance and corresponding County Code will be introduced at the October 8, 2019 County Council meeting in response to new state legislation for housing. The 2019 state legislative session passed Substitute House Bill 1406 (SHB 1406) allowing local governments to take a tax credit against a portion of the state's share of local sales and use tax. The purpose of these additional monies available to local government is to fund affordable and supportive housing. SHB 1406 has been codified in RCW 82.14.540 and that statute are attached to this packet as reference.

The tax credit expires twenty years after the date on which it is first imposed. Monies must be directed to the following:

1. Assisting people who are at or below 60% of the Area Median Income (AMI)
2. Acquiring, rehabilitating, or constructing affordable housing. This may include new units of affordable housing within an existing structure, or for facilities providing supportive housing services
3. Operations and maintenance costs of new units of affordable or supportive housing
4. Rental Assistance

Whatcom County has been in discussion with all seven city partners to determine who will take this tax credit on behalf of the community, as well as expectations for the use of the additional funds. Maximum taxing capacity is available if the County takes it, and the cities have agreed to this option. The Whatcom County Housing Advisory Committee (WCHAC), formed through an Interlocal agreement among the county and all seven cities, will act as the advisory body for use of these additional funds. This Interlocal will be amended to capture this added responsibility. The Interlocal amendment will also outline membership for the WCHAC to include two representatives from the city of Bellingham. Small cities currently hold a position on the WCHAC under the Interlocal agreement and will continue to have representation.

The City Council of Bellingham passed a resolution on September 9, 2019 declaring their intent to have the County take the tax credit, providing that the county takes formal action before November 30, 2019. A copy of the city's resolution is also attached as reference.





As recipient of the tax, the County has agreed to facilitate a community-wide housing action plan, collaborating with cities, and collating and coordinating existing plans from all seven cities to identify common goals. The WCHAC will submit an annual report to the community on the activities related to this new funding source. Additionally, the county will submit an annual report on activities to Commerce as required by state statute.

State statute reads that by December 31, 2019, or within thirty days of the county authorizing the tax, *whichever is later*, the state's Department of Revenue must calculate the maximum amount of tax distributions. This calculation will be equal to the taxable retail sales within the county in state fiscal year 2019 multiplied by the tax rate of .0146 percent. It is estimated that the annual tax distribution will be between \$650,000 to \$700,000.

Exhibit A is attached and will serve as the County Code for this new funding source. The Affordable and Supportive Housing Fund will be established to account for these monies.



09/17/2019

PROPOSED BY: Health
INTRODUCTION DATE: _____

ORDINANCE NO. _____

ESTABLISHING AN AFFORDABLE AND SUPPORTIVE HOUSING FUND

WHEREAS, in the 2019 Regular Session, the Washington State Legislature approved, and the Governor signed, Substitute House Bill 1406 (Chapter 338, Laws of 2019) ("SHB 1406"); and

WHEREAS, RCW 82.14.540 was established as statute pursuant to SHB 1406; and

WHEREAS, RCW 82.14.540 authorizes the governing body of a county to impose a local sales and use tax for affordable and for supportive housing to persons whose income is at or below sixty percent of the Whatcom County area median income, with said tax expiring twenty years after the date on which the tax is first imposed; and

WHEREAS, RCW 82.14.540 authorizes use for the following: the acquisition, construction or rehabilitation of affordable housing, which may include new units of affordable housing within an existing structure or facilities providing supportive housing, and for funding the operations and maintenance costs of new units of affordable or supportive housing, and for counties with populations of 400,000 or less, for providing rental assistance to tenants; and

WHEREAS, Whatcom County is a participating county that currently imposes a qualifying local sales and use tax in accordance with requirements of RCW 82.14.540; and

WHEREAS, the City of Bellingham also has a qualifying local tax; and

WHEREAS, the City of Bellingham has stated in a resolution on September 9, 2019 that Whatcom County is authorized to retain the tax at the maximum rate and will not be a participating city by retaining the tax; and

WHEREAS, Whatcom County and the cities within the county have agreed that Whatcom County is authorized to retain the tax at the maximum rate; and

WHEREAS, Whatcom County has declared on September 10, 2019 through resolution an intent to adopt legislation to authorize the maximum capacity of the sales and use tax authorized by RCW 82.14.540; and

WHEREAS, the tax will be credited against state sales taxes collected within Whatcom County and, therefore, will not result in higher sales and use taxes within the County and will represent an additional source of funding to address housing needs in the County; and

WHEREAS, Whatcom County will facilitate a county-wide housing plan by collating the various city and county housing plans and then identifying common goals; and

WHEREAS, the Whatcom County Housing Advisory Committee was formed through an interlocal agreement among the county and the seven cities and serves in an advisory capacity to Whatcom County issues related to housing; and

1 **WHEREAS**, the current interlocal agreement establishing the Whatcom County
2 Housing Advisory Committee states membership status for cities as well as scope of the
3 committee's activities; and

4 **WHEREAS**, the city of Bellingham desires two representatives on the Whatcom
5 County Housing Advisory Committee; and

6 **WHEREAS**, an amendment to the interlocal agreement that established the
7 Whatcom County Housing Advisory Committee will reflect the change in membership to add
8 an additional representative from the city of Bellingham, as well as expanded scope as an
9 advisory body for said tax distribution; and

10 **WHEREAS**, the County has a need for supportive and affordable housing units and
11 has determined that retaining the maximum rate of the sales and use tax to address this
12 need will benefit its citizens; and

13 **WHEREAS**, the state Department of Revenue will set the maximum amount of tax
14 distributions for a participating county no later than December 31, 2019; and

15 **WHEREAS**, a new fund must be established to collect the tax distributions;

16 **NOW, THEREFORE, BE IT ORDAINED** that:

17
18 1. Whatcom County adopts Exhibit A into law.

19 2. The Affordable & Supportive Housing fund is hereby established to collect this new
20 revenue.

21 3. An annual report reflecting housing priorities, strategies, and accomplishments of
22 the entire county will be submitted by the Whatcom County Housing Advisory
23 Committee.

24 This ordinance shall take effect immediately upon its passage and adoption.

25
26 **ADOPTED** this ____ day of _____, 20____.

27
28
29
30 ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

31
32
33 _____
34 Dana Brown-Davis, Clerk of the Council

(Current Chair's Name), Council Chair

35
36 WHATCOM COUNTY EXECUTIVE
37 APPROVED AS TO FORM:

WHATCOM COUNTY, WASHINGTON

38
39 _____
40 Civil Deputy Prosecutor
41 Executive

(Current Executive's Name), County

42
43 () Approved () Denied

44
45 Date Signed: _____
46

Exhibit A

Chapter 3.45

AFFORDABLE AND SUPPORTIVE HOUSING SALES AND USE TAX FUND

Sections

3.45.010	Sales and use tax revenue
3.45.020	Administration and collection
3.45.030	Affordable and Supportive Housing Fund
3.45.040	Use of funds
3.45.050	Administration of fund
3.45.060	Whatcom County Housing Advisory Committee
3.45.070	Effective date
3.45.080	Severability

3.45.010 Sales and use tax revenue.

Pursuant to RCW 82.14.540, Whatcom County is a participating county that imposes a qualifying sales and use tax, and may retain a portion of the existing “qualifying tax” as defined in Chapter 82.14.540 RCW. The rate at which the tax will be retained is .0146 percent of the taxable retail sales within the county in state fiscal year 2019, the maximum allowable per RCW 82.14.540 for a participating county. This revenue is not a new tax to the citizens of Whatcom County. This amount is calculated by the Department of Revenue and the tax imposed by a county under this legislation expires twenty years after the date on which the tax is first imposed. (Ord. Exh.; Ord. Exh.).

3.45.020 Administration and collection.

The revenue retained by this chapter shall be administered and collected in accordance with RCW [82.14.540](#). The county executive or designee is hereby authorized and directed to execute any contracts with the Washington State Department of Revenue that may be necessary to provide for the administration or collection of the tax. (Ord. Exh.; Ord. Exh.).

3.45.030 Affordable and Supportive Housing Fund.

The Whatcom County treasurer shall deposit moneys collected pursuant to this chapter in the Affordable and Supportive Housing Fund. The treasurer may invest the fund balance and any interest earned shall be deposited into this fund. (Ord. Exh.; Ord. Exh.).

3.45.040 Use of funds.

Moneys deposited into the Affordable and Supportive Housing Fund shall be used solely for the purpose of acquiring, rehabilitating or constructing affordable housing, which may include new units of affordable housing within an existing structure or facilities providing supportive housing services under RCW 71.24.385, or for funding the operations and maintenance costs of new units of affordable or supportive

housing. Funds may also be used for rental assistance throughout Whatcom County as long as the county population remains 400,000 or less. The housing and services provided may only be provided to persons whose income is at or below 60% area median income for Whatcom County. Funds may also be used as otherwise authorized by the laws of the state of Washington as referenced in RCW 82.14.540. (Ord. Exh.; Ord. Exh).

3.45.050 Administration of fund.

The county executive shall administer the Affordable and Supportive Housing Fund with assistance of the Whatcom County Health Department, in accordance with budgetary processes and Whatcom County administrative policies and state statutes. Whatcom County must report annually to the Department of Commerce on the collection and use of the revenue. (Ord. Exh.; Ord. Exh).

3.45.060 Whatcom County Housing Advisory Committee

The Whatcom County Housing Advisory Committee serves in an advisory capacity to the county executive via Whatcom County Health Department on uses of the Affordable and Supportive Housing Fund. The county will facilitate a community-wide housing action plan with support from the committee. Collaborative efforts include convening city partners, collating existing housing plans and identifying common themes and goals. The committee will submit an annual report reflecting priorities, strategies and accomplishments related to this funding source, as well as identification of action steps for the coming year. This report will be submitted to the County Executive and community partners by the committee.

3.45.070 Effective date.

In accordance with the Whatcom County budget cycle, this chapter shall take effect upon passage. Start date for the collection of the tax credit will be determined by the state Department of Revenue. (Ord. Exh.; Ord. Exh).

3.45.080 Severability.

If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of this chapter or the application of the provisions to other persons or circumstances is not affected. (Ord. Exh.; Ord. Exh).

RCW 82.14.540**Affordable and supportive housing—Sales and use tax.**

(1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Nonparticipating city" is a city that does not impose a sales and use tax in accordance with the terms of this section.

(b) "Nonparticipating county" is a county that does not impose a sales and use tax in accordance with the terms of this section.

(c) "Participating city" is a city that imposes a sales and use tax in accordance with the terms of this section.

(d) "Participating county" is a county that imposes a sales and use tax in accordance with the terms of this section.

(e) "Qualifying local tax" means the following tax sources, if the tax source is instated no later than twelve months after July 28, 2019:

(i) The affordable housing levy authorized under RCW **84.52.105**;

(ii) The sales and use tax for housing and related services authorized under RCW **82.14.530**, provided the city has imposed the tax at a minimum or [of] at least half of the authorized rate;

(iii) The sales tax for chemical dependency and mental health treatment services or therapeutic courts authorized under RCW **82.14.460** imposed by a city; and

(iv) The levy authorized under RCW **84.55.050**, if used solely for affordable housing.

(2)(a) A county or city legislative authority may authorize, fix, and impose a sales and use tax in accordance with the terms of this section.

(b) The tax under this section is assessed on the selling price in the case of a sales tax, or value of the article used, in the case of a use tax.

(c) The rate of the tax under this section for an individual participating city and an individual participating county may not exceed:

(i) Beginning on July 28, 2019, until twelve months after July 28, 2019:

(A) 0.0073 percent for a:

(I) Participating city, unless the participating city levies a qualifying local tax; and

(II) Participating county, within the limits of nonparticipating cities within the county and within participating cities that do not currently levy a qualifying tax;

(B) 0.0146 percent for a:

(I) Participating city that currently levies a qualifying local tax;

(II) Participating city if the county in which it is located declares they will not levy the sales and use tax authorized under this section or does not adopt a resolution in accordance with this section; and

(III) Participating county within the unincorporated areas of the county and any city that declares they will not levy the sales and use tax authorized under this section or does not adopt a resolution in accordance with this section;

(ii) Beginning twelve months after July 28, 2019:

(A) 0.0073 percent for a:

(I) Participating city that is located within a participating county if the participating city is not levying a qualifying local tax; and

(II) Participating county, within the limits of a participating city if the participating city is not levying a qualifying local tax;

(B) 0.0146 percent within the limits of a:

(I) Participating city that is levying a qualifying local tax; and

(II) Participating county within the unincorporated area of the county and within the limits of any nonparticipating city that is located within the county.

(d) A county may not levy the tax authorized under this section within the limits of a participating city that levies a qualifying local tax.

(e)(i) In order for a county or city legislative authority to impose the tax under this section, the authority must adopt:

(A) A resolution of intent to adopt legislation to authorize the maximum capacity of the tax in this section within six months of July 28, 2019; and

(B) Legislation to authorize the maximum capacity of the tax in this section within one year of July 28, 2019.

(ii) Adoption of the resolution of intent and legislation requires simple majority approval of the enacting legislative authority.

(iii) If a county or city has not adopted a resolution of intent in accordance with the terms of this section, the county or city may not authorize, fix, and impose the tax.

(3) The tax imposed under this section must be deducted from the amount of tax otherwise required to be collected or paid to the department of revenue under chapter **82.08** or **82.12** RCW. The department must perform the collection of such taxes on behalf of the county or city at no cost to the county or city.

(4) By December 31, 2019, or within thirty days of a county or city authorizing the tax under this section, whichever is later, the department must calculate the maximum amount of tax distributions for each county and city authorizing the tax under this section as follows:

(a) The maximum amount for a participating county equals the taxable retail sales within the county in state fiscal year 2019 multiplied by the tax rate imposed under this section. If a county imposes a tax authorized under this section after a city located in that county has imposed the tax, the taxable retail sales within the city in state fiscal year 2019 must be subtracted from the taxable retail sales within the county for the calculation of the maximum amount; and

(b) The maximum amount for a city equals the taxable retail sales within the city in state fiscal year 2019 multiplied by the tax rate imposed under subsection (1) of this section.

(5) The tax must cease to be distributed to a county or city for the remainder of any fiscal year in which the amount of tax exceeds the maximum amount in subsection (4) of this section. The department must remit any annual tax revenues above the maximum to the state treasurer for deposit in the general fund. Distributions to a county or city meeting the maximum amount must resume at the beginning of the next fiscal year.

(6)(a) If a county has a population greater than four hundred thousand or a city has a population greater than one hundred thousand, the moneys collected or bonds issued under this section may only be used for the following purposes:

(i) Acquiring, rehabilitating, or constructing affordable housing, which may include new units of affordable housing within an existing structure or facilities providing supportive housing services under RCW **71.24.385**; or

(ii) Funding the operations and maintenance costs of new units of affordable or supportive housing.

(b) If a county has a population of four hundred thousand or less or a city has a population of one hundred thousand or less, the moneys collected under this section may only

be used for the purposes provided in (a) of this subsection or for providing rental assistance to tenants.

(7) The housing and services provided pursuant to subsection (6) of this section may only be provided to persons whose income is at or below sixty percent of the median income of the county or city imposing the tax.

(8) In determining the use of funds under subsection (6) of this section, a county or city must consider the income of the individuals and families to be served, the leveraging of the resources made available under this section, and the housing needs within the jurisdiction of the taxing authority.

(9) To carry out the purposes of this section including, but not limited to, financing loans or grants to nonprofit organizations or public housing authorities, the legislative authority of the county or city imposing the tax has the authority to issue general obligation or revenue bonds within the limitations now or hereafter prescribed by the laws of this state, and may use, and is authorized to pledge, the moneys collected under this section for repayment of such bonds.

(10) A county or city may enter into an interlocal agreement with one or more counties, cities, or public housing authorities in accordance with chapter **39.34** RCW. The agreement may include, but is not limited to, pooling the tax receipts received under this section, pledging those taxes to bonds issued by one or more parties to the agreement, and allocating the proceeds of the taxes levied or the bonds issued in accordance with such interlocal agreement and this section.

(11) Counties and cities imposing the tax under this section must report annually to the department of commerce on the collection and use of the revenue. The department of commerce must adopt rules prescribing content of such reports. By December 1, 2019, and annually thereafter, and in compliance with RCW **43.01.036**, the department of commerce must submit a report annually to the appropriate legislative committees with regard to such uses.

(12) The tax imposed by a county or city under this section expires twenty years after the date on which the tax is first imposed.

[2019 c 338 § 1.]



City of Bellingham
210 Lottie Street
Bellingham, WA 98225

MEMORANDUM

TO: MAYOR KELLI LINVILLE
FROM: TARA SUNDIN, COMMUNITY & ECONOMIC DEVELOPMENT MANAGER
CC: BRIAN HEINRICH, DEPUTY ADMINISTRATOR
SUBJECT: RESOLUTION ON SHB 1406
DATE: SEPTEMBER 9, 2019

City and Whatcom County staff have been coordinating on our approach regarding collection and administration of a sales and use tax for affordable and supportive housing under SHB 1406. Per your direction, we have been working toward a collaborative approach whereby the County would collect and administer the monies while providing the City with an opportunity for meaningful input. If the Whatcom County Council passes a resolution stating it intends to collect the sales and use tax in the full amount authorized by the legislation, we propose the following measures be included in the ordinance the County Council is required to pass:

1. Whatcom County facilitates a county-wide housing action plan. Whatcom County is aware that the cities and the county have existing housing plans. The Whatcom County Housing Advisory Committee can take the lead in convening these partners, collate the various plans and identify common themes and goals. The committee will then create an Annual Report that reflects the priorities, strategies, and accomplishments of the entire county, with acknowledgment of action steps for the coming year.
2. The Housing Advisory Committee members. Whatcom County staff are proposing that this Committee be the body that makes recommendations on the SHB 1406 funds (estimated at \$650-\$700k in 2019). Bellingham currently has one representative on this committee. Given the largest portion of sales tax revenue is generated in Bellingham, we request two City representatives be on this committee. County staff has indicated the Housing Advisory Committee is in the process of updating its by-laws and will ensure that two representatives from the City of Bellingham are members. The committee will also take this opportunity to re-evaluate membership generally to optimize input from all relevant sectors.
3. Use of SHB 1406 funds. We propose no limitation on the use of the funds authorized by the State so long as they are used consistently with the legislation.

As a reminder, in order for a city or county to impose the tax, within six months of the effective date of SHB 1406, or January 28, 2020, the governing body must adopt a resolution of intent to authorize the maximum capacity of the tax, and within twelve months of the effective date of SHB 1406, or July 28, 2020, must adopt legislation to authorize the maximum capacity of the tax.

RESOLUTION NO. _____

**A RESOLUTION OF THE BELLINGHAM CITY COUNCIL
REGARDING A SALES AND USE TAX FOR AFFORDABLE AND
SUPPORTIVE HOUSING UNDER SUBSTITUTE HOUSE BILL 1406
(CHAPTER 338, LAWS OF 2019)**

WHEREAS, in the 2019 Regular Session, the Washington State Legislature approved, and the Governor signed, Substitute House Bill 1406 (Chapter 338, Laws of 2019) (“SHB 1406”); and

WHEREAS, SHB 1406 authorizes the governing body of a city or county to impose a local sales and use tax for the acquisition, construction or rehabilitation of affordable housing or facilities providing supportive housing, for the operations and maintenance costs of affordable or supportive housing, and for certain cities and counties, providing rental assistance to tenants; and

WHEREAS, the tax will be credited against sales and use taxes collected by the State of Washington within the city and county imposing the tax, including Bellingham and, therefore, will not result in higher sales and use taxes within the city and county and will represent an additional source of funding to address housing needs in the city and county; and

WHEREAS, the tax must be used to assist persons whose income is at or below sixty percent of the county median income; and

WHEREAS, both Whatcom County (the “County”) and the City of Bellingham (the “City”) have a need for more housing units affordable to those earning at or below sixty percent of median income; and

WHEREAS, in order for a city or county to impose the tax, within six months of the effective date of SHB 1406, or January 28, 2020, the governing body must adopt a resolution of intent to authorize the maximum capacity of the tax, and within twelve months of the effective date of SHB 1406, or July 28, 2020, must adopt legislation to authorize the maximum capacity of the tax; and

WHEREAS, the City and the County are currently working on a proposal under which the County will impose the maximum amount of the tax instead of the City, and the jurisdictions will work collaboratively to ensure the funds are administered in a manner that is consistent with the attached memorandum; and

WHEREAS, the City Council now desires that the County pass a resolution stating its intent to impose a local sales and use tax as authorized by SHB 1406 as set forth herein and pass an ordinance consistent with the memorandum attached hereto.

Resolution Regarding Sales and Use Tax
under SHB 1406

(1)

City of Bellingham
City Attorney
210 Lottie Street
Bellingham, Washington 98225
360-778-8270

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BELLINGHAM:

Section 1. The City Council expresses its support for the proposal attached to this resolution.

Section 2. The City Council anticipates declaring that it will not levy the sales and use tax so that the County may proceed with the attached proposal.

Section 3. It is the intent of the City Council that following passage by the Whatcom County Council of a resolution and legislation that (1) authorizes the maximum capacity of the tax, and (2) is consistent with the attached proposal, the City Council will adopt a resolution declaring that it will not levy the tax.

Section 4. In the event the County Council does not complete the actions set forth in Section 3 of this resolution by November 30, 2019, the City intends to pass a resolution of intent to impose the tax under SHB 1406.

PASSED by the Council this _____ day of _____, 2019.

Council President

APPROVED by me this _____ day of _____, 2019.

Mayor

ATTEST: _____

Finance Director

APPROVED AS TO FORM:

Office of the City Attorney

Resolution Regarding Sales and Use Tax
under SHB 1406 (2)

City of Bellingham
City Attorney
210 Lottie Street
Bellingham, Washington 98225
360-778-8270



Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2019-508

File ID:	AB2019-508	Version:	1	Status:	Agenda Ready
File Created:	09/25/2019	Entered by:	MCaldwel@co.whatcom.wa.us		
Department:	Finance Division	File Type:	Ordinance		
Assigned to:	Council			Final Action:	
Agenda Date:	10/08/2019			Enactment #:	

Primary Contact Email: mcaldwel@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Ordinance amending the 2019 Whatcom County Budget, request no. 13, in the amount of \$375,570

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Supplemental #13 requests funding from the General Fund:

1. To move \$902,724 out of Non-Departmental wage and benefit reserves and distribute to all General Fund Departments in accordance with 2019 wage settlements and benefit adjustments.
2. To appropriate \$65,000 in Non-Departmental to fund pass-through census grant to the Opportunity Council.
3. To appropriate \$77,500 in Planning & Development Services to fund Buildable Lands program from grant funding.

From the Election Reserve Fund:

4. To appropriate \$27,378 to fund civic engagement activities and prepaid postage envelopes from state grant proceeds.

From the Public Utilities Improvement (EDI) Fund:

5. To appropriate \$205,692 to fund Housing Affordable Impact Fee Loan program.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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ORDINANCE NO.
AMENDMENT NO. 13 OF THE 2019 BUDGET

WHEREAS, the 2019-2020 budget was adopted November 20, 2018; and,

WHEREAS, changing circumstances require modifications to the approved 2019-2020 budget;
and,

WHEREAS, the modifications to the budget have been assembled here for deliberation by the
Whatcom County Council,

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that the 2019-2020
Whatcom County Budget Ordinance #2018-064 is hereby amended by adding the following additional
amounts to the 2019 budget included therein:

Fund	Expenditures	Revenues	Net Effect
General Fund			
Assessor	50,257	-	50,257
Auditor	17,216	-	17,216
Council	13,083	-	13,083
Clerk	35,312	-	35,312
District Court	56,183	-	56,183
District Court Probation	33,520	-	33,520
Executive	8,485	-	8,485
Health	144,765	-	144,765
Hearing Examiner	1,843	-	1,843
Juvenile	78,650	-	78,650
Parks	50,465	-	50,465
Planning and Development Services	102,294	-	102,294
Prosecuting Attornery	110,682	-	110,682
Public Defender	73,447	-	73,447
Sheriff	32,671	-	32,671
Superior Court	70,820	-	70,820
Treasurer	19,587	-	19,587
Extension	3,444	-	3,444
Non-Departmental	(902,724)	-	(902,724)
Non-Departmental	65,000	(65,000)	-
Planning and Development Services	77,500	(77,500)	-
Total General Fund	142,500	(142,500)	-
Election Reserve Fund	27,378	(27,378)	-
Public Utilities Improvement (EDI) Fund	205,692	-	205,692
Total Supplemental	375,570	(169,878)	205,692

ADOPTED this ____ day of _____, 2019.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Council Clerk

Chair of Council

APPROVED AS TO FORM:

() Approved () Denied



Civil Deputy Prosecutor

Jack Louws, County Executive

Date: _____

WHATCOM COUNTY				
Summary of the 2019 Supplemental Budget Ordinance No. 13				
Department/Fund	Description	Increased (Decreased) Expenditure	(Increased) Decreased Revenue	Net Effect to Fund Balance (Increase) Decrease
General Fund				
Assessor	To fund 2019 wage and benefit settlements.	50,257	-	50,257
Auditor	To fund 2019 wage and benefit settlements.	17,216	-	17,216
Council	To fund 2019 wage and benefit settlements.	13,083	-	13,083
Clerk	To fund 2019 wage and benefit settlements.	35,312	-	35,312
District Court	To fund 2019 wage and benefit settlements.	56,183	-	56,183
District Court Probation	To fund 2019 wage and benefit settlements.	33,520	-	33,520
Executive	To fund 2019 wage and benefit settlements.	8,485	-	8,485
Health	To fund 2019 wage and benefit settlements.	144,765	-	144,765
Hearing Examiner	To fund 2019 wage and benefit settlements.	1,843	-	1,843
Juvenile	To fund 2019 wage and benefit settlements.	78,650	-	78,650
Parks	To fund 2019 wage and benefit settlements.	50,465	-	50,465
Planning and Development Services	To fund 2019 wage and benefit settlements.	102,294	-	102,294
Prosecuting Attorney	To fund 2019 wage and benefit settlements.	110,682	-	110,682
Public Defender	To fund 2019 wage and benefit settlements.	73,447	-	73,447
Sheriff	To fund 2019 wage and benefit settlements.	32,671	-	32,671
Superior Court	To fund 2019 wage and benefit settlements.	70,820	-	70,820
Treasurer	To fund 2019 wage and benefit settlements.	19,587	-	19,587
Extension	To fund 2019 wage and benefit settlements.	3,444	-	3,444
Non-Departmental	To distribute 2019 General Fund wage reserve.	(902,724)	-	(902,724)
Non-Departmental	To fund pass through census grant to the Opportunity Council.	65,000	(65,000)	-
Planning and Development Services	To fund Buildable Lands program from grant funding.	77,500	(77,500)	-
Total General Fund		142,500	(142,500)	-
Election Reserve Fund				
Elections	To fund civic engagement activities from grant funding.	12,083	(12,083)	-
Elections	To fund prepaid postage envelopes from grant proceeds.	15,295	(15,295)	-
Total Election Reserve Fund		27,378	(27,378)	-
Public Utilities Improvement (EDI) Fund	To fund Housing Affordable Impact Fee Loan program.	205,692	-	205,692
Total Supplemental		375,570	(169,878)	205,692

Supplemental Budget Request

Status: Pending

Assessor

Suppl ID # 2775

Fund 1

Cost Center 300

Originator: M Caldwell

Expenditure Type: One-Time

Year 1 2019

Add'l FTE ☐

Add'l Space ☐

Priority 1

Name of Request: Trf 2019 Wage Settlements_Assessor

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$41,473
	6210	Retirement	\$5,470
	6230	Social Security	\$3,173
	6255	Other H&W Benefits	\$87
	6269	Unemployment-Interfund	\$54
	Request Total		\$50,257

1a. Description of request:

Transfer 2019 wage settlements from Non Departmental reserves to departments. See companion Non Departmental supplemental #2776.

1b. Primary customers:

2. Problem to be solved:

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:

4b. Measures:

5a. Other Departments/Agencies:

5b. Name the person in charge of implementation and what they are responsible for:

6. Funding Source:

General Fund

Supplemental Budget Request

Status: Pending

Auditor

Suppl ID # 2905 Fund 1 Cost Center Originator: M Caldwell

Expenditure Type: One-Time Year 1 2019 Add'l FTE ☐ Add'l Space ☐ Priority 1

Name of Request: Trf 2019 Wage Settlements_Auditor

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$14,171
	6210	Retirement	\$1,906
	6230	Social Security	\$1,085
	6255	Other H&W Benefits	\$36
	6269	Unemployment-Interfund	\$18
	Request Total		\$17,216

1a. Description of request:

Transfer 2019 wage settlements from Non Departmental reserves to departments. See companion Non Departmental supplemental #2776.

1b. Primary customers:

2. Problem to be solved:

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:

4b. Measures:

5a. Other Departments/Agencies:

5b. Name the person in charge of implementation and what they are responsible for:

6. Funding Source:

General Fund

Supplemental Budget Request

Status: Pending

Council

Suppl ID # 2778

Fund 1

Cost Center 1100

Originator: M Caldwell

Expenditure Type: One-Time

Year 1

2019

Add'l FTE ☐

Add'l Space ☐

Priority

1

Name of Request: Trf 2019 Wage Settlements_Council

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$10,622
	6210	Retirement	\$1,578
	6230	Social Security	\$813
	6255	Other H&W Benefits	\$56
	6269	Unemployment-Interfund	\$14
	Request Total		\$13,083

1a. Description of request:

Transfer 2019 wage settlements from Non Departmental reserves to departments. See companion Non Departmental supplemental #2776.

1b. Primary customers:

2. Problem to be solved:

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:

4b. Measures:

5a. Other Departments/Agencies:

5b. Name the person in charge of implementation and what they are responsible for:

6. Funding Source:

General Fund

Supplemental Budget Request

Status: Pending

County Clerk

Suppl ID # 2779

Fund 1

Cost Center

Originator: M Caldwell

Expenditure Type: One-Time

Year 1

2019

Add'l FTE ☐

Add'l Space ☐

Priority

1

Name of Request: Trf 2019 Wage Settlements_Clerk

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$29,194
	6210	Retirement	\$3,795
	6230	Social Security	\$2,234
	6255	Other H&W Benefits	\$51
	6269	Unemployment-Interfund	\$38
	Request Total		\$35,312

1a. Description of request:

Transfer 2019 wage settlements from Non Departmental reserves to departments. See companion Non Departmental supplemental #2776.

1b. Primary customers:

2. Problem to be solved:

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:

4b. Measures:

5a. Other Departments/Agencies:

5b. Name the person in charge of implementation and what they are responsible for:

6. Funding Source:

General Fund

Supplemental Budget Request

Status: Pending

District Court

Suppl ID # 2780

Fund 1

Cost Center 1300

Originator: M Caldwell

Expenditure Type: One-Time

Year 1

2019

Add'l FTE ☐

Add'l Space ☐

Priority

1

Name of Request: Trf 2019 Wage Settlements_District Ct

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$46,006
	6210	Retirement	\$6,489
	6230	Social Security	\$3,519
	6255	Other H&W Benefits	\$109
	6269	Unemployment-Interfund	\$60
	Request Total		\$56,183

1a. Description of request:

Transfer 2019 wage settlements from Non Departmental reserves to departments. See companion Non Departmental supplemental #2776.

1b. Primary customers:

2. Problem to be solved:

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:

4b. Measures:

5a. Other Departments/Agencies:

5b. Name the person in charge of implementation and what they are responsible for:

6. Funding Source:

General Fund

Supplemental Budget Request

Status: Pending

District Court Probation

Suppl ID # 2781

Fund 1

Cost Center 1310

Originator: M Caldwell

Expenditure Type: One-Time

Year 1

2019

Add'l FTE ☐

Add'l Space ☐

Priority 1

Name of Request: Trf 2019 Wage Settlements_Probation

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$27,674
	6210	Retirement	\$3,637
	6230	Social Security	\$2,117
	6255	Other H&W Benefits	\$56
	6269	Unemployment-Interfund	\$36
	Request Total		\$33,520

1a. Description of request:

Transfer 2019 wage settlements from Non Departmental reserves to departments. See companion Non Departmental supplemental #2776.

1b. Primary customers:

2. Problem to be solved:

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:

4b. Measures:

5a. Other Departments/Agencies:

5b. Name the person in charge of implementation and what they are responsible for:

6. Funding Source:

General Fund

Supplemental Budget Request

Status: Pending

Executive

Suppl ID # 2782

Fund 1

Cost Center 1200

Originator: M Caldwell

Expenditure Type: One-Time Year 1 2019 Add'l FTE ☐ Add'l Space ☐ Priority 1

Name of Request: Trf 2019 Wage Settlements_Executive

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$6,899
	6210	Retirement	\$1,025
	6230	Social Security	\$528
	6255	Other H&W Benefits	\$24
	6269	Unemployment-Interfund	\$9
	Request Total		\$8,485

1a. Description of request:

Transfer 2019 wage settlements from Non Departmental reserves to departments. See companion Non Departmental supplemental #2776.

1b. Primary customers:

2. Problem to be solved:

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:

4b. Measures:

5a. Other Departments/Agencies:

5b. Name the person in charge of implementation and what they are responsible for:

6. Funding Source:

General Fund

Supplemental Budget Request

Status: Pending

Health

Administration

Suppl ID # 2783

Fund 1

Cost Center

Originator: M Caldwell

Expenditure Type: One-Time

Year 1 2019

Add'l FTE ☐

Add'l Space ☐

Priority 1

Name of Request: Trf 2019 Wage Settlements_Health

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$128,272
	6195	Direct Billing Offset	(\$10,887)
	6210	Retirement	\$17,106
	6230	Social Security	\$9,814
	6255	Other H&W Benefits	\$294
	6269	Unemployment-Interfund	\$166
	Request Total		\$144,765

1a. Description of request:

Transfer 2019 wage settlements from Non Departmental reserves to departments. See companion Non Departmental supplemental #2776. \$10,887 will be charged out to other Health Department Funds based on where employees charge their time.

1b. Primary customers:

2. Problem to be solved:

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:

4b. Measures:

5a. Other Departments/Agencies:

5b. Name the person in charge of implementation and what they are responsible for:

6. Funding Source:

General Fund

Supplemental Budget Request

Status: Pending

Hearing Examiner

Suppl ID # 2784 Fund 1 Cost Center 1600 Originator: M Caldwell

Expenditure Type: One-Time Year 1 2019 Add'l FTE ☐ Add'l Space ☐ Priority 1

Name of Request: Trf 2019 Wage Settlements_Hearing Examiner

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$1,526
	6210	Retirement	\$196
	6230	Social Security	\$117
	6255	Other H&W Benefits	\$2
	6269	Unemployment-Interfund	\$2
	Request Total		\$1,843

1a. Description of request:

Transfer 2019 wage settlements from Non Departmental reserves to departments. See companion Non Departmental supplemental #2776.

1b. Primary customers:

2. Problem to be solved:

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:

4b. Measures:

5a. Other Departments/Agencies:

5b. Name the person in charge of implementation and what they are responsible for:

6. Funding Source:

General Fund

Supplemental Budget Request

Status: Pending

Juvenile

Administration

Suppl ID # 2785

Fund 1

Cost Center

Originator: M Caldwell

Expenditure Type: One-Time

Year 1 2019

Add'l FTE ☐

Add'l Space ☐

Priority 1

Name of Request: Trf 2019 Wage Settlements_Juvenile

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$64,992
	6210	Retirement	\$8,481
	6230	Social Security	\$4,973
	6255	Other H&W Benefits	\$118
	6269	Unemployment-Interfund	\$86
	Request Total		\$78,650

1a. Description of request:

Transfer 2019 wage settlements from Non Departmental reserves to departments. See companion Non Departmental supplemental #2776.

1b. Primary customers:

2. Problem to be solved:

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:

4b. Measures:

5a. Other Departments/Agencies:

5b. Name the person in charge of implementation and what they are responsible for:

6. Funding Source:

General Fund

Supplemental Budget Request

Status: Pending

Parks & Recreation

Suppl ID # 2786 Fund 1 Cost Center Originator: M Caldwell

Expenditure Type: One-Time Year 1 2019 Add'l FTE ☐ Add'l Space ☐ Priority 1

Name of Request: Trf 2019 Wage Settlements_Parks

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$41,581
	6210	Retirement	\$5,560
	6230	Social Security	\$3,181
	6255	Other H&W Benefits	\$89
	6269	Unemployment-Interfund	\$54
	Request Total		\$50,465

1a. Description of request:

Transfer 2019 wage settlements from Non Departmental reserves to departments. See companion Non Departmental supplemental #2776.

1b. Primary customers:

2. Problem to be solved:

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:

4b. Measures:

5a. Other Departments/Agencies:

5b. Name the person in charge of implementation and what they are responsible for:

6. Funding Source:

General Fund

Supplemental Budget Request

Status: Pending

Planning & Development Services

Administration

Suppl ID # 2787

Fund 1

Cost Center

Originator: M Caldwell

Expenditure Type: One-Time

Year 1

2019

Add'l FTE ☐

Add'l Space ☐

Priority 1

Name of Request: Trf 2019 Wage Settlements_PDS

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$84,481
	6210	Retirement	\$11,086
	6230	Social Security	\$6,463
	6255	Other H&W Benefits	\$154
	6269	Unemployment-Interfund	\$110
	Request Total		\$102,294

1a. Description of request:

Transfer 2019 wage settlements from Non Departmental reserves to departments. See companion Non Departmental supplemental #2776.

1b. Primary customers:

2. Problem to be solved:

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:

4b. Measures:

5a. Other Departments/Agencies:

5b. Name the person in charge of implementation and what they are responsible for:

6. Funding Source:

General Fund

Supplemental Budget Request

Status: Pending

Prosecuting Attorney

Suppl ID # 2788

Fund 1

Cost Center

Originator: M Caldwell

Expenditure Type: One-Time Year 1 2019 Add'l FTE ☐ Add'l Space ☐ Priority 1

Name of Request: Trf 2019 Wage Settlements_Pro Pros Attorney

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$90,441
	6210	Retirement	\$12,870
	6230	Social Security	\$6,919
	6255	Other H&W Benefits	\$335
	6269	Unemployment-Interfund	\$117
	Request Total		\$110,682

1a. Description of request:

Transfer 2019 wage settlements from Non Departmental reserves to departments. See companion Non Departmental supplemental #2776.

1b. Primary customers:

2. Problem to be solved:

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:

4b. Measures:

5a. Other Departments/Agencies:

5b. Name the person in charge of implementation and what they are responsible for:

6. Funding Source:

General Fund

Supplemental Budget Request

Status: Pending

Public Defender

Suppl ID # 2789

Fund 1

Cost Center

Originator: M Caldwell

Expenditure Type: One-Time Year 1 2019 Add'l FTE ☐ Add'l Space ☐ Priority 1

Name of Request: Trf 2019 Wage Settlements_Public Defender

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$59,992
	6210	Retirement	\$8,562
	6230	Social Security	\$4,589
	6255	Other H&W Benefits	\$226
	6269	Unemployment-Interfund	\$78
	Request Total		\$73,447

1a. Description of request:

Transfer 2019 wage settlements from Non Departmental reserves to departments. See companion Non Departmental supplemental #2776.

1b. Primary customers:

2. Problem to be solved:

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:

4b. Measures:

5a. Other Departments/Agencies:

5b. Name the person in charge of implementation and what they are responsible for:

6. Funding Source:

General Fund

Supplemental Budget Request

Status: Pending

Sheriff

Administration

Suppl ID # 2790

Fund 1

Cost Center

Originator: M Caldwell

Expenditure Type: One-Time

Year 1

2019

Add'l FTE ☐

Add'l Space ☐

Priority

1

Name of Request: Trf 2019 Wage Settlements_Sheriff

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$26,943
	6210	Retirement	\$3,570
	6230	Social Security	\$2,061
	6255	Other H&W Benefits	\$61
	6269	Unemployment-Interfund	\$36
	Request Total		\$32,671

1a. Description of request:

Transfer 2019 wage settlements from Non Departmental reserves to departments. See companion Non Departmental supplemental #2776.

1b. Primary customers:

2. Problem to be solved:

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:

4b. Measures:

5a. Other Departments/Agencies:

5b. Name the person in charge of implementation and what they are responsible for:

6. Funding Source:

General Fund

Supplemental Budget Request

Status: Pending

Superior Court

Suppl ID # 2791

Fund 1

Cost Center

Originator: M Caldwell

Expenditure Type: One-Time Year 1 2019 Add'l FTE ☐ Add'l Space ☐ Priority 1

Name of Request: Trf 2019 Wage Settlements_Superior Ct

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$61,088
	6210	Retirement	\$6,302
	6230	Social Security	\$3,266
	6255	Other H&W Benefits	\$109
	6269	Unemployment-Interfund	\$55
	Request Total		\$70,820

1a. Description of request:

Transfer 2019 wage settlements from Non Departmental reserves to departments. See companion Non Departmental supplemental #2776.

1b. Primary customers:

2. Problem to be solved:

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:

4b. Measures:

5a. Other Departments/Agencies:

5b. Name the person in charge of implementation and what they are responsible for:

6. Funding Source:

General Fund

Supplemental Budget Request

Status: Pending

Treasurer

Suppl ID # 2792

Fund 1

Cost Center 3300

Originator: M Caldwell

Expenditure Type: One-Time

Year 1 2019

Add'l FTE ☐

Add'l Space ☐

Priority 1

Name of Request: Trf 2019 Wage Settlements_Treasurer

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$16,164
	6210	Retirement	\$2,131
	6230	Social Security	\$1,237
	6255	Other H&W Benefits	\$34
	6269	Unemployment-Interfund	\$21
	Request Total		\$19,587

1a. Description of request:

Transfer 2019 wage settlements from Non Departmental reserves to departments. See companion Non Departmental supplemental #2776.

1b. Primary customers:

2. Problem to be solved:

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:

4b. Measures:

5a. Other Departments/Agencies:

5b. Name the person in charge of implementation and what they are responsible for:

6. Funding Source:

General Fund

Supplemental Budget Request

Status: Pending

WSU Extension

Suppl ID # 2793 Fund 1 Cost Center 2000 Originator: M Caldwell

Expenditure Type: One-Time Year 1 2019 Add'l FTE ☐ Add'l Space ☐ Priority 1

Name of Request: Trf 2019 Wage Settlements_Extension

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$2,851
	6210	Retirement	\$367
	6230	Social Security	\$218
	6255	Other H&W Benefits	\$4
	6269	Unemployment-Interfund	\$4
	Request Total		\$3,444

1a. Description of request:

Transfer 2019 wage settlements from Non Departmental reserves to departments. See companion Non Departmental supplemental #2776.

1b. Primary customers:

2. Problem to be solved:

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:

4b. Measures:

5a. Other Departments/Agencies:

5b. Name the person in charge of implementation and what they are responsible for:

6. Funding Source:

General Fund

Supplemental Budget Request

Status: Pending

Non-Departmental

Suppl ID # 2776 Fund 1 Cost Center 4075 Originator: M Caldwell

Expenditure Type: One-Time Year 1 2019 Add'l FTE ☐ Add'l Space ☐ Priority 1

Name of Request: Trf 2019 Wage Settlements to Depts

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	(\$902,724)
	Request Total		(\$902,724)

1a. Description of request:

Transfer 2019 wage settlements from Non Departmental reserves to General Fund departments. See companion supplementals for each General Fund department.

1b. Primary customers:

2. Problem to be solved:

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:

4b. Measures:

5a. Other Departments/Agencies:

5b. Name the person in charge of implementation and what they are responsible for:

6. Funding Source:

General Fund

Supplemental Budget Request

Status: Pending

Executive: *Non Departmental*

Suppl ID # 2860

Fund 1

Cost Center 4041

Originator: Suzanne Mildner

Year 1 2019

Add'l FTE ☐

Priority 1

Name of Request: *OppCo OFM Census Grant 19-20*

X

Department Head Signature (Required on Hard Copy Submission)

Date

9-24-19

Costs:	Object	Object Description	Amount Requested
	4334.0040	OFM Grant	(\$65,000)
	6610	Contractual Services	\$65,000
	Request Total		\$0

1a. Description of request:

Washington State Office of Financial Management has requested assistance from Opportunity Council to extend their work with census tracks, and fill a gap in the 2020 census data collection and outreach in the northwest region of the State. In order to access funding to complete this work, Opportunity Council must enter into an interagency agreement with the county, and funds will pass through to Opportunity Council. The grant will provide education to Washington residents and ensure maximum response for the 2020 census.

1b. Primary customers:

Whatcom County, Skagit County and San Juan County

2. Problem to be solved:

In order to gain access to this State funding, the county must enter into an interagency agreement with the State, and Opportunity Council must enter into a Subrecipient Agreement with the county in order to facilitate pass-through of the funds. The work involves outreach and education, as well as census support and trainings.

3a. Options / Advantages:

N/A

3b. Cost savings:

N/A

4a. Outcomes:

There are specific deliverables required for the completion of the contract: provide quarterly reports on results of workshops, trainings, outreach kit distribution, a report on the Questionnaire Assistance Centers in the tri-county area, and report on radio and website advertising outreach.

4b. Measures:

Quarterly reports will be submitted to the county and to the Office of Financial Management.

5a. Other Departments/Agencies:

Opportunity Council - staff resources will be mobilized

5b. Name the person in charge of implementation and what they are responsible for:

Sheri Emerson, Associate Director of Opportunity Council

6. Funding Source:

State Grant

Supplemental Budget Request

Status: Pending

Planning & Development Services

Planning

Suppl ID # 2863

Fund 1

Cost Center 2528

Originator: Matt Aamot

Year 1 2019

Add'l FTE ☐

Priority 1

Name of Request: Review & Evaluation (Buildable Lands) Funding

X



9-19-19

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	4334.0421	Commerce Grant	(\$77,500)
	7210	Intergov Prof Svcs	\$77,500
	Request Total		\$0

1a. Description of request:

The Washington State Legislature approved a bill in the 2017 legislative session that imposes new land use planning requirements on Whatcom County and the cities. The County and cities will now be required to review past development patterns and compare them to the planned growth envisioned in the Comprehensive Plan. If the actual growth deviates from planned growth, then local jurisdictions will need to take reasonable measures to address the situation. This process will include developing a public participation approach, County/City coordination, countywide planning policies, data collection and analysis, developing a methodology to conduct the buildable lands evaluation, developing preliminary draft housing element revisions in the Comprehensive Plan (if necessary), and issuing a "Review and Evaluation Program" report by June 30, 2021.

1b. Primary customers:

The public and partner cities.

2. Problem to be solved:

The Washington State Legislature approved Engrossed Second Substitute Senate Bill 5254 in 2017. This new legislation, relating to the Growth Management Act and Buildable Lands, imposes new requirements on Whatcom County and the cities. This request is to utilize grant money from the State to facilitate compliance with this new law.

3a. Options / Advantages:

The State has allocated:

o\$225,000 to Whatcom County for state fiscal year 2020 (July 1, 2019— June 30, 2020); and

o\$225,000 to Whatcom County for state fiscal year 2021 (July 1, 2020— June 30, 2021);

These funds will be used for reimbursing County staff time and other expenses, reimbursing city expenses, and consultant work on the buildable lands program. The other option would be for the County (and cities) to fund the work without assistance of the State.

3b. Cost savings:

The State allocated a total of \$450,000 to Whatcom County. Accepting these state funds will save the County and cities from spending local funds to comply with this new state mandate.

4a. Outcomes:

•What outcomes will be delivered and when?

Task # 1 - Public Participation – Develop and implement public participation approach for the Review and Evaluation Program.

Task # 2 - City/County Coordination - County/City collaboration to develop a unified Review and

Supplemental Budget Request

Status: Pending

Planning & Development Services

Planning

Suppl ID # 2863

Fund 1

Cost Center 2528

Originator: Matt Aamot

Evaluation Program approach.

Task # 3 - Countywide Planning Policies - Develop and adopt County-wide Planning Policies (CWPPs), in consultation with cities, to establish the buildable lands program.

Task # 4 - Data Collection and Analysis - Collect annual data to the extent necessary to assess achieved development densities and land suitable for development and conduct preliminary analysis of data.

Task # 5 - Methodology - Develop Whatcom County Review and Evaluation (Buildable Lands) Program Methodology.

Task # 6 - Review and Evaluation Program Report – Issue Review and Evaluation Program Report required by RCW 36.70A.215 by June 30, 2021.

Task # 7 - Preliminary draft housing element revisions.

Task # 8 - On-Going Implementation - Develop procedures and estimate resources needed for on-going implementation of the Review and Evaluation Program.

Task # 9 - Project management

All tasks will be completed between July 1, 2019 and June 30, 2021.

4b. Measures:

Work products including public participation approach, interlocal agreement(s), countywide planning policies, development and regulatory data collected in spreadsheets, methodology, Review and Evaluation Program Report, preliminary draft housing element amendments, and user manual for the program.

5a. Other Departments/Agencies:

The County's Information Technology Department will provide permit data reports.

5b. Name the person in charge of implementation and what they are responsible for:

Ben Glassett - Producing permit reports.

6. Funding Source:

The State Department of Commerce (state grant)

Supplemental Budget Request

Status: Pending

Auditor

Suppl ID # 2877

Fund 109

Cost Center 10924

Originator: Diana Bradrick

Year 1 2019

Add'l FTE ☐

Priority 2

Name of Request: State Grant Civic Engagement

X



9/19/19
Date

Department Head Signature (Required on Hard Copy Submission)

Costs:	Object	Object Description	Amount Requested
	4334.0031	State Elections Grant	(\$12,083)
	6810	Advertising	\$12,083
	Request Total		\$0

1a. Description of request:

Whatcom County received a grant from the state for civic engagement. This grant would fund voter outreach and advertising in order to educate voters about improvements in regard to state Election Laws that will impact the 2019 and 2020 elections. Funds would be used for media advertising (print, radio, and social media), brochures, posters and similar materials.

1b. Primary customers:

Voters of Whatcom County

2. Problem to be solved:

The Washington State Legislature appropriated funds and mandated that the Office of the Secretary of State and County Auditor collaborate to increase voter participation and educate voters.

3a. Options / Advantages:

There are no other options.

3b. Cost savings:

There are no cost savings.

4a. Outcomes:

Printing of materials will be completed by the end of the year, and a contract for media services will be executed for advertisements over a period of months leading up to the 2020 Presidential election.

4b. Measures:

The print materials will be distributed and the media ads will take place.

5a. Other Departments/Agencies:

None

5b. Name the person in charge of implementation and what they are responsible for:

None

6. Funding Source:

State grant funds.

Supplemental Budget Request

Status: Pending

Auditor

Suppl ID # 2874

Fund 109

Cost Center 10923


Originator: Diana Bradrick

Year 1 2019

Add'l FTE ☐

Priority 1

Name of Request: State Grant Pre-Paid Postage

X 

9/19/19
Date

Department Head Signature (Required on Hard Copy Submission)

Costs:	Object	Object Description	Amount Requested
	4334.0031	State Elections Grant	(\$15,295)
	6710	Postage/Shipping/Freight	\$15,295
	Request Total		\$0

1a. Description of request:

Whatcom County received a grant from the state to pay for the return postage related to the new mandate to provide prepaid postage envelopes for elections. The County paid \$15,295 for prepaid postage for the February special and August primary elections to be funded by the state grant

1b. Primary customers:

Voters of Whatcom County

2. Problem to be solved:

The State Legislature passed legislation requiring pre-paid return envelopes for elections ballots.

3a. Options / Advantages:

There are no other options

3b. Cost savings:

There are no cost savings.

4a. Outcomes:

Pre-paid postage was provided for return ballots delivered through USPS for the special and primary elections.

4b. Measures:

Pre-paid postage was provided for all ballots delivered via USPS.

5a. Other Departments/Agencies:

None

5b. Name the person in charge of implementation and what they are responsible for:

None

6. Funding Source:

Grant revenue for prepaid postage.

Supplemental Budget Request

Status: Pending

Non-Departmental

Suppl ID # 2904

Fund 332

Cost Center 332213

Originator: T. Helms

Year 1 2019

Add'l FTE ☐

Priority 1

Name of Request: **Housing Affordable Impact Fee Loan Program**

X

Department Head Signature (Required on Hard Copy Submission)

9/25/19

Date

Costs:	Object	Object Description	Amount Requested
	7220	Intergov Subsidies	\$205,692
	Request Total		\$205,692

1a. Description of request:

This budget supplemental will provide the remaining committed balance of \$206,692 to the 2019 budget. An additional commitment of \$500k will be brought forward in 2020.

1b. Primary customers:

Whatcom County Citizens and city governments.

2. Problem to be solved:

The County's Housing Affordability through the Workforce (HATWF) program was funded from local RCW 82.13.370 sales tax revenue, known locally as the Economic Development Investment (EDI) Program. The original \$1.2M was increased by \$500,000 in 2017. This remaining commitment is anticipated to be expended by year end.

3a. Options / Advantages:

The County Executive is supportive of the HATWF program as an investment in the construction of public facilities and in the construction of new homes.

3b. Cost savings:

n/a

4a. Outcomes:

Anticipated 2019 loans will be funded with the remaining funding committed in 2017 through Ordinance 2018-008

4b. Measures:

10 new loans will be awarded as anticipated in November, 2019.

5a. Other Departments/Agencies:

n/a

5b. Name the person in charge of implementation and what they are responsible for:

6. Funding Source:

Public Utilities Improvement Fund



Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2019-495

File ID:	AB2019-495	Version:	1	Status:	Agenda Ready
File Created:	09/23/2019	Entered by:	RMcconne@co.whatcom.wa.us		
Department:	Public Works Department	File Type:	Ordinance Requiring a Public Hearing		
Assigned to:	Council			Final Action:	
Agenda Date:	10/08/2019			Enactment #:	

Primary Contact Email: sdraper@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Ordinance reauthorizing a Golf Cart Zone on certain roads in the Birch Bay Area

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attached memo

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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MEMORANDUM

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

THROUGH: Jon Hutchings, Public Works Director/ *JH*

FROM: Joseph P. Rutan, P.E., County Engineer/Assistant Director *JLR*

DATE: September 24, 2019

SUBJECT: Ordinance reauthorizing a Golf Cart Zone on certain roads in the Birch Bay Area

Requested Action

At the request of the Whatcom County Council, the Public Works Department respectfully submits the attached ordinance reauthorizing a Golf Cart Zone on certain roads in the Birch Bay area.

Background and Purpose

On May 22, 2018, the Whatcom County Council adopted Ordinance 2018-023 creating a Golf Cart Zone on certain roads in the Birch Bay area. This ordinance is set to expire on October 31, 2019. Public Works has reviewed all collisions within the Golf Cart Zone following the adoption of the ordinance and found that none involved golf carts. The Whatcom County Sheriff's Department supports reauthorizing this ordinance.

Information

Creation of golf cart zones is allowed per RCW 46.08.175 while "golf carts" are defined under RCW 46.04.1945 (see attached). RCW 46.08.175 requires that a roadway designated as a "Golf Cart Zone" have a posted speed limit of 25 MPH or less. All roads within this zone have posted speed limits of 25 MPH or less.

Please contact Joe Rutan at extension 6219 with any questions regarding this ordinance.

PROPOSED BY: Public Works-Engineering
INTRODUCTION DATE: _____

ORDINANCE NO. _____

REAUTHORIZING A GOLF CART ZONE ON CERTAIN ROADS IN THE BIRCH BAY AREA

WHEREAS, Birch Bay area residents have requested to operate golf carts in the Birch Bay area; and

WHEREAS, RCW 46.08.175 allows for the creation of golf cart zones; and

WHEREAS, the Birch Bay Chamber of Commerce supports the reauthorization of a golf cart zone in the Birch Bay area; and

WHEREAS, the speed limit on all of the roads in the proposed Golf Cart Zone are 25 MPH or less; and

WHEREAS, the operators of golf carts shall be licensed motor vehicle operators as required by RCW 46.20.001.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that a Golf Cart Zone is hereby established on Birch Bay Drive and all county roads posted 25 MPH or less that lead to, and are contiguous with, Birch Bay Drive;

BE IT FURTHER ORDAINED, that the County Engineer is hereby directed to install the appropriate signs and the Whatcom County Sheriff and the Washington State Patrol be notified by a copy of this ordinance.

ADOPTED this ____ day of _____, 2019.

ATTEST:

Dana Brown-Davis, Clerk of the Council

APPROVED AS TO FORM:

 9/26/19

Christopher Quinn,
Civil Deputy Prosecutor

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Rud Browne, Council Chair

WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON

Jack Louws, County Executive

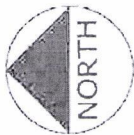
() Approved () Denied

Date Signed: _____

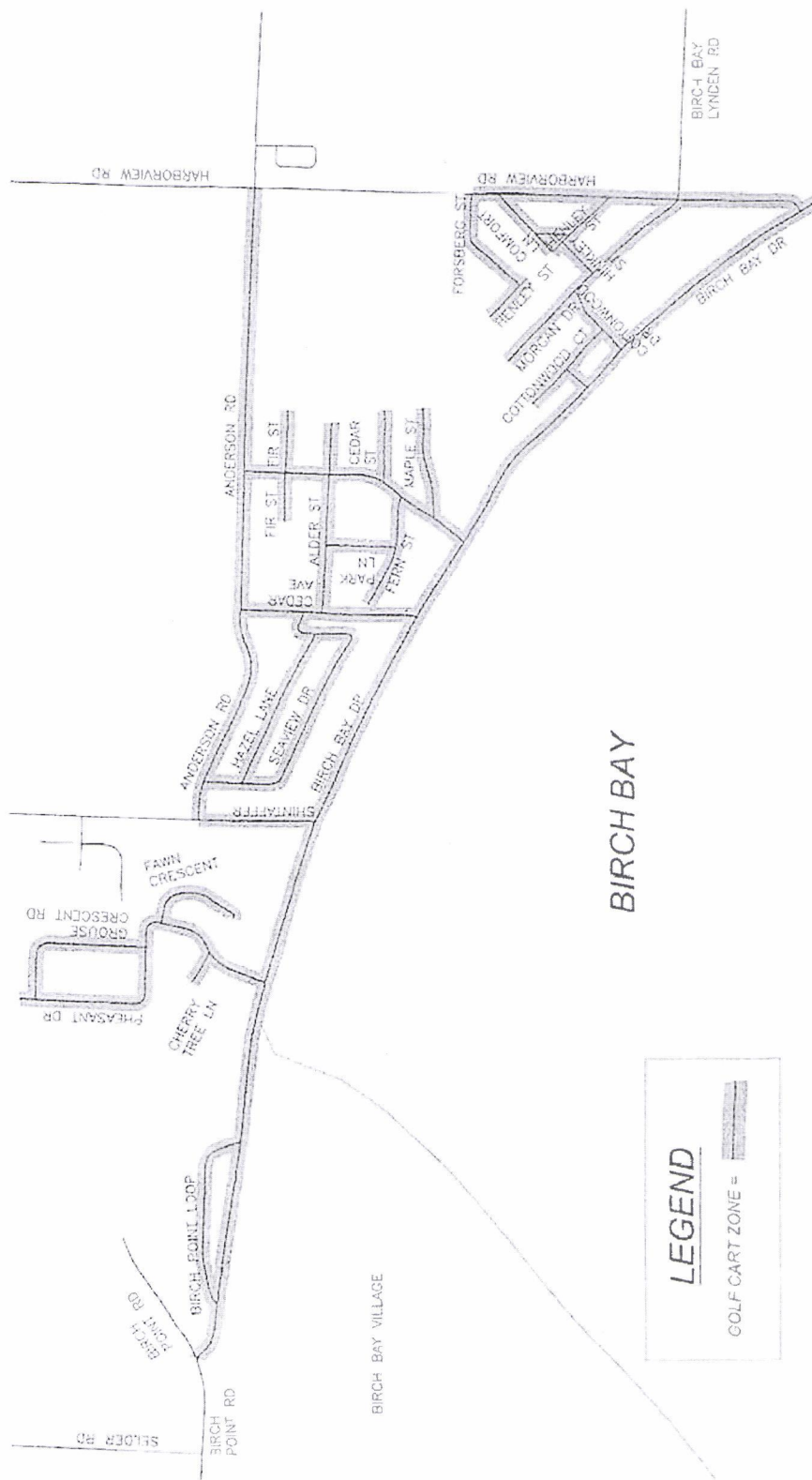


ATTACHMENT "A"

DEPARTMENT OF PUBLIC WORKS
322 N. COMMERCIAL ST., SUITE 301
BELLINGHAM, WA 98225
(360) 778-6219



SITUATE IN A PORTION OF SECTION 24
TOWNSHIP 40 NORTH, RANGE 1 WEST, W.M.
WHATCOM COUNTY, WASHINGTON



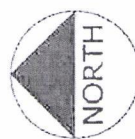
SEE ATTACHMENT "B"



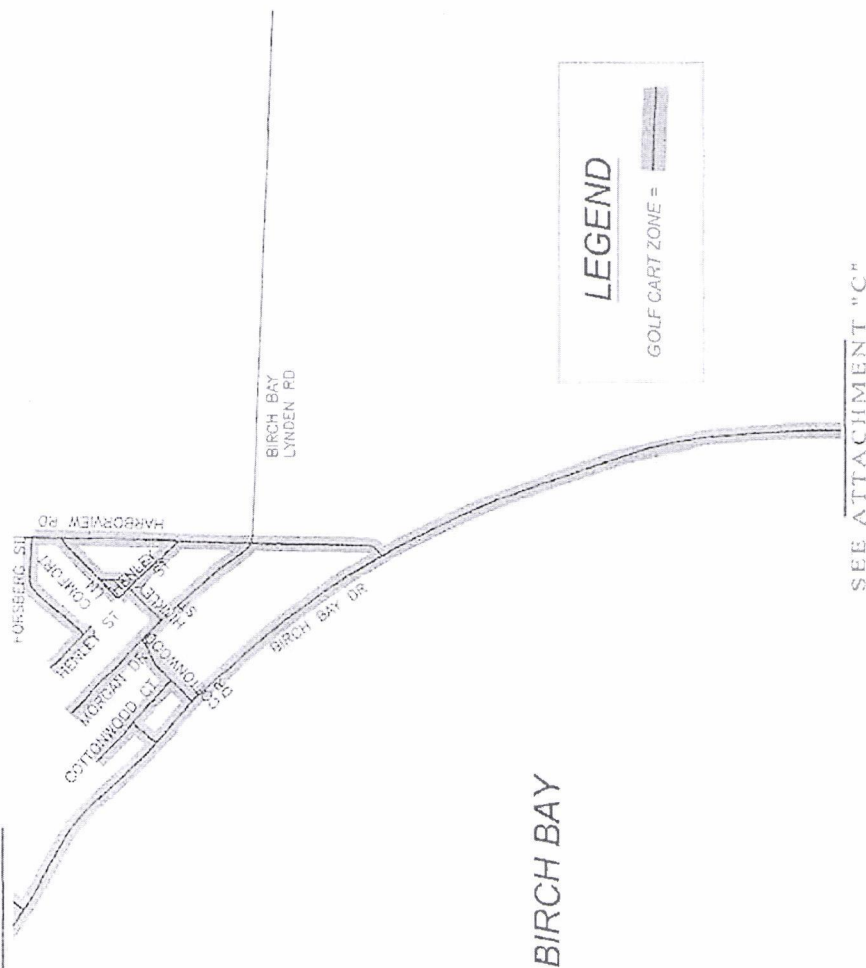
ATTACHMENT "B"

DEPARTMENT OF PUBLIC WORKS
322 N. COMMERCIAL ST., SUITE 301
BELLINGHAM, WA 98225
1-800-378-6210

SITUATE IN A PORTION OF SECTION 24
TOWNSHIP 40 NORTH, RANGE 1 WEST, W.M.
WHATCOM COUNTY, WASHINGTON

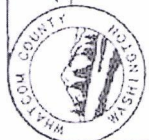


SEE ATTACHMENT "A"



LEGEND

GOLF CART ZONE =



ATTACHMENT "C"

DEPARTMENT OF PUBLIC WORKS
322 N. COMMERCIAL ST., SUITE 301
BELLINGHAM, WA 98225
(360) 778-6210

SEE ATTACHMENT "B"

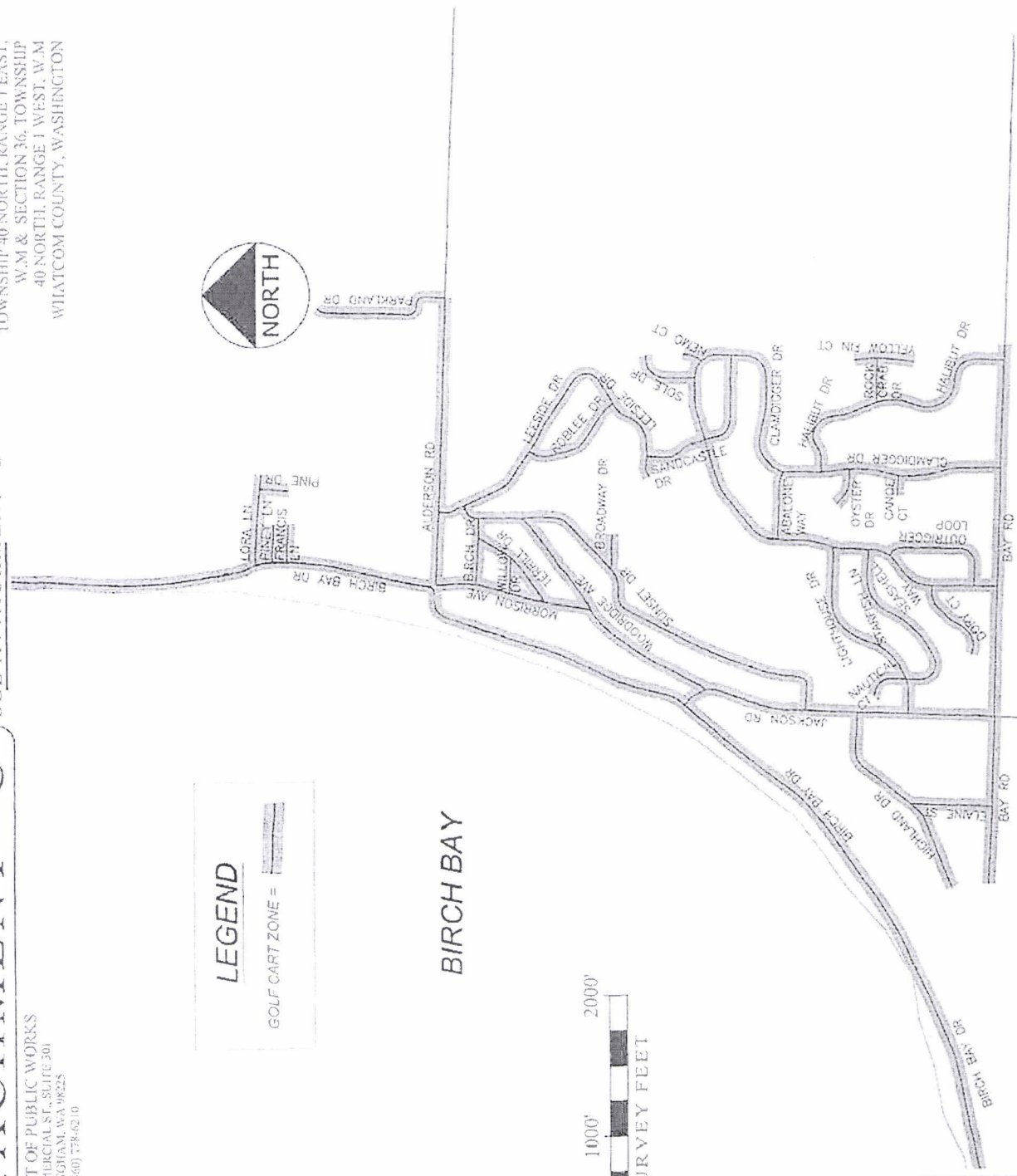
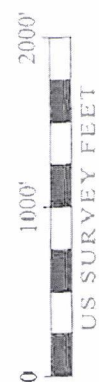
SITUATE IN A PORTION OF SECTION 31
TOWNSHIP 40 NORTH, RANGE 1 EAST,
W.M. & SECTION 36, TOWNSHIP
40 NORTH, RANGE 1 WEST, W.M.
WHATCOM COUNTY, WASHINGTON

LEGEND

GOLF CART ZONE =



BIRCH BAY



SEE ATTACHMENT "D"

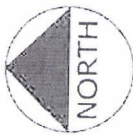
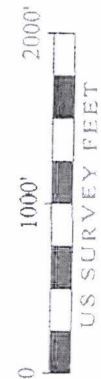


ATTACHMENT "D"

DEPARTMENT OF PUBLIC WORKS
322 N. COMMERCIAL ST., SUITE 301
BELLINGHAM, WA 98225
(360) 738-6210

SITUATE IN A PORTION OF SECTION 2
TOWNSHIP 39 NORTH, RANGE 1 WEST, WM
WHATCOM COUNTY, WASHINGTON

SEE ATTACHMENT "C"



LEGEND

GOLF CART ZONE =



BIRCH BAY



Jason Ardt

From: Kevin Moyes
Sent: Wednesday, September 11, 2019 11:37 AM
To: David Hower; Mike Donahue; Jason Ardt
Subject: FW: Birch Bay Golf Cart Zone Ordinance
Attachments: image001.png

FYI,

Pretty much same thing we discussed yesterday.

-----Original Message-----

From: George Ratayczak
Sent: Tuesday, September 10, 2019 10:19 PM
To: Kevin Moyes
Subject: RE: Birch Bay Golf Cart Zone Ordinance

Kevin,

I have not seen any great issues with the Golf Cart Zone other than in a few areas it should be expanded a block or so to include a couple of the major campground entrances the carts come from.

The one issue that did come up was the original email referencing the golf cart zone indicates no night time driving but the actual county ordinance does not specifically address this. The way I read the state law RCW 48.08.175 (5) the county MAY limit driving during hours of darkness. The temporary ordinance does not specifically address night time driving indicating that golf carts at night are legal. This has caused some confusion with deputies enforcing it differently some saying it's legal some saying it's not.

This should be clarified in the ordinance if it is to continue. I personally think it should be legal/ authorized.

Be safe,
G

Deputy George Ratayczak
Whatcom County Sheriff's Office
311 Grand Avenue,
Bellingham, WA 98225

360-778-6705

From: Kevin Moyes
Sent: Monday, September 9, 2019 13:22
To: DL-SH_CommissionedDeputies
Subject: Birch Bay Golf Cart Zone Ordinance

The one year temporary ordinance is scheduled to end in October 2019. The traffic engineers are asking for any feedback on issues with any of the current regulations or needs for change to the ordinance. They will be providing information to the Council, who will then decide to end it, keep it or make additional requirements.

Please feel free to provide me with any information for or against this ordinance. I will need the information by September 25th.

Thanks!

[cid:image001.png@01D56711.9484BE10]

Jason Ardt

From: Jason Ardt
Sent: Thursday, April 25, 2019 9:25 AM
To: www.TimothyLambert.com
Subject: RE: Birch Bay Area Golf Cart Zone

Timothy –

If you'd like to produce a better map, I can certainly include it in our items to council on this, but it is not a necessity. Public Works knows where you are referring to and in the correspondence I received from Councilwoman Brenner on the issue, I believe she is aware of the area as well. I did copy her on my email to you, as well as the public works director, county engineer and traffic engineer, unfortunately I was a little confused on your email address and the first one I sent came back undeliverable, that's why you received one without all the cc's. You are also welcome to give public testimony at the Council meeting when the golf cart zone comes up for renewal in September, I can make sure to keep you informed as to the dates of the meetings.

Regards,
Jason

Jason Ardt

Engineering Technician III – Traffic
Whatcom County Public Works
5280 Northwest Dr.
Bellingham, WA 98226
(360) 778-6272 – Office
jardt@co.whatcom.wa.us

NOTE: Incoming and outgoing emails may be subject to public disclosure and/or records retention requirements pursuant to the Public Records Act (RCW 42.56).

From: www.TimothyLambert.com [<mailto:timothy@timothylambert.com>]
Sent: Thursday, April 25, 2019 9:14 AM
To: Jason Ardt
Subject: Re: Birch Bay Area Golf Cart Zone

Hello Mr. Ardt,

Thank you for your response to my suggestion. I am confident that you will present it to the Council for their consideration.

Do you think it would help if I were to draw up a more professional looking map? Or do you feel the one I attached is sufficient? It is not rocket science, as everyone always says, but I do want it to be clear to the council. Please let me know.

Thanks again, Tim

Timothy Lambert

US Cell (202)250-0746
Canada Cell (778)240-9143
www.timothylambert.com

From: Jason Ardt <JArdt@co.whatcom.wa.us>
To: "timothy@timothylambert.com" <timothy@timothylambert.com>
Sent: Thursday, April 25, 2019 9:03 AM
Subject: Birch Bay Area Golf Cart Zone

Mr. Lambert –

Thank you for your suggestion regarding the speed limit change on Bay Rd. and the use of the Bay Crest Subdivisions for golf carts to access Jackson Road leading to Birch Bay Drive. The Golf Cart Zone ordinance must be renewed by the Whatcom County Council no later than October 31st, 2019. As such, Public Works will be evaluating the current Golf Cart Zone and will incorporate your suggestion into our evaluation. Public Works will be bringing forth the renewal of the ordinance for the Council's consideration in September and at that time we will also propose any modifications to speed limits in the area that would better serve both the community and the traveling public. Should you wish to discuss this further, you can reach Traffic Engineer Mike Donahue or me at (360) 778-6220.

Regards,
Jason

Jason Ardt

Engineering Technician III – Traffic
Whatcom County Public Works
5280 Northwest Dr.
Bellingham, WA 98226
(360) 778-6272 – Office
jardt@co.whatcom.wa.us

NOTE: Incoming and outgoing emails may be subject to public disclosure and/or records retention requirements pursuant to the Public Records Act (RCW 42.56).

Jason Ardt

From: Joe Rutan
Sent: Tuesday, April 16, 2019 3:37 PM
To: Mike Donahue; David Hower; Jason Ardt
Cc: Jon Hutchings
Subject: Fwd: Golf Cart Zone
Attachments: FW: Golf Cart Zone; ATT00001.htm; Golf Zone FinalIMG_20190412_0001_NEW.pdf; ATT00002.htm

Follow Up Flag: Follow up
Flag Status: Flagged

Traffic group,

Please review the attached suggestion. I will reach out to you Wednesday afternoon to discuss.

Joe

Sent from my iPhone

Begin forwarded message:

From: "Barbara Brenner" <BBrenner@co.whatcom.wa.us>
To: "Jon Hutchings" <JHutchin@co.whatcom.wa.us>, "Joe Rutan" <JRutan@co.whatcom.wa.us>
Cc: "timothy@timothylambert.com" <timothy@timothylambert.com>, "BBGUN1010@aol.com" <BBGUN1010@aol.com>, "NaDean Hanson" <NHanson@co.whatcom.wa.us>
Subject: FW: Golf Cart Zone

Jon or Joe,

Will someone please respond to the e-mail below and copy me to keep me in the loop regarding whether this type of change would work.

Thank you.

Barbara Brenner, Whatcom County Council Member

NOTICE: All emails, and attachments, sent to and from Whatcom County are public records and may be subject to disclosure pursuant to the Public Records Act (RCW 42.56)

From: bbgun1010@aol.com [mailto:bbgun1010@aol.com]
Sent: Monday, April 15, 2019 7:30 PM
To: Barbara Brenner
Subject: Fwd: Golf Cart Zone

From: BBrenner@co.whatcom.wa.us
To: BBGUN1010@aol.com
Sent: 4/15/2019 8:09:39 AM Pacific Standard Time
Subject: FW: Golf Cart Zone

From: www.TimothyLambert.com [<mailto:timothy@timothylambert.com>]
Sent: Sunday, April 14, 2019 3:47 PM
To: Council; Sheriff; Barbara Brenner
Subject: Golf Cart Zone

Hello,

This message is regarding the "Golf Cart Zone" recently established in the area of Bay Crest North and Bay Crest South subdivisions, a one square mile zone bordered by Blaine Rd., Bay Rd., Alderson Rd., and Jackson Rd. in Birch Bay. Please see the attached diagrams.

The top diagram represents the "Golf Cart Zone" as it now exists, highlighted in red.

Without commenting on the questionable merit of the zone, I would like to propose changing

the zone (if it is to be kept) to the area in the 2nd diagram, eliminating the unnecessary stretch along Bay Rd. My proposal is also highlighted in red.

It is unnecessary because this stretch only allows access to to Bay Crest North and South,

which are already accessible off Jackson Rd., where the speed limit has been 25mph for years.

As a major artery to both I-5 and the Cherry Point Refinery, Bay Rd. is heavily trafficked.

Inconveniencing those of us who regularly use this stretch of Bay Rd. for absolutely no benefit to Golf Cart users, who would still have complete access to the Bay Crest subdivisions

is unfair, unnecessary, and counter-productive.

Please contact me with any questions you may have.

Thank you,

Timothy Lambert

timothy@timothylambert.com

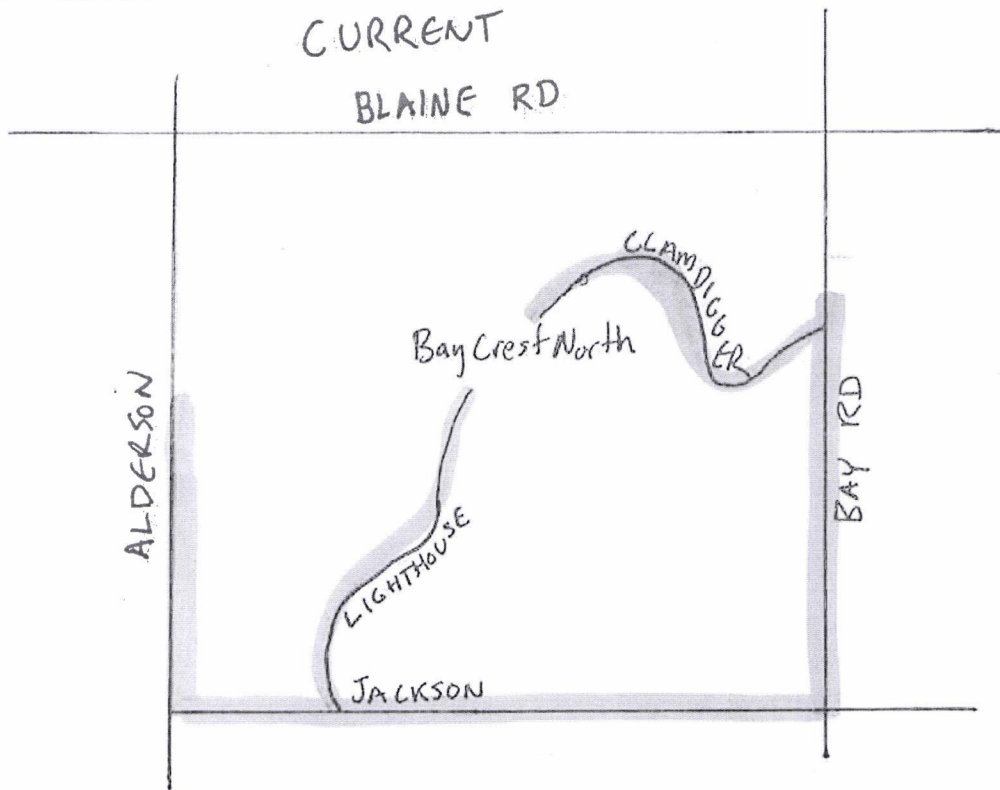
Timothy Lambert

US Cell (202)250-0746

Canada Cell (778)240-9143

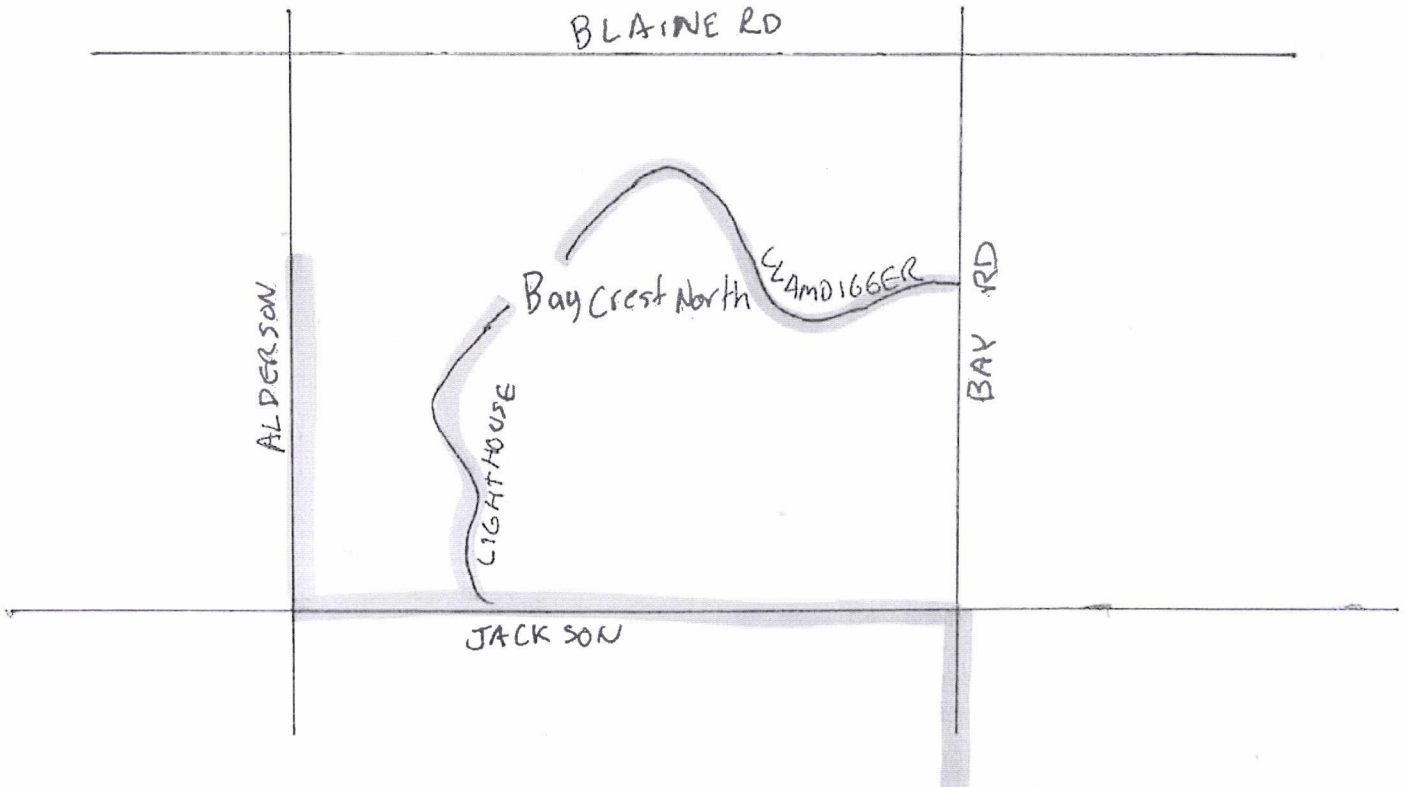
www.timothylambert.com

CURRENT
BLAINE RD



PROPOSED

BLAINE RD



RCW 46.08.175**Golf cart zones.**

(1) The legislative authority of a city or county may by ordinance or resolution create a golf cart zone, for the purposes of permitting the incidental operation of golf carts, as defined in RCW 46.04.1945, upon a street or highway of this state having a speed limit of twenty-five miles per hour or less.

(2) Every person operating a golf cart as authorized under this section is granted all rights and is subject to all duties applicable to the driver of a vehicle under chapter 46.61 RCW.

(3) Every person operating a golf cart as authorized under this section must be at least sixteen years of age and must have completed a driver education course or have previous experience driving as a licensed driver.

(4) A person who has a revoked license under RCW 46.20.285 may not operate a golf cart as authorized under this section.

(5) The legislative authority of a city or county may prohibit any person from operating a golf cart as authorized under this section at any time from a half hour after sunset to a half hour before sunrise.

(6) The legislative authority of a city or county may require a decal or other identifying device to be displayed on golf carts authorized on the streets and highways of this state under this section. The city or county may charge a fee for the decal or other identifying device.

(7) The legislative authority of a city or county may prohibit the operation of golf carts in designated bicycle lanes that are within a golf cart zone.

(8) Golf carts must be equipped with reflectors, seat belts, and rearview mirrors when operated upon streets and highways as authorized under this section.

(9) A city or county that creates a golf cart zone under this section must clearly identify the zone by placing signage at the beginning and end of the golf cart zone on a street or road that is part of the golf cart zone. The signage must be in compliance with the department of transportation's manual on uniform traffic control devices for streets and highways.

(10) Accidents that involve golf carts operated upon streets and highways as authorized under this section must be recorded and tracked in compliance with chapter 46.52 RCW. The accident report must indicate that a golf cart operating within a golf cart zone is involved in the accident.

[2010 c 217 § 4.]

RCW 46.04.1945**Golf cart.**

"Golf cart" means a gas-powered or electric-powered four-wheeled vehicle originally designed and manufactured for operation on a golf course for sporting purposes and has a speed attainable in one mile of not more than twenty miles per hour. A golf cart is not a nonhighway vehicle or off-road vehicle as defined in RCW 46.04.365.

[2011 c 171 § 12; 2010 c 217 § 3.]

NOTES:

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.



Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2019-503

File ID:	AB2019-503	Version:	1	Status:	Agenda Ready
File Created:	09/24/2019	Entered by:	JNixon@co.whatcom.wa.us		
Department:	Council Office	File Type:	Current Year Council Appointment		
Assigned to:	Council			Final Action:	
Agenda Date:	10/08/2019			Enactment #:	

Primary Contact Email: jnixon@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Receipt of application(s) for the Horticulture Pest and Disease Board, applicant: Andrew Taylor (committee controls and prevents the spread of horticultural pests and diseases) (application deadline for additional applicants is 10:00 a.m. October 15, 2019)

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Horticulture Pest and Disease Board:

2 Vacancies

One member shall have at least a practical knowledge of horticultural pests and diseases and the other member shall be residents of the county, shall own land within the county and shall be engaged in the primary and commercial production of a horticultural product or products, one of whom shall be engaged in the production of certified organic produce, if available. Terms expire January 31, 2022. The Board is created to enable Whatcom County to more effectively control and prevent the spread of horticultural pests and diseases. The Board shall have the following powers and duties. 1.Receive complaints, 2.Inspect 3.Enforce 4.Employ persons and purchase goods and equipment as necessary, 5.Educate the public, and 6. Administrate.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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APPLICATION FOR APPOINTMENT TO WHATCOM COUNTY BOARDS AND COMMISSIONS

PLEASE PRINT LEGIBLY and COMPLETE ALL ITEMS

Name: Andrew Taylor Date: 9/18/2019
Street Address: 2621 Franklin St
City: Bellingham Zip Code: 98225
Mailing Address (if different from street address): _____
Day Telephone: _____ Evening Telephone: _____ Cell Phone: 512-413-4985
E-mail address: agastont@gmail.com

1. Name of board or committee-**please see reverse:** Whatcom County Horticultural Pest Board
2. **You must specify which position you are applying for.**
Please refer to vacancy list. County Appointee

3. Do you meet the residency, employment, and/or affiliation requirements of the position for which you're applying?
(If applicable, please refer to vacancy list.) _____ (☒) yes () no
4. Which Council district do you live in? _____ () One (☒) Two () Three () Four () Five
5. Are you a US citizen? _____ (☒) yes () no
6. Are you registered to vote in Whatcom County? _____ (☒) yes () no
7. Have you ever been a member of this Board/Commission? _____ () yes (☒) no
If yes, dates: _____
8. Do you or your spouse have a financial interest in or are you an employee or officer of any
business or agency that does business with Whatcom County? _____ () yes (☒) no
If yes, please explain: _____
9. Have you declared candidacy (as defined by RCW 42.17A.055, see instructions) for a paid elected
office in any jurisdiction within the county? _____ () yes (☒) no

You may attach a résumé or detailed summary of experience, qualifications, & interest in response to the following questions.

10. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education.

Current Occupation - Annuals Production Manager at Cloud Mountain Farm Center

Education - B.S. Geology, WWU 2011 Masters Certificate GIS - Northeastern, 2013

11. Please describe why you're interested in serving on this board or commission: _____
To represent organic farmers of Whatcom County, stay apprised of current pest issues,
deeper understanding of local ag issues, and further professional experience within ag.

References (please include daytime telephone number): _____
Matthew McDermott (530) 717-7224 Sean McWay (314) 578-8120

Signature of applicant: Andrew Taylor

THIS IS A PUBLIC DOCUMENT: As a candidate for a public board or commission, the above information will be available to the County Council, County Executive, and the public. All board and commission members are expected to be fair, impartial, and respectful of the public, County staff, and each other. Failure to abide by these expectations may result in revocation of appointment and removal from the appointive position.

If you are applying for one of the following boards, committees, or commissions, please send this application to the

Whatcom County Executive's Office:

311 Grand Avenue, Suite 108

Bellingham, Washington 98225

Phone:(360) 778-5200 Fax:(360) 778-5201

- Agricultural Advisory Committee
- Americans with Disabilities Act (ADA) Compliance Committee
- Behavioral Health Advisory Committee
- Bellingham-Whatcom County Commission Against Domestic Violence
- Bicycle/Pedestrian Advisory Committee
- Boundary Review Board
- Civil Service Commission
- County Appeals Board
- Developmental Disabilities Board
- Development Standards Technical Advisory Committee
- Ethics Commission
- Food System Committee
- Housing Authority of Whatcom County
- Housing Advisory Committee
- Lodging Tax Advisory Committee
- Marine Resource Committee
- North Sound Mental Health Administration
- Northwest Senior Services Board
- Parks and Recreation Commission
- Point Roberts Community Advisory Committee
- Public Health Advisory Board
- Purchase of Development Rights Oversight Committee
- Rural Library Board
- Salary Commission
- Veteran's Advisory Board

If you are applying for one of the following boards, committees, or commissions, please send this application to the

Whatcom County Council Office:

311 Grand Avenue, Suite 105

Bellingham, Washington 98225

Phone:(360) 778-5010 Fax: (360) 778-5011

- Acme/VanZandt Flood Control Sub-Zone Advisory Committee
- Address and Road Name Citizen Appeals Committee
- Birch Bay Watershed and Aquatic Resources Management Committee
- Board of Equalization
- Business and Commerce Advisory Committee
- Climate Impact Advisory Committee
- Drayton Harbor Shellfish Protection District Advisory Committee
- Flood Control Zone District Advisory Committee
- Forestry Advisory Committee
- Horticultural Pest and Disease Board
- Incarceration Prevention and Reduction Task Force/Law and Justice Council
- Jail Stakeholder Workgroup
- Lake Whatcom Stormwater Utility Advisory Committee
- Lummi Island Ferry Advisory Committee
- Lynden/Everson Flood Control Sub-Zone Advisory Committee
- Noxious Weed Control Board
- Open Space Advisory Committee
- Planning Commission
- Portage Bay Shellfish Protection District Advisory Committee
- Solid Waste Advisory Committee
- Sumas/Everson/Nooksack Flood Control Sub-Zone Advisory Committee
- Surface Mining Advisory Committee
- Wildlife Advisory Committee

RCW 42.17A.005

(7) "Candidate" means any individual who seeks nomination for election or election to public office. An individual seeks nomination or election when he or she first:

- (a) Receives contributions or makes expenditures or reserves space or facilities with intent to promote his or her candidacy for office;
- (b) Announces publicly or files for office;
- (c) Purchases commercial advertising space or broadcast time to promote his or her candidacy; or
- (d) Gives his or her consent to another person to take on behalf of the individual any of the actions in (a) or (c) of this subsection.



Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2019-502

File ID:	AB2019-502	Version:	1	Status:	Agenda Ready
File Created:	09/24/2019	Entered by:	BBushaw@co.whatcom.wa.us		
Department:	Public Works Department	File Type:	Resolution Requiring a Public Hearing		
Assigned to:	Council	Final Action:			
Agenda Date:	10/08/2019	Enactment #:			

Primary Contact Email: sdraper@co.whatcom.wa.us <<mailto:sdraper@co.whatcom.wa.us>>

TITLE FOR AGENDA ITEM:

Resolution amending WCC 100.7 Birch Bay Watershed Aquatic Resources Management District Funding Mechanism by adding an exemption for the Birch Bay Water and Sewer District (Council acting as the Whatcom County Flood Control Zone District Board of Supervisors)

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

An amendment to the Birch Bay Watershed and Aquatic Resources Management District Funding Mechanism which adds an exemption for the Birch Bay Water and Sewer District

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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**WHATCOM COUNTY
PUBLIC WORKS DEPARTMENT**

**Jon Hutchings
Director**



STORMWATER

322 N. Commercial, Suite 224
Bellingham, WA 98225
Main: (360) 778-6210
FAX: (360) 778-6201
www.whatcomcounty.us

MEMORANDUM

TO: The Whatcom County Flood Control Zone District Board of Supervisors and
The Honorable Jack Louws, County Executive

THROUGH: Jon Hutchings, Public Works Director *JH*

FROM: Kraig Olason, Stormwater Program Manager *KO*

DATE: September 5, 2019

RE: Resolution to Amend 100.07 Birch Bay Watershed and Aquatic Resources
Management District Funding Mechanism

Requested Action

Please find enclosed for your review and consideration a proposed resolution to amend the Birch Bay Watershed and Aquatic Resource Management District Funding Mechanism (WCC 100.07) and Rate Resolutions (Res 2008-049 & 2008-050).

Background and Purpose

One change is being proposed to WCC 100.07.080 – Exemption – Birch Bay Watershed and Aquatic Resources Management District. It provides the Birch Bay Water and Sewer District (BBWSD) an exemption from fees associated with impervious surfaces as long as an interlocal agreement between BBWSD and the Whatcom County Flood Control Zone District (FCZD) is in effect.

BBWSD works regularly with the FCZD through its Sub-Flood Zone, the Birch Bay Watershed and Aquatic Resources Management (BBWARM) district. Both districts share the same goals of protecting Birch Bay's water quality, managing stormwater and providing critical utility services to rate payers in the districts. In 2011, an interlocal agreement (ILA) was signed by the two districts that describes the relationship between the two agencies, common areas of concern and shared goals. This agreement also provides a rationale for dispensing with charging fees by either party and emphasizes the types of planning, programming and collaborative projects that would be undertaken. This agreement expired at the end of 2016 and has recently been revised to reflect recent changes and updates. If approved, the new ILA will be in effect from 2020-2024.

A review of the revised ILA by the County's attorney resulted in a suggestion to amend the resolution establishing the BBWARM rates and exemptions criteria to provide basis for not charging the BBWSD. The resolution is enclosed for your review.

Please contact Holly Faulstich at extension 6290 if you have any questions or concerns regarding this proposed resolution.

Encl.

RESOLUTION NO. _____

**ADOPTING CHANGES TO WCC 100.07 BIRCH BAY WATERSHED AND AQUATIC
RESOURCES MANAGEMENT DISTRICT FUNDING MECHANISM, BY ADDING AN
EXEMPTION FOR THE BIRCH BAY WATER AND SEWER DISTRICT**

**(Council acting as the Whatcom County Flood Control Zone District Board of
Supervisors)**

WHEREAS, on March 13, 2007, the Whatcom County Flood Control Zone District Board of Supervisors adopted Ordinance 2007-019 which created the Birch Bay Watershed and Aquatic Resources Management (BBWARM) District pursuant to RCW 86.15; and,

WHEREAS, RCW 86.15.160 (4) authorizes a charge for the furnishing of service to those who are receiving or will receive benefits from stormwater control facilities and programs and who are contributing to an increase in surface water runoff (Res 2008-049 & Res 2008-050); and,

WHEREAS, implementation of the Birch Bay Comprehensive Stormwater Plan is needed to solve many of the current stormwater management problems in the Birch Bay Watershed; and,

WHEREAS, the Birch Bay Water and Sewer District (BBWSD) works regularly with BBWARM and both districts share the same goals of protecting Birch Bay's water quality, managing stormwater and providing critical utility services to rate payers in the districts; and,

WHEREAS, the majority of BBWARM rate payers are also BBWSD rate payers; and,

WHEREAS, collaborative efforts between the districts that seek to improve stormwater drainage options often result in reduced quantities of stormwater entering the systems, which can reduce the amount of effluent requiring treatment and subsequent treatment costs; and,

WHEREAS, in 2011, an interlocal agreement was signed by the two districts that describes the relationship between the two agencies, common areas of concern and shared goals; and,

WHEREAS, this interlocal agreement also provides a rationale for dispensing with charging fees by either party and emphasizes the types of planning, programming, and collaborative projects that would be undertaken; and,

WHEREAS, while endeavoring to renew the expired interlocal agreement, it was suggested by the County's attorney that the resolution establishing the BBWARM rates and exemptions criteria be amended to provide a provision for not charging the BBWSD,

1 **NOW, THEREFORE, BE IT RESOLVED** by the Whatcom County Flood Control Zone
2 District Board of Supervisors that Whatcom County Code 100.07 Birch Bay Watershed and
3 Aquatic Resources Management District Funding Mechanism is hereby amended as outlined
4 in Exhibit A of this resolution. The new text appears as underlined.
5

6 **APPROVED** this ____ day of _____, 20____.
7

8
9
10 ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

11
12
13 _____
14 Dana Brown-Davis, Clerk of the Council

Rud Browne, Council Chair

15
16
17 APPROVED AS TO FORM:

WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON

18 *Cee* 9/26/19
19 _____
20

21 Civil Deputy Prosecutor

Jack Louws, County Executive

() Approved () Denied

Date Signed: _____
26
27

EXHIBIT A

New language appears as underlined.

100.07.080 Exemptions.

A. Property that is owned by, and is the personal residence of, a person or persons approved by the county assessor for a senior citizen or disabled persons property tax exemption under RCW 84.36.381 shall be exempt from the service charge. Any person eligible for this low-income, senior citizen, or disabled persons exemption shall be provided a refund of annual service charges for the subject property for the first year the exemption is sought and for up to three prior years; provided, that eligibility for each year has been approved by the assessor's office; and provided further, that refunds shall not be approved for any year prior to 2009. (Res. 2009-015 § 1 (Exh. A); Res. 2008-049 § 1 (Exh. A § 8)).

B. Properties owned by BBWSD are exempted from BBWARM stormwater fees provided an interlocal agreement is in effect between BBWSD and WCFCZD.



Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2019-504

File ID:	AB2019-504	Version:	1	Status:	Agenda Ready
File Created:	09/25/2019	Entered by:	SMock@co.whatcom.wa.us		
Department:	Public Works Department	File Type:	Resolution Requiring a Public Hearing		
Assigned to:	Council	Final Action:			
Agenda Date:	10/08/2019	Enactment #:			

Primary Contact Email: sdraper@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Resolution adopting the 2020 Annual Road Construction Program (ACP)

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Resolution adopting the Whatcom County 2020 Annual Construction Program (ACP). The ACP is an integral part of the County budget process and reflects the first year of the adopted 2020-2025 Six Year Transportation Improvement Program


HISTORY OF LEGISLATIVE FILE


Date:	Acting Body:	Action:	Sent To:
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Memorandum

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

Through: Jon Hutchings, Director 

From: Joseph P. Rutan, P.E., County Engineer/Assistant Director 

Date: September 25, 2019

Re: 2020 Annual Construction Program (ACP)

Requested Action:

Public Works Committee work session and Introduction on October 8, 2019, followed by a Public Hearing and adoption on October 22, 2019.

Background and Purpose:

RCW 36.81.130 requires the adoption of the Annual Construction Program (ACP). Adoption of this program is an element of the County budget process.

This ACP is identical to the 1st year of the Six Year Transportation Improvement Program (STIP) approved on September 24, 2019.

Information:

A proposed resolution is enclosed for your consideration. In addition, each project that has funding available in 2020 has a project summary sheet for your review.

If you have questions or require additional information, please contact me at the number provided above.

PROPOSED BY: Public Works

INTRODUCED: 10/8/2019

RESOLUTION NO. _____

APPROVING THE WHATCOM COUNTY 2020 ANNUAL CONSTRUCTION PROGRAM

WHEREAS, pursuant to RCW 36.81.130, the Whatcom County Engineer did file with the Whatcom County Council a recommended plan for laying out, construction, maintenance and special maintenance of County roads for the fiscal year of 2020; and,

WHEREAS, the Whatcom County Council held a public meeting on the 24th day of September, 2019, and has considered the testimony given as well as the recommended plan; and,

WHEREAS, the Whatcom County Council had determined that said plan is necessary as nearly as practicable to the Whatcom County 2020-2025 Six-Year Transportation Program, approved by Resolution 2019-040 on September 24, 2019.

NOW, THEREFORE, BE IT RESOLVED that the 2020 Whatcom County Annual Construction Program is hereby approved as shown on the attachment hereto; and

BE IT FURTHER RESOLVED that no changes be made in the program without the unanimous vote of the Whatcom County Council; and

BE IT FINALLY RESOLVED that the 2020 Annual Construction Program be filed with the Director of Highways of the State of Washington.

APPROVED this ____ day of _____, 2019.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Clerk of the Council

Rud Browne, Chair of the Council

APPROVED AS TO FORM:

 9/26/19

Chris Quinn, Senior Civil Deputy Prosecutor Attorney

Whatcom County
2020

Annual Construction Program

WAC 136-16

(A) TOTAL CONSTRUCTION DONE (total sum of column 13 + column 14): \$14,175,000.00
 (B) COMPUTED COUNTY FORCES LIMIT: \$1,801,002.00
 (C) TOTAL COUNTY FORCES CONSTRUCTION (total sum of column 14): \$1,150,000.00

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)
Annual Program Item No.	6 Year Road Program Item No.	Project Name	Road #	Road Segment Information Road Name	Project Type Code	Environmental Assessment	County Road Funds	Other Funds Amount	Program Source	PE & CE (995.10)	Right of Way (995.20)	Construction Contract	County Forces	Grand Total (All 995)
1	R1	CRP #910001 Birch Bay Drive & Pedestrian Facility from Lora Lane to Cedar Avenue	20010	Road Name: Birch Bay Drive From: Lora Lane To: Cedar Avenue	P&T FP DR Other	S	\$5,290,000	\$810,000.00	STP (US)	\$1,100,000		\$5,000,000		\$6,100,000
2	R2	CRP #915005 Samish Way/Galbraith Lane	44060	Road Name: Samish Way To: Samish Way To: Galbraith Lane Road Name: Galbraith Lane From: 0 To: 0	IS Other Safety Ilm	S	\$500,000			\$125,000	\$10,000	\$395,000		\$500,000
3	R3	CRP #920001 ADA Barrier Removal			SW		\$50,000			\$50,000				\$50,000
4	R4	CRP #915009 Lake Whatcom Blvd. Water Quality Improvements	44120	Road Name: Lake Whatcom Blvd From: Cable Street To: Strawberry Point	3R P&T DR FP	S	\$25,000			\$25,000				\$25,000
5	R5	CRP #916002 Horton Road, Northwest Drive to Aldrich Road	74230	Road Name: Horton Road From: Horton Road To: Aldrich Road	NEW SW DR IS	S	\$10,000			\$10,000				\$10,000
6	R6	CRP #914001 Slater Road & Northwest Drive	14760	Road Name: Slater Road From: Slater Road To: Northwest Drive Road Name: Northwest Drive From: Slater Road To: Northwest Drive	RC FP IS Ilm Safety	S	\$25,000			\$25,000				\$25,000
7	R7	CRP #916003 Slater Road, I5 Interchange to 0.10 M.E. of Pacific Hwy	14760	Road Name: Slater Road From: Slater Road To: Slater Road	RC IS Ilm Safety	S	\$25,000			\$25,000				\$25,000
8	R9	CRP #918019 Smith Road & Northwest Drive	75080	Road Name: Smith Road From: 0 To: 0 Road Name: Northwest Drive From: 0 To: 0	RC IS Ilm Safety	S	\$25,000			\$25,000				\$25,000
9	R10	CRP #917001 Marine Drive, Locust Avenue to Alderwood Avenue	12790	Road Name: Marine Drive From: Locust Avenue To: Alderwood Avenue	RC SW P&T Safety	S	\$550,000			\$300,000	\$250,000			\$550,000
10	R12	CRP #912017 Lummi Nation Transportation Projects					\$2,000,000			\$350,000	\$150,000	\$1,500,000		\$2,000,000
11	R13	CRP 910002 Point Roberts Transportation Improvements					\$150,000			\$50,000		\$0	\$100,000	\$150,000

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)			
Annual Program Item No.	6 Year Road Program Item No.	Project Name	Road #	Road Segment Information Road Name	Road Segment Information			Project Length (mi.)	Project Type Code	Environmental Assessment	Sources of Funds				Estimated Expenditures Dollars		
					BMP	EMP	FFC				County Road Funds	Other Funds Amount	Program Source	PE & CE (595.10)	Right of Way (595.20)	Construction Contract	County Forces
12	R14	CRP #917002 Slater Road/Haxton Way	14760 To: Slater Road From: Haxton Way	12659 To: Slater road From: Haxton Way	3.59	3.79	07	0.40	2R IS Safety	E	\$10,000			\$10,000	\$10,000		
13	R15	CRP #916006 East Smith Road/Everson- Goshen Road	55080 To: East Smith Road From: Everson Goshen Road		4.98	8.23	07	3.25	2R Safety FP	E	\$605,000	\$1,000,000.00	RAP	\$200,000	\$5,000	\$1,400,000	\$1,605,000
14	R16	CRP #914002 East Smith Road & Hannegan Road	55080 To: East Smith Road From: Hannegan Road	55110 To: East Smith Road From: Hannegan Road	1.86	2.06	07	0.40	3R IS Ilim Safety	S	\$500,000			\$200,000	\$300,000		\$500,000
15	R18	CRP #915013 Turkington Road/Jones Creek	89200 To: Turkington Road From: Turkington Road		0.40	0.60	09	0.20	RC Other	S	\$117,000			\$85,000	\$32,000		\$117,000
16	R19	CRP #906001 Birch Bay Lynden Rd. & Blaine Rd.	21580 To: Birch Bay Lynden Rd From: Blaine Rd		0.90	1.10	17	0.20	IS Ilim SW Safety 3R	S	\$100,000			\$100,000			\$100,000
17	R22	CRP #916007 East Hemmi Road Flood Mitigation	56320 To: East Hemmi Road From: East Hemmi Road		2.30	2.60	08	0.30	2R DR Other	S	\$150,000			\$100,000	\$50,000		\$150,000
18	R23	CRP #915014 Innis Creek Road	88550 To: Innis Creek Road From: Innis Creek Road		2.45	2.65	09	0.20	2R DR Other Safety	S	\$5,000			\$5,000			\$5,000
19	R26	CRP #919001 Ferndale Road/Levee Improvements	12800 To: Ferndale Road From: Ferndale Road		2.50	3.82	08	1.32	Other	S	\$150,000			\$150,000			\$150,000
20	R27	CRP #19002 Abbott Road/Levee Improvements	55560 To: Abbott Road From: Abbott Road		1.70	1.90	09	0.20	RC Other	S	\$620,000			\$90,000	\$30,000	\$500,000	\$620,000
21	R28	CRP #919003 Northwest Drive Overlay	74050 To: Northwest Drive From: Axton Road		1.11	4.65	16	3.54	2R Safety FP	E	\$1,760,000			\$200,000	\$10,000	\$1,550,000	\$1,760,000
22	R29	CRP #918018 E Smith Rd., Hannegan Rd to Everson Goshen Rd.	55080 To: East Smith Road From: Hannegan Road		1.96	4.98	07	3.02	2R Safety	E	\$465,000	\$1,035,000.00	RAP	\$200,000		\$1,300,000	\$1,500,000
23	R30	CRP #919018 Birch Bay Lynden Rd., Enterprise Rd. to Rathbone Rd	21580 To: Birch Bay Lynden Rd From: Enterprise Rd		7.92	9.95	07	2.03	2R Safety	E	\$25,000			\$25,000			\$25,000
24	R31	CRP #919022 Slater Road, Pacific Hwy to Northwest Drive	14760 To: Slater Road From: Pacific Hwy		7.55	8.29	16	0.74	2R Safety	E	\$500,000			\$150,000		\$350,000	\$500,000
25	R32	CRP #920002 2020 Small Area Paving						N/A	2R Safety	E	\$250,000			\$50,000		\$200,000	\$250,000
26	B2	CRP #917004 Jackson Road/Terrell Creek Bridge No. 81	21950 To: Jackson Road From: Jackson Road		0.00	0.10	18	0.10	Br	S	\$270,000			\$250,000	\$20,000		\$270,000
27	B4	CRP #913006 North Lake Samish Road Bridge No. 107	44170 To: North Lake Samish From: North Lake Samish		0.01	0.11	08	0.10	P&T Br	S	\$250,000			\$200,000	\$50,000		\$250,000

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)			(10)	(11)	(12)	(13)	(14)	(15)		
Annual Program Item No.	6 Year Road Program Item No.	Project Name	Road #	Road Segment Information		Project Length (mi.)	Project Type Code	Environmental Assessment	County Road Funds	Sources of Funds			Estimated Expenditures Dollars					
				Road Name	BMP					EMP	FFC	Amount	Program Source	PE & CE (995.10)	Right of Way (995.20)	Construction Contract	County Forces	Grand Total (All 995)
28	B5	CRP #920003 Goshen Road/Anderson Creek Bridge No. 248	56140	Road Name: Goshen Rd From: At Bridge No. 248 To: At Bridge No. 248	0.61	0.71	08	0.10	Br		\$170,000			\$150,000	\$20,000	\$170,000		
29	B11	CRP #919006 Mosquito Lake Road/Hutchinson Creek Tributary	84190	Road Name: Mosquito Lake Road From: Mosquito Lake Road To: Mosquito Lake Road	3.10	3.20	08	0.10	FP	S	\$160,000			\$150,000	\$10,000	\$160,000		
30	B12	CRP #919007 North Fork Road/Kenney Creek	89510	Road Name: North Fork Road From: North Fork Road To: North Fork Road	1.00	1.10	09	0.10	FP	S	\$80,000	\$240,000.00	FBRB	\$300,000	\$20,000	\$320,000		
31	B13	CRP #920004 Truck Road/Deal Road (3) Fish Passage						N/A	FP		\$250,000			\$30,000	\$10,000	\$110,000	\$100,000	\$250,000
32	F1	CRP #919008 Replacement of Whitcom Chief & Terminal Modification						N/A	Ferry	E	\$400,000			\$400,000				\$400,000
33	F2	CRP #919020 Lummi Island Terminal Preservation Project						N/A	Ferry	E	\$169,000	\$656,000.00	FBP	\$75,000		\$750,000		\$825,000
34	F3	CRP #919021 Gooseberry Pt. Terminal Preservation Project						N/A	Ferry		\$50,000			\$50,000				\$50,000
35	F4	CRP #914015 Lummi Island Breakwater Replacement						N/A	Ferry	E	\$45,000	\$80,000.00	FBP	\$125,000				\$125,000
36	F5	CRP #919009 Relocation of Gooseberry Terminal						N/A	Ferry	E	\$50,000			\$50,000				\$50,000
37	Y1	CRP #920005 Various Bridge Rehabilitation/Replacement						N/A	Br	S	\$300,000			\$50,000		\$250,000		\$300,000
38	Y2	CRP #920006 Right of Way Acquisition						N/A		E	\$50,000				\$50,000			\$50,000
39	Y3	CRP #920007 Unanticipated Site Improvements						N/A		E	\$300,000			\$30,000		\$270,000		\$300,000
40	Y4	CRP #920008 Unanticipated Stormwater Quality Improvements						N/A		S	\$100,000			\$100,000				\$100,000
41	Y5	CRP #920009 Unanticipated Non- motorized Transportation Improvements						N/A	SW P&T Safety	I	\$100,000			\$10,000		\$90,000		\$100,000
42	Y6	CRP #920010 Fish Passage Project						N/A	FP		\$50,000			\$50,000				\$50,000
43	Y7	CRP #920011 Swift Creek Transportation Impact						N/A			\$100,000			\$10,000		\$90,000		\$100,000
44	Y8	CRP #920012 Railroad Crossing Improvements						N/A	Other 2R Safety	I	\$200,000			\$50,000		\$150,000		\$200,000

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)
Annual Program Item No.	6 Year Road Program Item No.	Project Name	Road #	Road Segment Information		Project Type Code	Environmental Assessment	Sources of Funds				Estimated Expenditures Dollars		
				Road Name	BMP			EMP	FFC	Project Length (mi.)	County Road Funds	Other Funds Amount	Program Source	PE & CE (595.10)
45	Y9	CRP #620013 Beam guardrail Replacements/Upgrades				Safety								
							\$100,000							
							\$17,101,000	\$3,821,000	\$5,730,000	\$1,017,000	\$13,025,000	\$1,150,000		\$20,922,000

Birch Bay Drive and Pedestrian Facility CRP #907001

Construction Funding Year(s): 2019 thru 2022

Project Narrative:

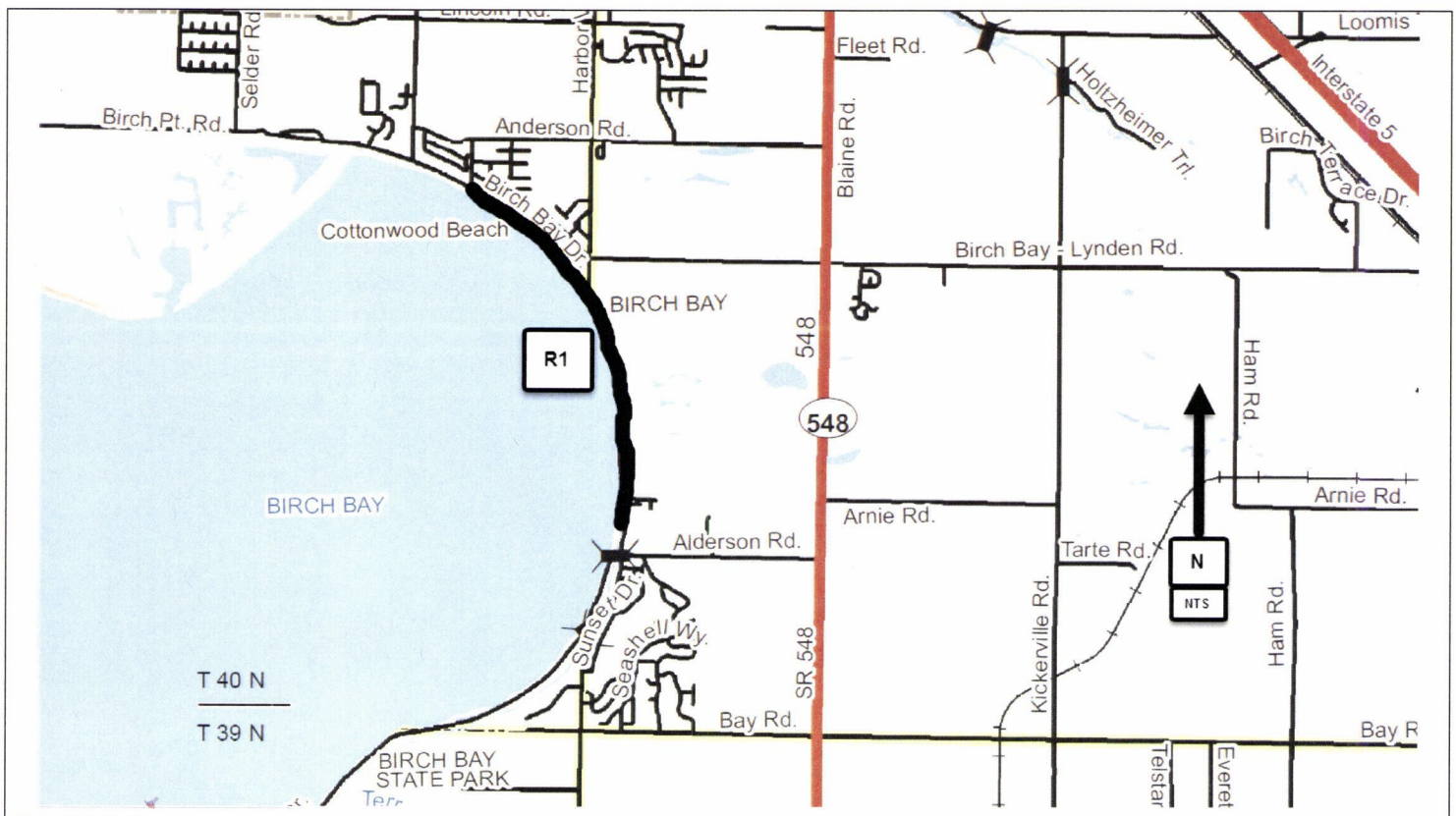
This project is located parallel to Birch Bay Drive from Cedar Avenue to the mouth of Terrell Creek, in Sections 30 and 31, T40N, R1E, and Sections 24 and 25, T40N, R1W. This is a 1.58 mile separated berm with pathway to encourage pedestrian use along Birch Bay Drive to support safety and to protect 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 2020-2025 Six-Year Transportation Improvement Program.

Project Status:

Phase I of the Feasibility Study was completed in 2006. Phase 2A (Preliminary Construction Cost Estimate) was completed in 2007, and updated in spring of 2013. Preliminary Engineering began in late 2013, R/W acquisition began in 2016 (100% complete), permitting is 100% complete, and construction is planned for 2019 thru 2022. Due to the long duration monitoring periods required by project permits, it is anticipated that the contract may be open through 2025.

Total Estimated Project Cost: \$14,150,000 Expenditures to Date: \$4,300,000	Funding Sources:	
	Federal	\$3,172,000 (STP and TAP)
	State	\$0
	Local	\$10,978,000

Environmental Permitting	Whatcom County-Shorelines; WDFW-HPA, Army Corps of Engineers, DOE; Sec 404 Clean Water Act; NEPA
Right-of-Way Acquisition (Actual)	\$1,686,000
County Forces (Estimate)	N/A



Samish Way & Galbraith Lane Pedestrian Crosswalk CRP # 919005

Construction Funding Year(s): 2020

Project Narrative:

Construct a pedestrian-actuated crosswalk for access across Samish Way at Galbraith Lane in response to the City of Bellingham's expansion of the upper Lake Padden parking lot on Samish Way. The existing and projected high use of this parking lot for mountain bike and pedestrian use will result in numerous pedestrians and bikes crossing Samish Way. This project is listed **#R2** on the 2020-2025 Six Year Transportation Improvement Program.

Project Status:

Working to get a traffic consultant under contract services to design pedestrian-actuated crosswalk, with expected design to occur late 2019 and construction planned for spring 2020.

Total Estimated Project Cost: \$ 500,000

Expenditures to Date: - 0 -

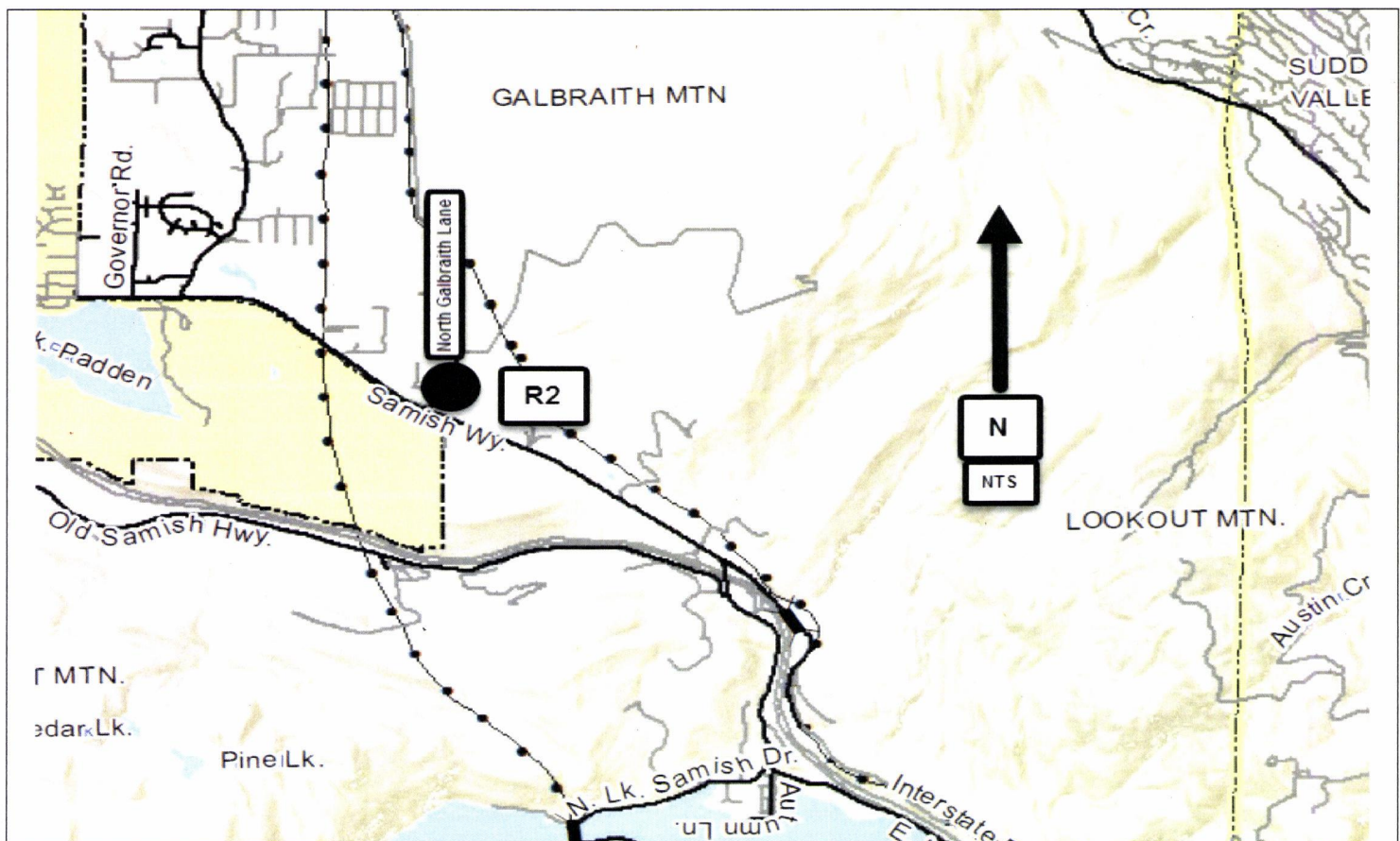
Funding Sources:

Federal	\$0
State	\$0
Local	\$500,000

Environmental Permitting	SEPA, Land Disturbance, Critical Areas
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Right-of-Way Acquisition (Estimate)	\$10,000
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County Forces (Estimate)	TBD
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**ADA Barrier Removal
ADA Transition Plan, Multiple Locations
CRP # 920001**

Construction Funding Year(s): TBD

Project Narrative:

Whatcom County will be addressing an update to its Americans with Disabilities Act (ADA) Transition Plan in 2019, concentrating on an assessment of facilities in County road rights-of-way. This project will involve the removal of a number of barriers yearly, in a systematic and prioritized method. This project is listed **#R3** on the 2020-2025 Six-Year Transportation Improvement Program.

Project Status: ADA Transition Plan update will be completed in 2019, with a number of priority barrier locations highlighted by the study, addressed by design efforts in 2020.

Total Estimated Project Cost: \$

Expenditures to Date: \$0

Funding Sources:

Federal	\$0
State	\$0
Local	\$50,000

Environmental Permitting

Right-of-Way Acquisition (Estimate)

County Forces (Estimate)

Due to the nature of this item, no map exists. Location and priority of the ADA Barrier Removals will be determined when the updated Transition Plan is complete.

Lake Whatcom Boulevard, Phase II Water Quality Improvements CRP # 915009

Construction Funding Year(s): TBD

Project Narrative:

This project is located approximately 1 mile east of Bellingham, in Sections 35 and 36, T38N, R3E. The work will involve drainage improvements and pedestrian improvements to a 1.3 mile section of Lk Whatcom Blvd between Cable Street and Strawberry Point, addressing stormwater quality issues. This project is listed **R4** on the 2020-2025 Six-Year Transportation Improvement Program.

Project Status:

Survey work with associated base map and R/W research began in 2015. Preliminary design will be initiated to evaluate R/W needs, permit requirements and overall project costs. Construction time frame will be contingent on addressing funding needs along with resolution of permitting and R/W issues.

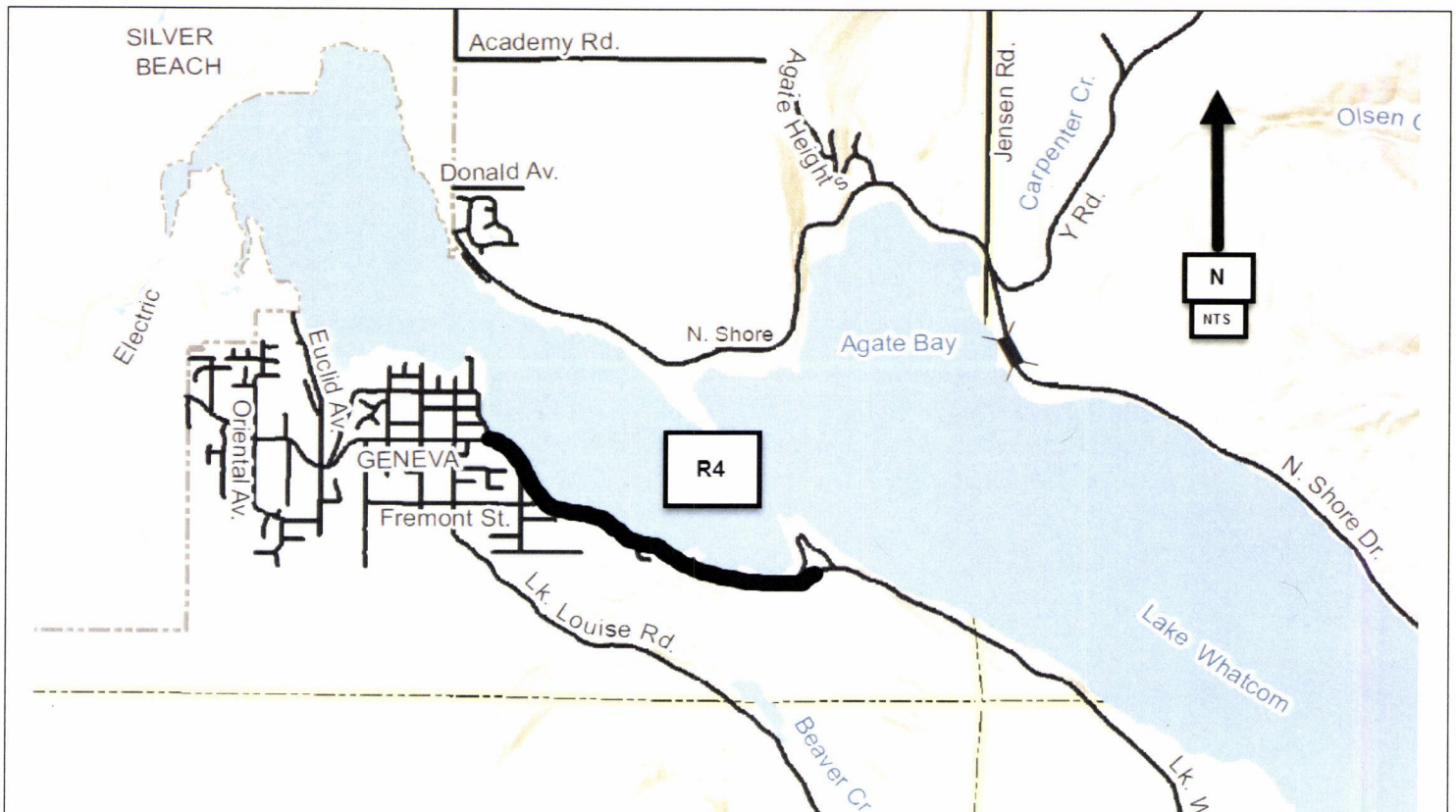
Total Estimated Project Cost: \$ TBD

Expenditures to Date: \$ 50,000

Funding Sources:

Federal	\$0
State	\$0
Local	\$100,000 (Grant funding will be sought)

Environmental Permitting	SEPA, CLR/CAO, Shorelines
Right-of-Way Acquisition (Estimate)	\$50,000
County Forces (Estimate)	\$10,000



Horton Road Northwest Drive to Aldrich Road CRP # 916002

Construction Funding Year(s): TBD

Project Narrative:

This new roadway project is located between Northwest Drive and Aldrich Road in Section 2 of T38N, R2E. The work involves a ½ mile of new roadway alignment and intersection with NW Drive, along with all the associated permitting, storm water and R/W issues. This project is listed **#R5** on the 2020-2025 Six-Year Transportation Improvement Program.

Project Status:

Design, right-of-way, and permitting to begin in 2017 with Surface Transportation Program (STP) Grant awarded to Whatcom County and transferred to the City of Bellingham. An interlocal agreement is in place for the City of Bellingham to perform design of the project in coordination with their section of Horton Road construction. Construction schedule dependent upon funding agreements with City of Bellingham and other sources.

Total Estimated Project Cost: TBD

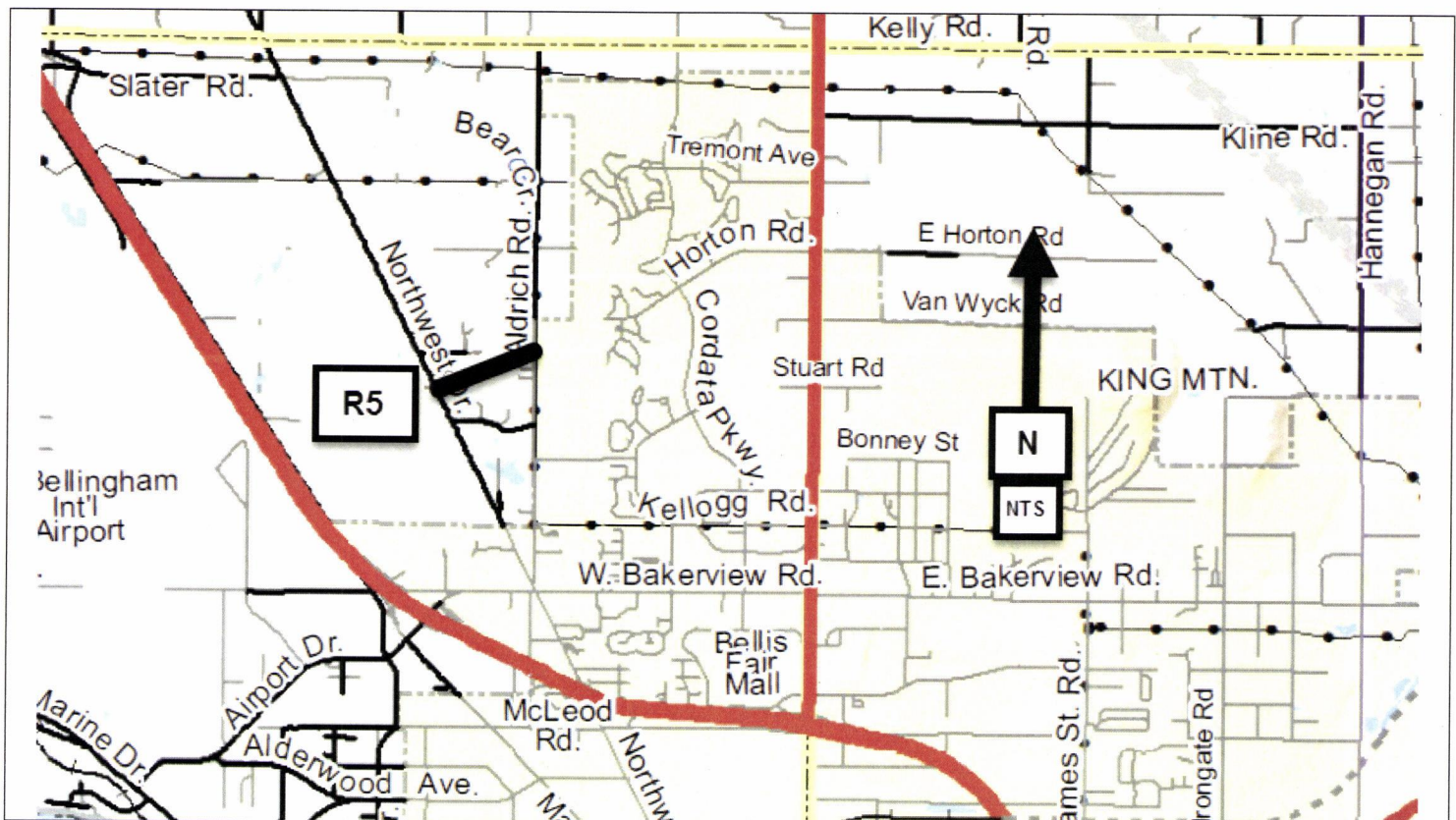
Expenditures to Date: \$5,000

***\$1,000,000 STBG Grant transferred to COB for design of county portion.**

Funding Sources:

Federal	(\$1,000,000)*
State	0
Local	\$157,000

Environmental Permitting	ECS, BA, NEPA, CLR/CAO, Corps of Engrs
Right-of-Way Acquisition (Estimate)	TBD
County Forces (Estimate)	N/A



Slater Road & Northwest Drive CRP # 914001

Construction Funding Year(s): TBD

Project Narrative:

The intersection of Slater and Northwest Roads is in Section 2 of T38N, R2E. The intersection will be reconstructed per recommendations by a professional traffic consultant. Fish passage improvements will also be constructed on Bear Creek which passes underneath Slater Road at this location. This project is listed **#R6** on the 2020-2025 Six-Year Transportation Improvement Program.

Project Status:

\$21,000,000 in state funding available for this project and project #R5, Slater Road/I5 Interchange, in July 2019. Design and permitting expected to take 3-4 years with construction in 2022 or 2023.

Total Estimated Project Cost: \$21,000,000*

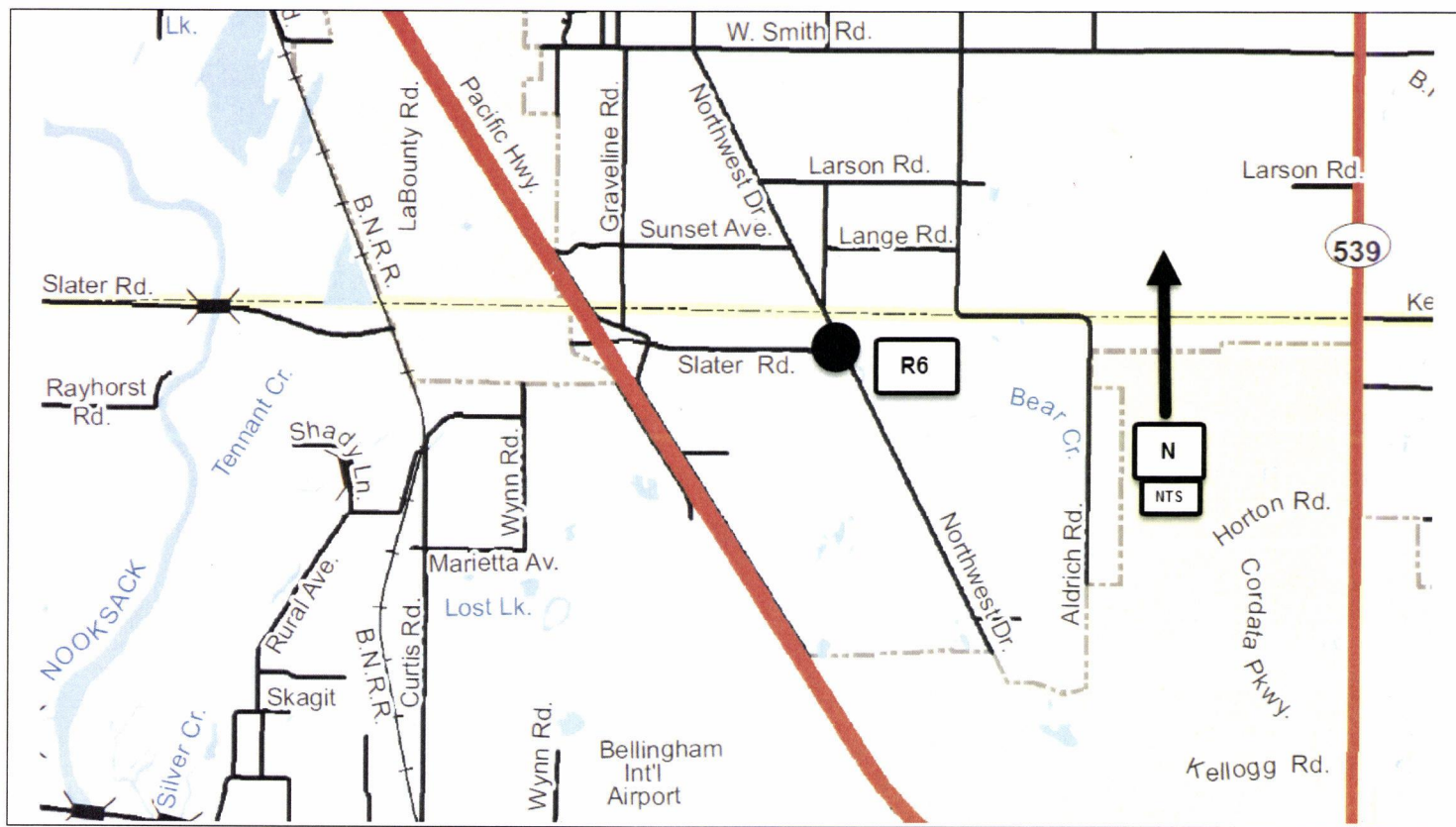
*Includes Project #R7

Expenditures to Date: \$21,000

Funding Sources:

Federal	\$0
State	\$21,000,000*
Local	\$25,000

Environmental Permitting	ECS, BA, SEPA, CLR/CAO, Corps of Engrs
Right-of-Way Acquisition (Estimate)	TBD
County Forces (Estimate)	N/A



Slater Road I-5 Interchange CRP # 916003

Construction Funding Year(s): TBD

Project Narrative:

This project is located north of Bellingham in Section 3, T38N, R2E. This project will improve the interchange/intersection of Interstate 5 and Slater Road. This includes the intersection of Slater Road with Rural Road and Pacific Highway. This project is listed **#R7** on the 2020-2025 Six Year Transportation Improvement Program.

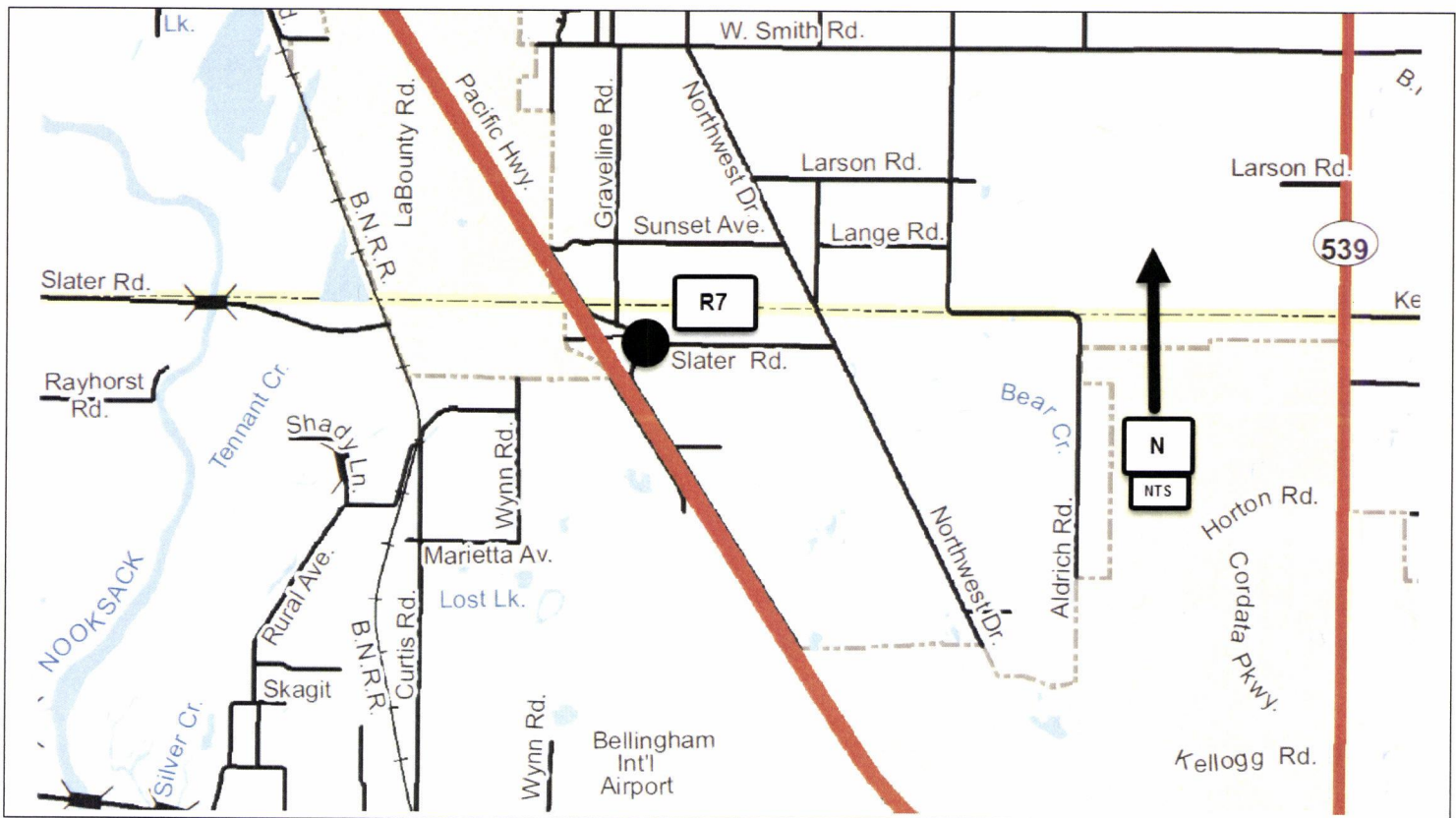
Project Status: \$21,000,000 available for this project and project #R4, Slater Road /Northwest, in July 2019. Design and permitting expected to take 3-4 years with construction in 2022 or 2023.

Total Estimated Project Cost: \$21,000,000*
*Includes Project #R6
Expenditures to Date: \$ 0

Funding Sources:

Federal	\$0
State	\$21,000,000*
Local	\$25,000

Environmental Permitting	TBD
Right-of-Way Acquisition (Estimate)	TBD
County Forces (Estimate)	TBD



Smith Road & Northwest Drive Intersection Improvements CRP # 918019

Construction Funding Year(s): TBD

Project Narrative:

This project is located in Section 27 & 34 of T39N, R2E. The work involves intersection improvements that will likely be a roundabout or traffic signal at the current 4-way stop. This project will also require drainage upgrades and R/W acquisition, and is dependent on the NW Annex building being demolished at a future date. This project is listed **#R9** on the 2020-2025 Six-Year Transportation Improvement Program.

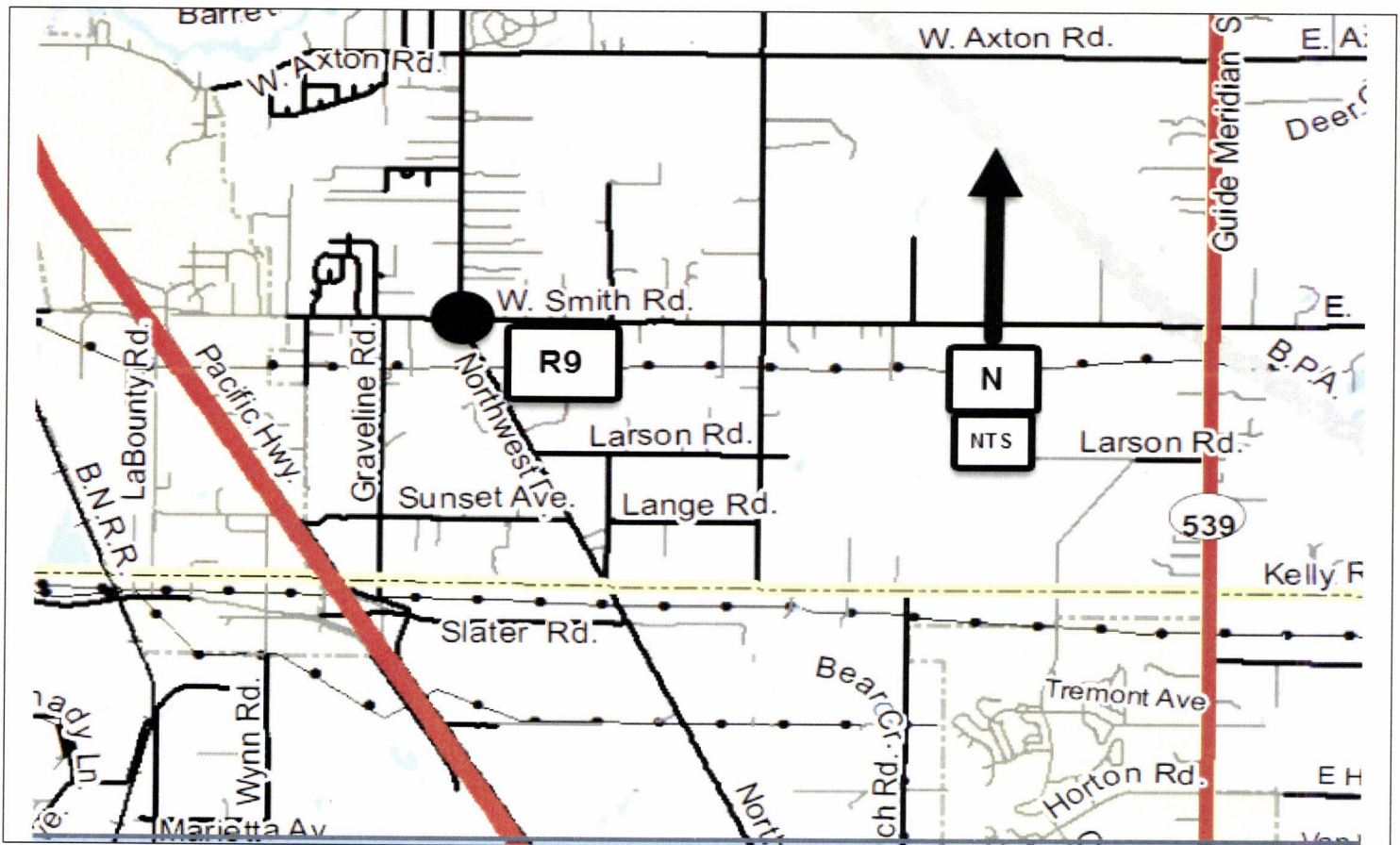
Project Status: The project is currently being scoped and surveyed. Public Works is working with Whatcom Council of Governments (WCOG) to submit this project for Regional Transportation Funding with a request for \$5 million.

Total Estimated Project Cost: TBD
Expenditures to Date: \$ 25,000

Funding Sources:

Federal	\$ 0
State	\$ 0
Local	\$25,000 (Grant funds sought thru WCOG)

Environmental Permitting	SEPA, Critical Areas, DOE
Right-of-Way Acquisition (Estimate)	TBD
County Forces (Estimate)	TBD



Marine Drive Locust Avenue to Alderwood Avenue Reconstruction and Bike/Ped Facilities CRP # 917001

Construction Funding Year(s): 2021

Project Narrative:

This Marine Drive project is located between Locust Ave. and Alderwood Avenue in Section 15 of T38N, R2E. The work involves reconstruction of approximately ½ mile of roadway with emphasis on bike/pedestrian and stormwater quality enhancements. This project is listed **#R10** on the 2020-2025 Six-Year Transportation Improvement Program.

Project Status: Survey completed and design initiated in 2019.

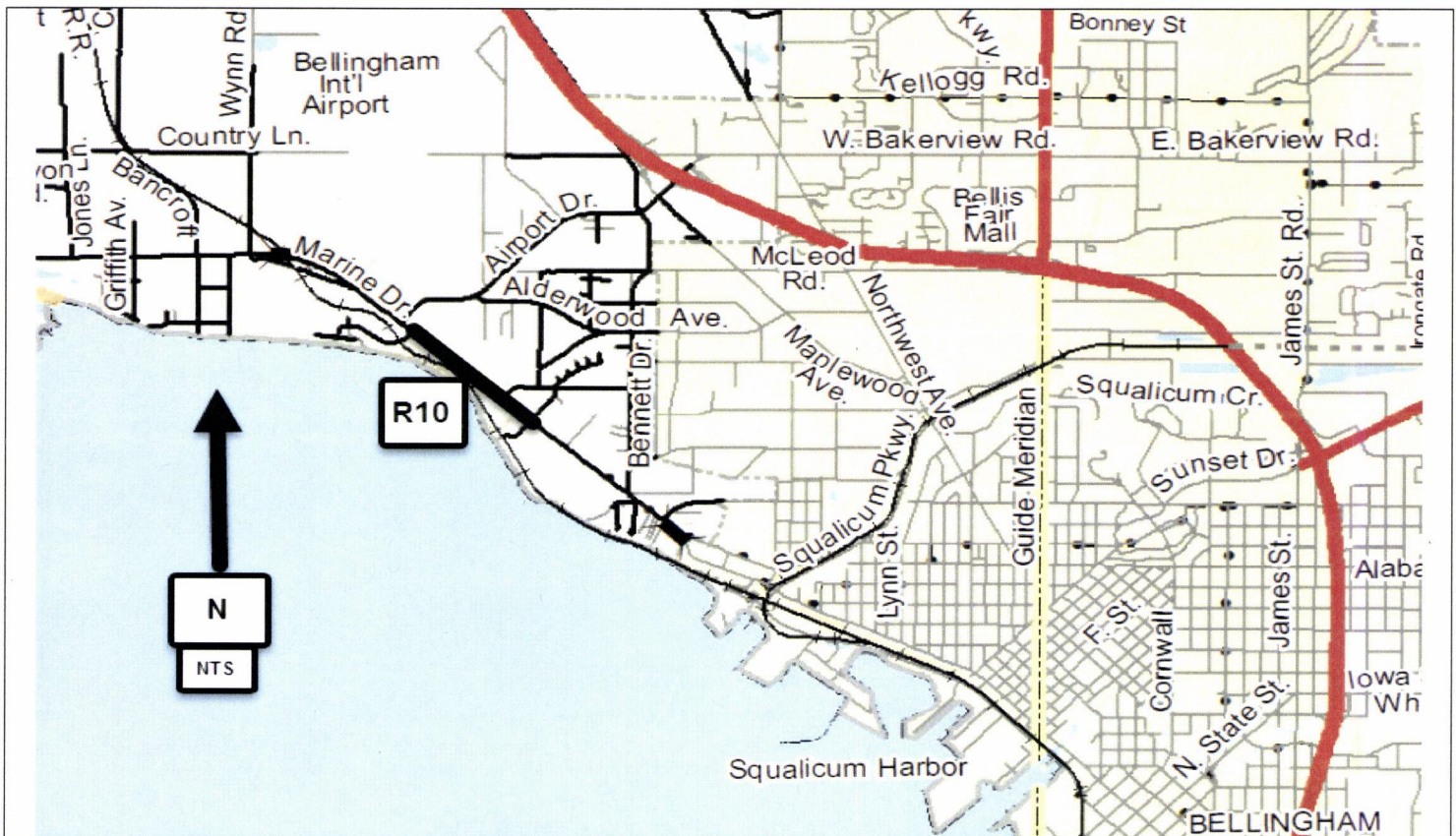
Total Estimated Project Cost: \$3,210,000

Expenditures to Date: \$56,000

Funding Sources:

Federal	\$1,509,000 (STBG) Available in 2021
State	\$0
Local	\$1,701,000

Environmental Permitting	ECS, BA, SEPA, CLR/CAO, Corps of Engrs
Right-of-Way Acquisition (Estimate)	TBD
County Forces (Estimate)	N/A



Lummi Nation Transportation Projects CRP #912017

Construction Funding Year(s): 2020

Project Narrative:

The Lummi Nation Transportation Projects is located in Section 2, T37N, R1E and Section 34, T38N, R1E. This work, in fulfillment of the ferry lease obligation, involves the construction of transportation improvement projects in accordance with Exhibit C of the October 27, 2011 Uplands Lease Agreement for Lummi Island Ferry Use at Gooseberry Point. This project is listed **#R12** on the 2020-2025 Six-Year Transportation Improvement Program.

Project Status:

Projects funds will be available for expenditure when funds of equal or greater value are matched by the Lummi Nation.

Total Estimated Project Cost: \$4,000,000

Expenditures to Date: \$2,000,000

Funding Sources:

Federal	\$0
State	\$0
Local	\$2,000,000

Environmental Permitting N/A

Right-of-Way Acquisition (Estimate) N/A

County Forces (Estimate) N/A

Due to the nature of this item, no map exists. Location of the new transportation projects will be determined in 2020.

Point Roberts Transportation Improvements CRP # 910002

Construction Funding Year(s): 2020

Project Narrative:

Point Roberts is located in T40N and T41N, R3W. The proposed improvements would be specific to area needs and the development of projects to be funded by the Pt. Roberts Transportation Benefit District. This project is listed **#R13** on the 2020-2025 Six-Year Transportation Improvement Program.

Project Status:

Public Works has assigned staff working with the Point Roberts Transportation Benefit District Advisory Committee to coordinate project evaluation, selection, and development.

Total Estimated Project Cost: \$150,000

Expenditures to Date: \$0

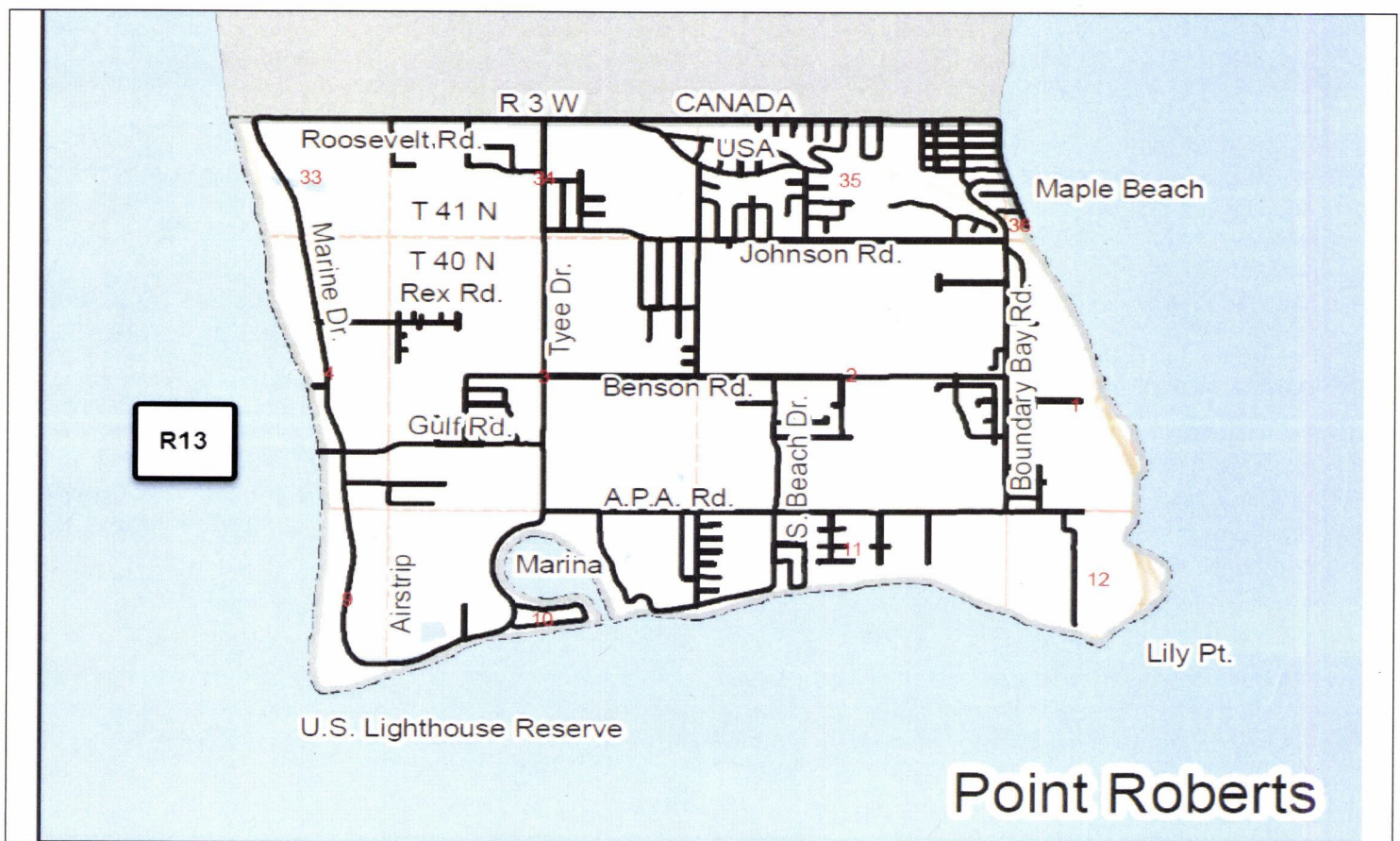
Funding Sources:

Federal	\$0
State	\$0
Local	\$150,000

Environmental Permitting	TBD
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Right-of-Way Acquisition (Estimate)	TBD
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County Forces (Estimate)	TBD
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Slater Road & Haxton Way CRP # 917002

Construction Funding Year(s): TBD

Project Narrative: This project is located on Slater Road in Section 36, T39N, R1E. The project is to improve the intersection, through location of a dedicated left hand turn signal, pavement, drainage, signing, and striping improvements. This project is listed **#R14** on the 2020-2025 Six Year Transportation Improvement Program.

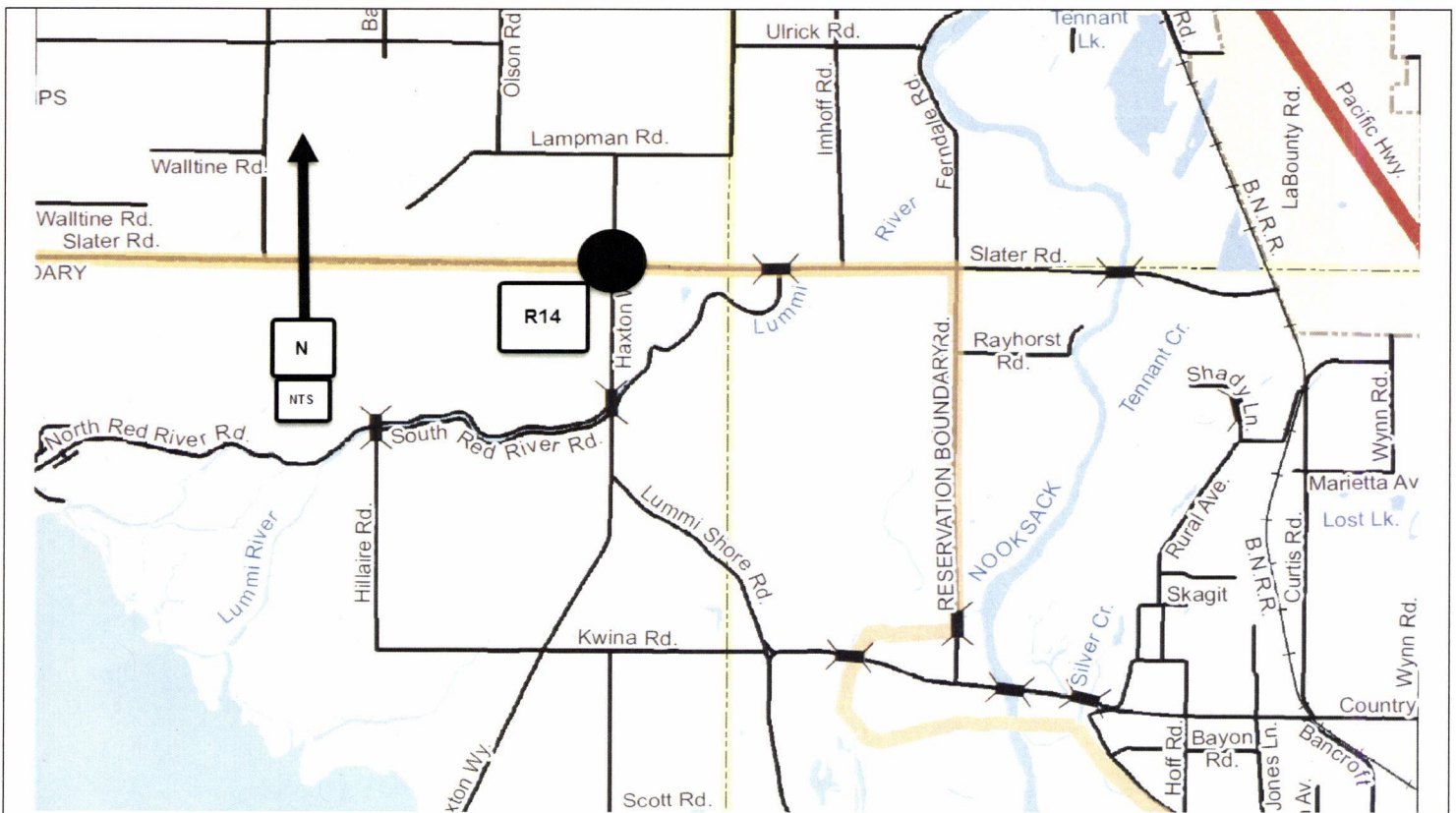
Project Status: The County has completed the design of a protected left hand turn lane for both legs of Slater Road. Working with the Lummi Nation on coordination of the project, as the ultimate plan is to address a portion of Haxton Way pavement and channelization with the signal upgrades. Additional preliminary engineering for pavement design is anticipated for 2020.

Total Estimated Project Cost: \$ TBD
Expenditures to Date: \$ 43,000

Funding Sources:

Federal	
State	
Local	\$10,000

Environmental Permitting	HPA, SEPA, Sec 404, NEPA
Right-of-Way Acquisition (Estimate)	\$ TBD
County Forces (Estimate)	TBD



East Smith Road Everson-Goshen Road to SR 542 CRP # 916006

Construction Funding Year(s): 2020

Project Narrative:

This East Smith Road project is located between Everson-Goshen Road and State Route 542 in Section 25 of T39N, R3E and Sections 28, 29, 30 T39N, R4E. The work will involve the pavement rehabilitation of approximately 3.25 miles of roadway and one fish passage culvert upgrade. This project is listed **#R15** on the 2020-2025 Six-Year Transportation Improvement Program.

Project Status:

Design, permitting and temporary easements to be completed in late 2019 / early 2020. Construction is anticipated for 2021.

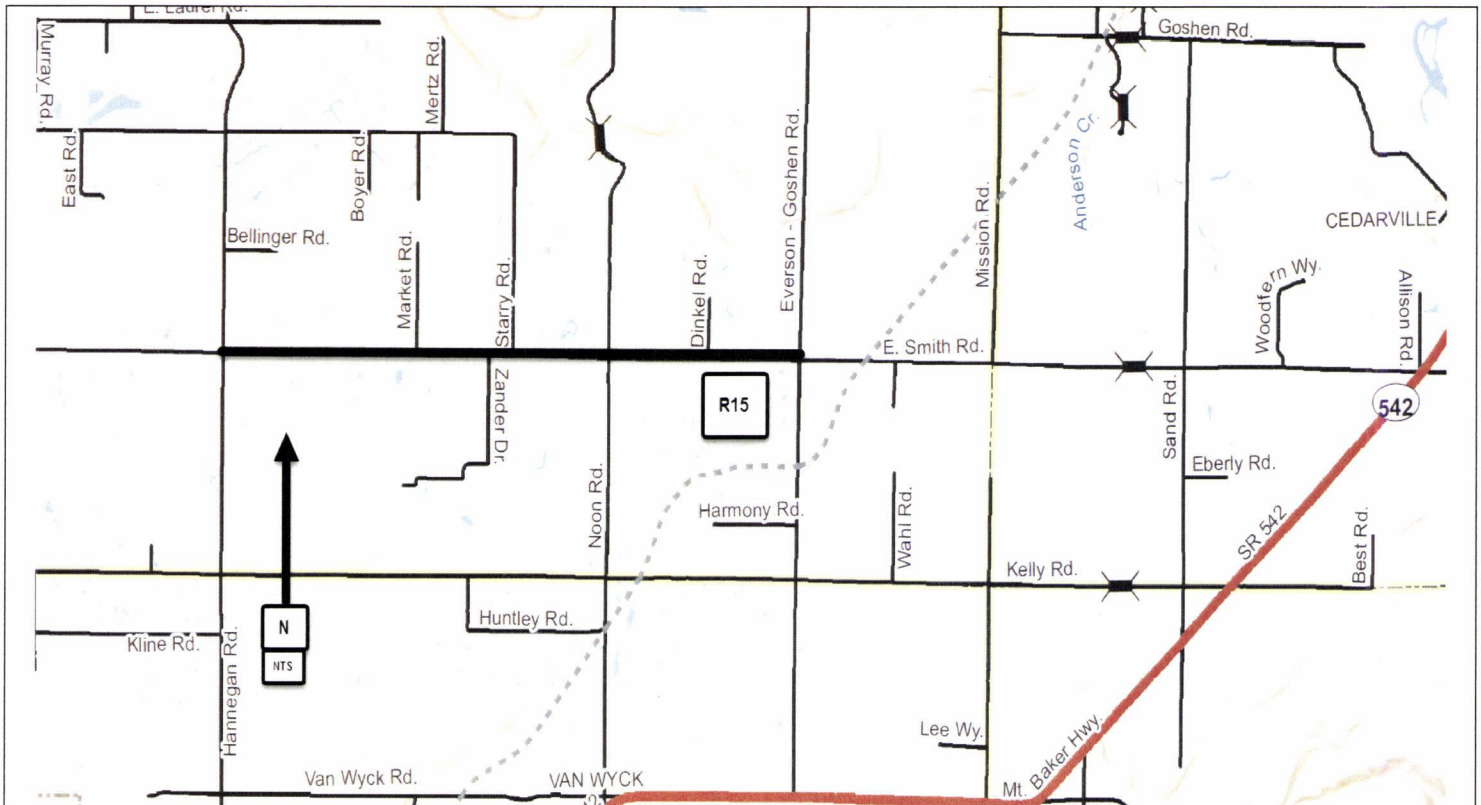
Total Estimated Project Cost: \$1,460,000

Expenditures to Date: \$14,500

Funding Sources:

Federal	
State	\$1,000,000 (RATA)
Local	\$605,000

Environmental Permitting	SEPA, ESA, HPA, Clrg/CAO
Right-of-Way Acquisition (Estimate)	5,000
County Forces (Estimate)	N/A



East Smith Road & Hannegan Road Intersection Improvements CRP # 914002

Construction Funding Year(s): 2021

Project Narrative:

The intersection of East Smith and Hannegan Roads is located in Sections 28, 29, 32 and 33, T39N, R3E. This intersection currently experiences delays due to the lack of left-turn channelization on Smith Road. The project work entails the construction of a two-lane Roundabout at the intersection. This project is listed **#R16** on the 2020-2025 Six-Year Transportation Improvement Program.

Project Status:

The 'Alternatives Analysis' completed by a traffic consultant in 2018 determined a two-lane Roundabout as the best design solution. Design proceeding, and expected to be completed in late 2019 / early 2020, with Construction planned for 2021.

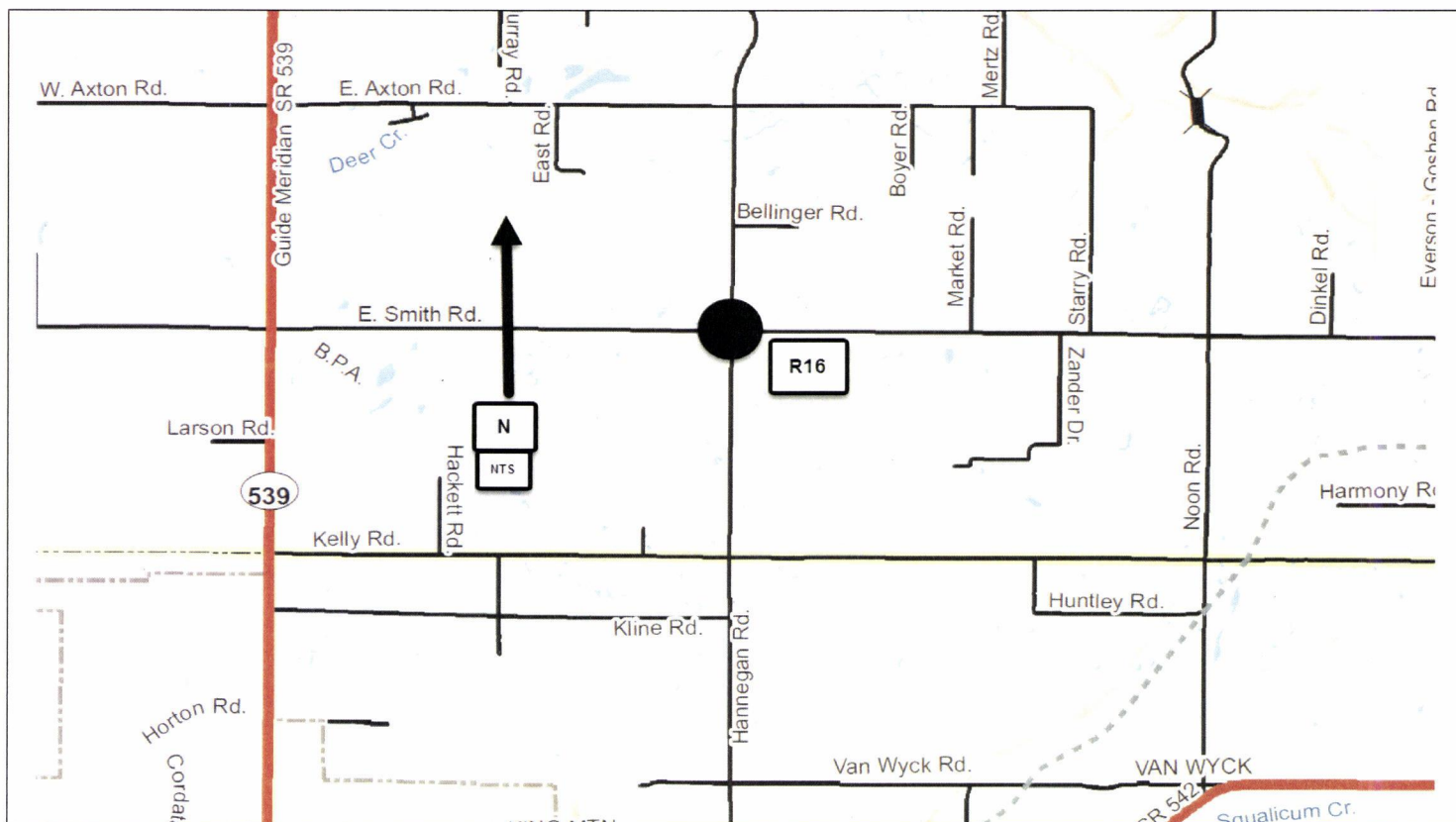
Total Estimated Project Cost: \$3,965,000

Expenditures to Date: \$80,000

Funding Sources:

Federal	\$1,000,000 STBG available in 2021
State	\$0
Local	\$2,965,000

Environmental Permitting	NEPA, ESA, Corp of Engr, Clrg/CAO, DOE
Right-of-Way Acquisition (Estimate)	\$350,000
County Forces (Estimate)	N/A



Turkington Road/Jones Creek CRP # 915013

Construction Funding Year(s): 2022

Project Narrative:

This project is located in Sections 6 & 7, T37N, R5E. This work involves completing design of road and bridge modifications in this area in coordination with a debris flow berm project being developed by the River and Flood Division. The project is listed **#R18** on the 2020-2025 Six-Year Transportation Improvement Program.

Project Status:

Alternate analysis work is underway by the River & Flood Division.

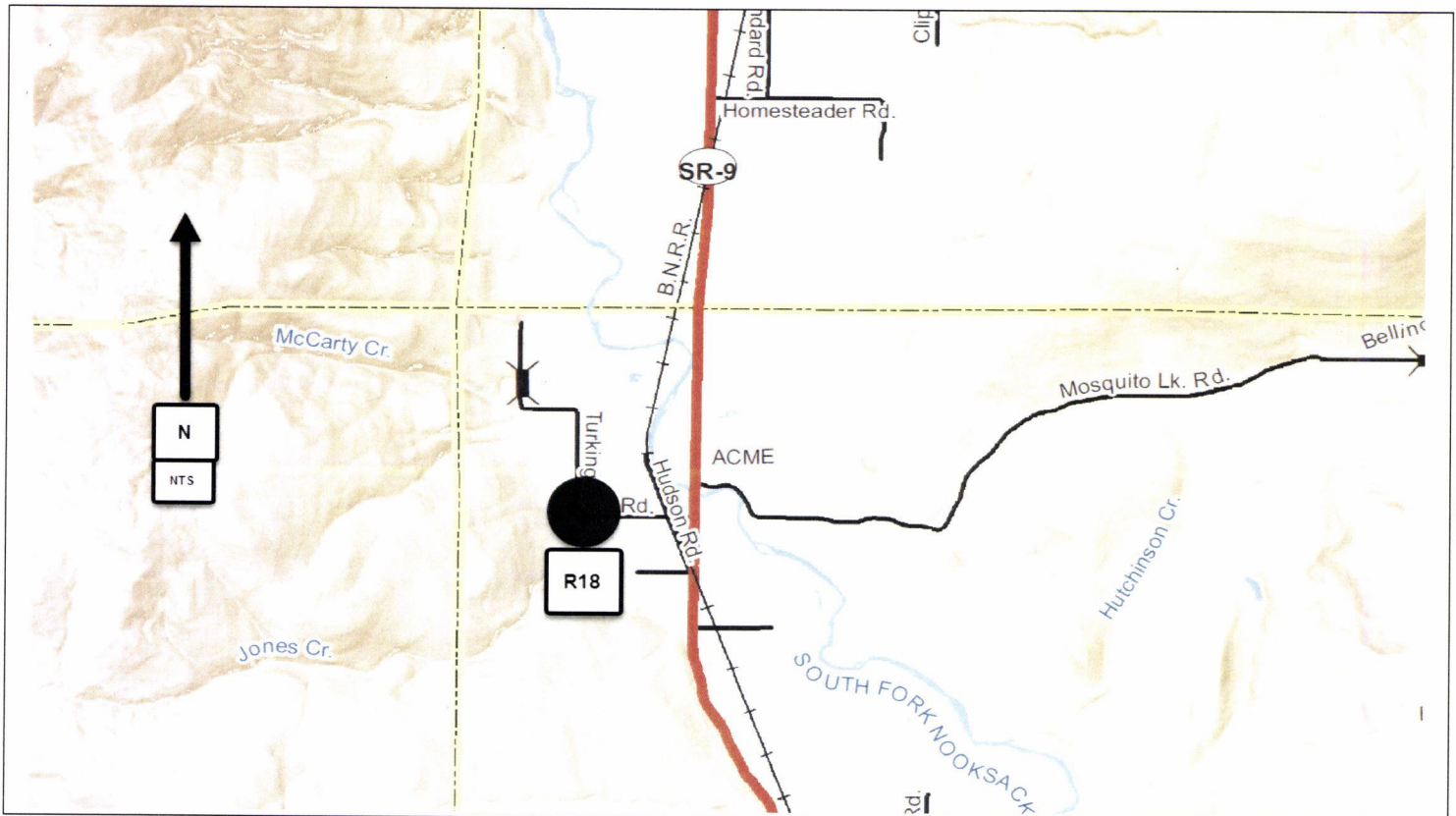
Total Estimated Project Cost: \$ 1,097,000

Expenditures to Date: \$0

Funding Sources:

Federal	\$0
State	\$0
Local	\$1,097,000 (2020-2022)

Environmental Permitting	BA, HPA, SEPA, Corps of Engrs, CLR/CAO, Shorelines, DNR
Right-of-Way Acquisition (Estimate)	\$50,000
County Forces (Estimate)	N/A



Birch Bay Lynden Rd. & Blaine Rd. Intersection Improvements CRP # 906001

Construction Funding Year(s): TBD

Project Narrative:

This project is located 4.6 miles south of Blaine, at the corners common to Sections 19, 20, 29, and 30, T40N, R1E. Intersection improvements being considered are a roundabout or a signal. This is a joint project with the Washington State Department of Transportation; however, it is unlikely that they will participate as a funding source. This project is listed **#R19** on the 2020-2025 Six-Year Transportation Improvement Program.

Project Status: Survey work and R/W Plan started. Consultant contract underway to evaluate & decide on preferred design alternative, and is due by end of 2019. Applied for and received federal STBG funding of \$800K which is available in 2023-2024. Additional grant funds will be looked for through other sources.

Total Estimated Project Cost: \$4,250,000

Expenditures to Date: \$0

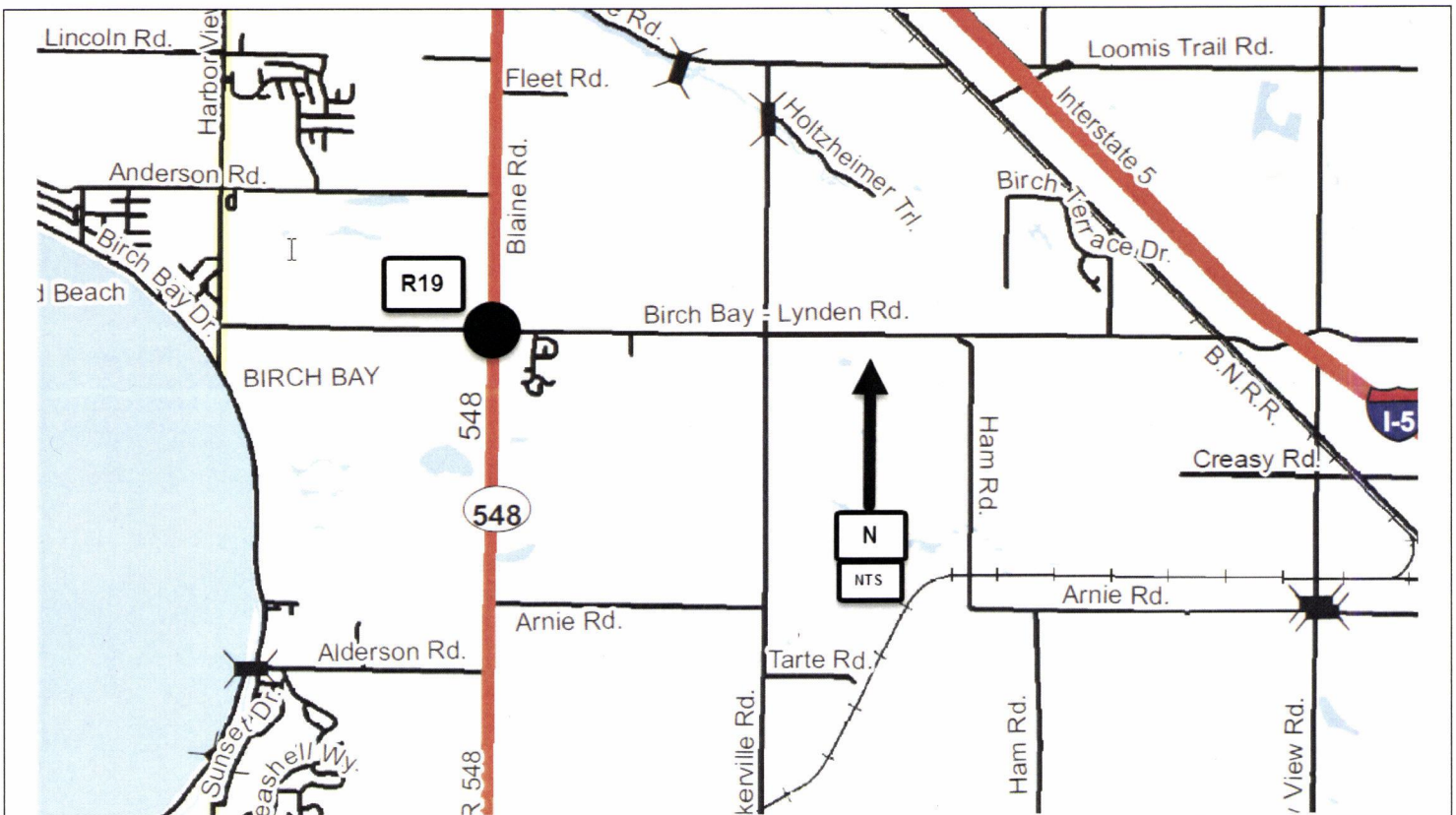
Funding Sources:

Federal	\$800,000 STBG available in 2023-2024
State	\$0
Local	\$3,450,000 (add'l Grant funds sought)

Environmental Permitting ESA, NEPA, Clrg/CAO, Corp of Engr, DOE,

Right-of-Way Acquisition (Estimate) \$500,000

County Forces (Estimate)



Hemmi Road Flood Mitigation CRP # 916007

Construction Funding Year(s): 2021

Project Narrative:

This Hemmi Road Flood Mitigation project is located on Hemmi Road approximately a half mile east of Hannegan Road, located in Section 16 and 21 of T39N, R3E. Hemmi Road is submerged several months of the year at this location. Project work will include raising this portion of the road, installing a larger culvert and associated road work. This project is listed **#R22** on the 2020-2025 Six-Year Transportation Improvement Program.

Project Status: Engineering, permitting and real estate work expected to be completed in 2020 with construction scheduled in 2021.

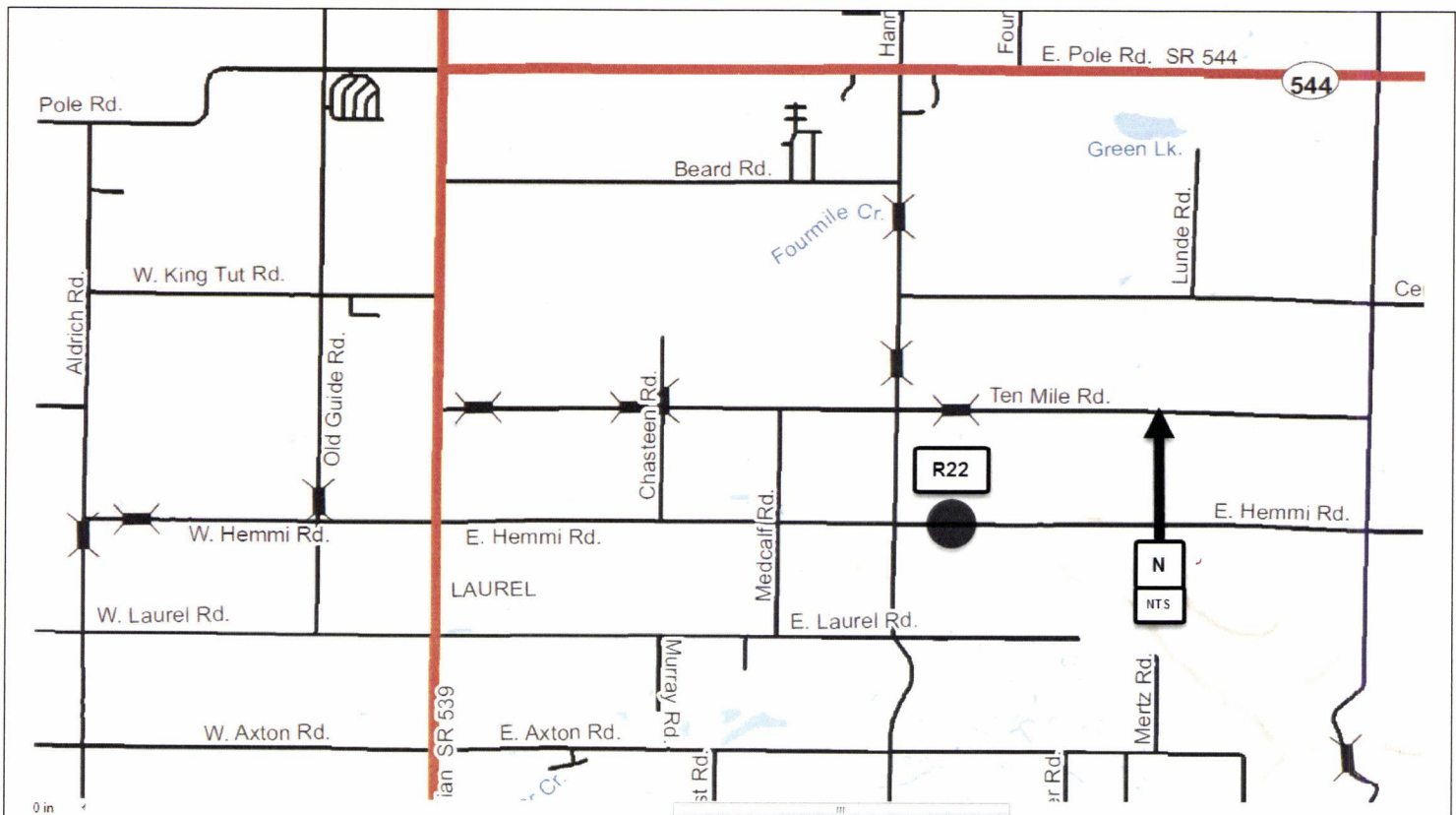
Total Estimated Project Cost: \$1,350,000

Expenditures to Date: \$200,000

Funding Sources:

Federal	
State	
Local	\$1,350,000

Environmental Permitting	TBD
Right-of-Way Acquisition (Estimate)	TBD
County Forces (Estimate)	TBD



Innis Creek Road CRP # 915014

Construction Funding Year(s): TBD

Project Narrative:

This project is located northeast of Wickersham in Section 29, T37N, R5E. The work involves raising a quarter mile section of Innis Creek Road to mitigate flooding issues. This project is listed **#R23** on the 2020-2025 Six Year Transportation Improvement Program.

Project Status:

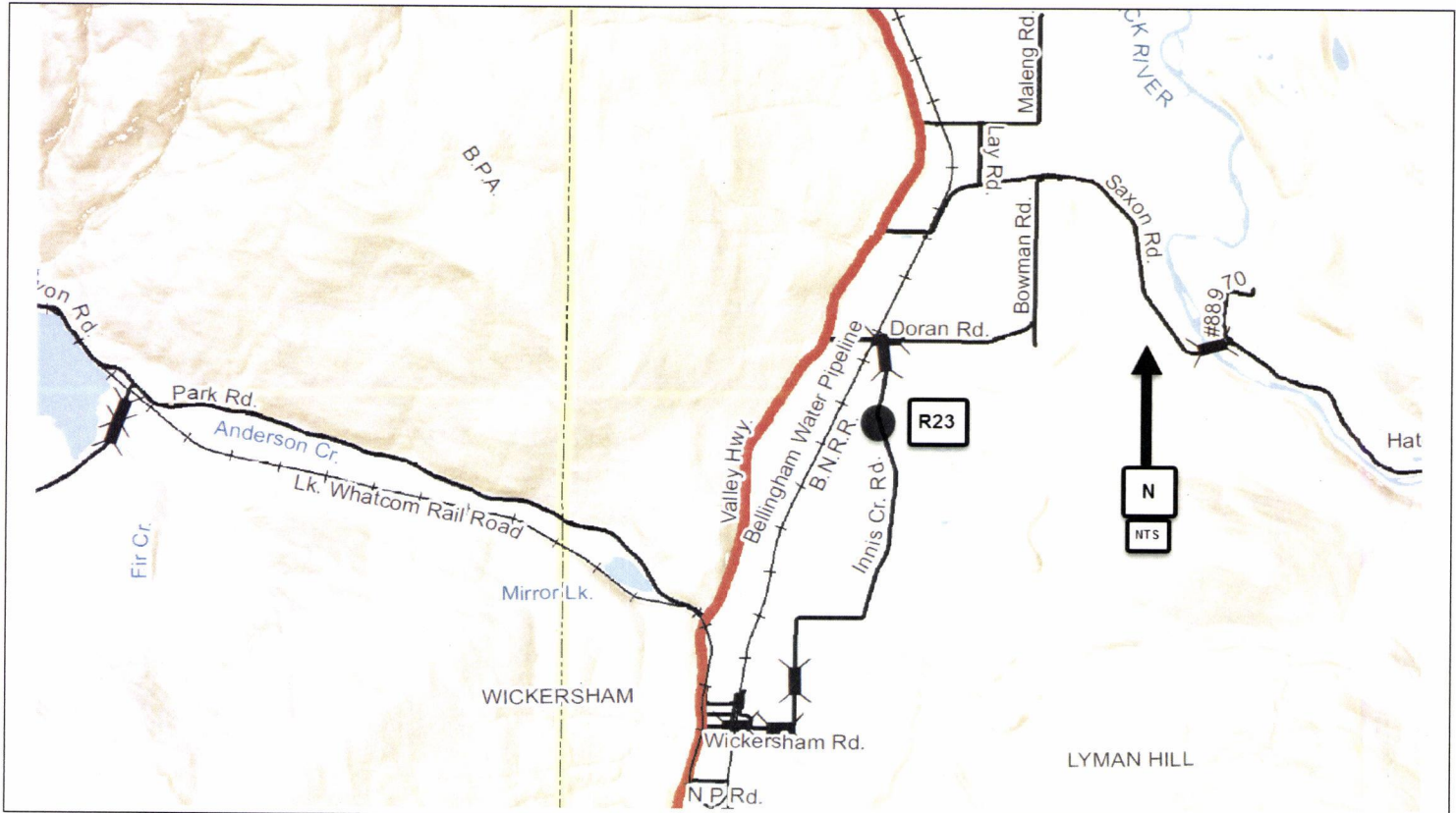
Preliminary design completed in 2019 with alternatives developed; however, environmental mitigation, due to presence of endangered species, has initiated re-evaluation of options.

Total Estimated Project Cost: TBD
Expenditures to Date: \$ 15,000

Funding Sources:

Federal	\$0
State	\$0
Local	\$15,000

Environmental Permitting	TBD
Right-of-Way Acquisition (Estimate)	TBD
County Forces (Estimate)	TBD



Ferndale Road/Levee Improvements CRP # 919001

Construction Funding Year(s): TBD

Project Narrative:

This project is located in Sections 30 and 31, T39N, R2E. This project includes reconstruction of 1.2 miles of levee including the Ferndale Levee and Ferndale Treatment Plant Levee segments. The new levee will be set back slightly to Ferndale Road with the roadway serving as the crest of the levee. This project is listed **#R26** on the 2020-2025 Six-Year Transportation Improvement Program.

Project Status: Due to the high cost, outside funding will be sought. The WCFCZD will pursue funding through the Floodplains by Design grant program administered by the DOE.

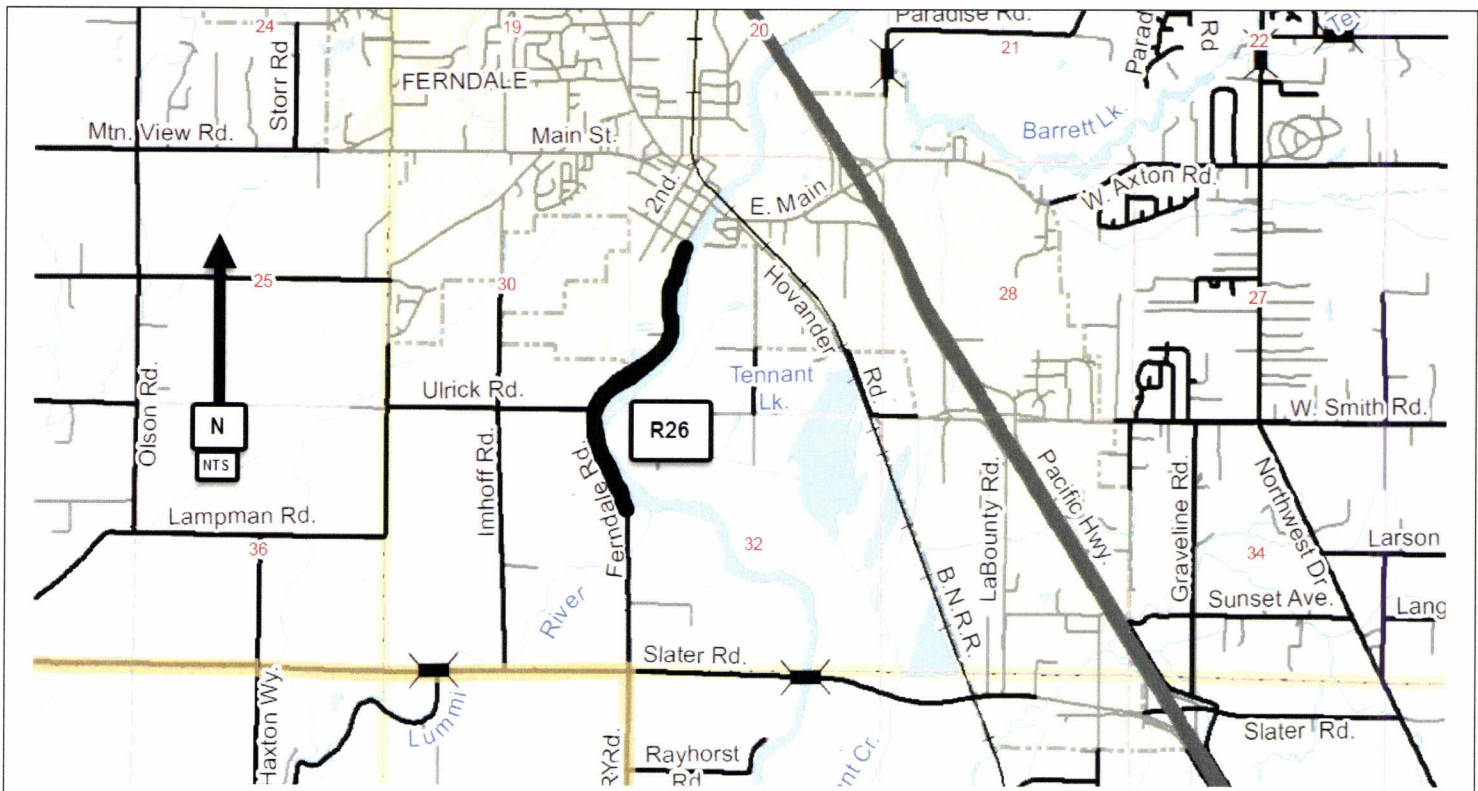
Total Estimated Project Cost: \$7,000,000

Expenditures to Date: \$0

Funding Sources:

Federal	\$
State	\$
Local	\$300,000 (2020-2021)

Environmental Permitting	TBD
Right-of-Way Acquisition (Estimate)	TBD
County Forces (Estimate)	TBD



Abbott Road/Levee Improvements CRP # 919002

Construction Funding Year(s): 2020

Project Narrative:

This project is located in Section 27, T40N, R3E. This project proposes to stabilize an approximately 600-LF section of the left bank of the Nooksack River adjacent to Abbott Road and to extend the upstream end of the Abbott Levee and realigned it to run under Abbott Road. This project is listed **#R27** on the 2020-2025 Six-Year Transportation Improvement Program.

Project Status: The funding sources will likely include the County Road fund, the WCFCZD and the LE Subzone.

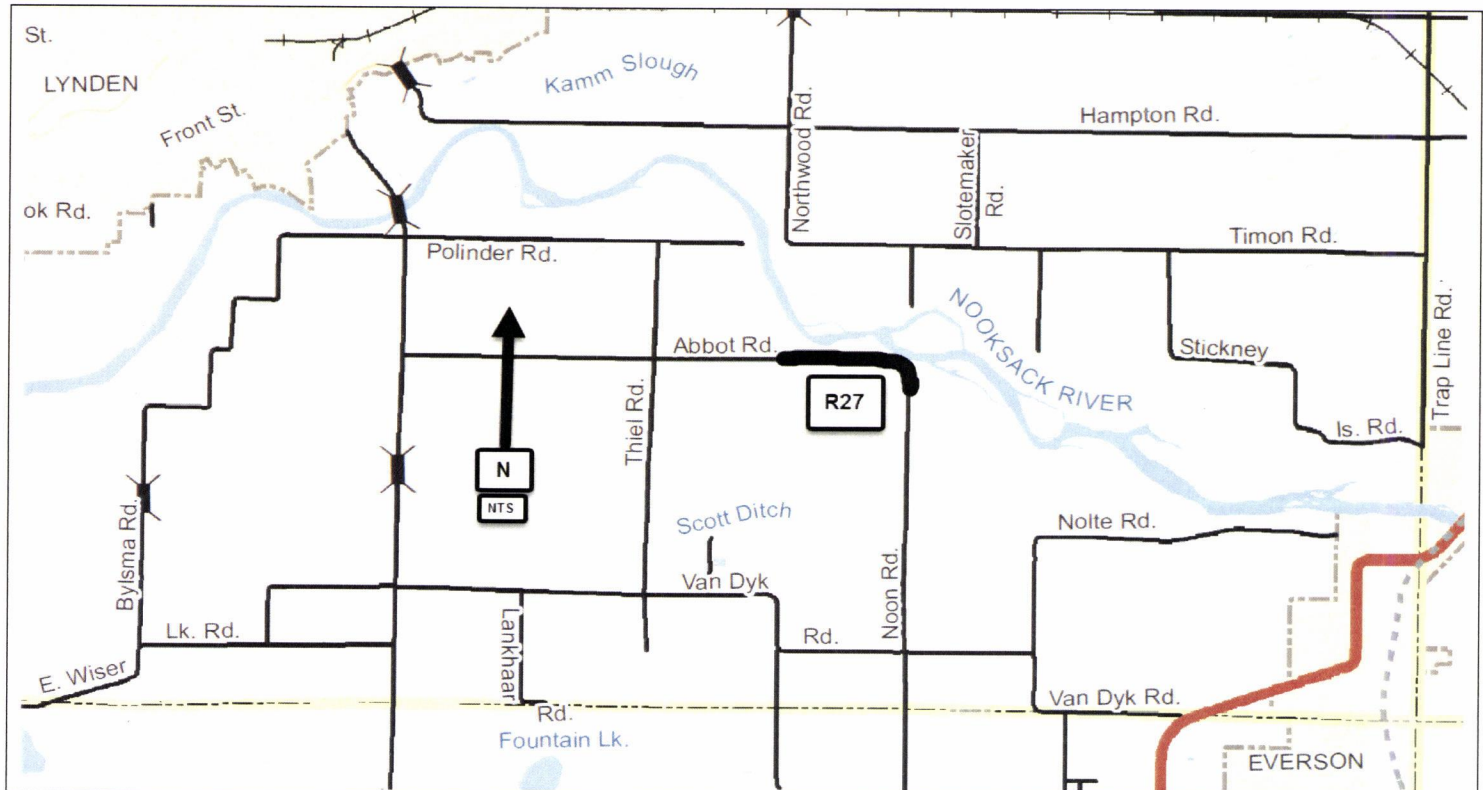
Total Estimated Project Cost: \$1,170,000

Expenditures to Date: \$0

Funding Sources:

Federal	\$
State	\$
Local	\$1,170,000 (2020-2022)

Environmental Permitting	HPA, ACOE, Shorelines, SEPA
Right-of-Way Acquisition (Estimate)	TBD
County Forces (Estimate)	TBD



Northwest Drive, City of Bellingham to Axton Road Structural Overlay CRP # 919003

Construction Funding Year(s): 2020

Project Narrative:

This project is located between the City Limits of Bellingham and Axton Road in Sections 2, 11, 26, & 35 of T38N & T39N, R2E. The work will involve a structural overlay of 3.45 miles of roadway, a culvert upgrade for fish passage, and other minor improvements. This project is listed **#R28** on the 2020-2025 Six-Year Transportation Improvement Program.

Project Status: Design proceeding for structural overlay and one (1) culvert upgrade for fish passage. Anticipate completing design and permitting by early 2020, with construction planned for Summer 2020.

Total Estimated Project Cost: \$1,760,000

Expenditures to Date: \$20,000

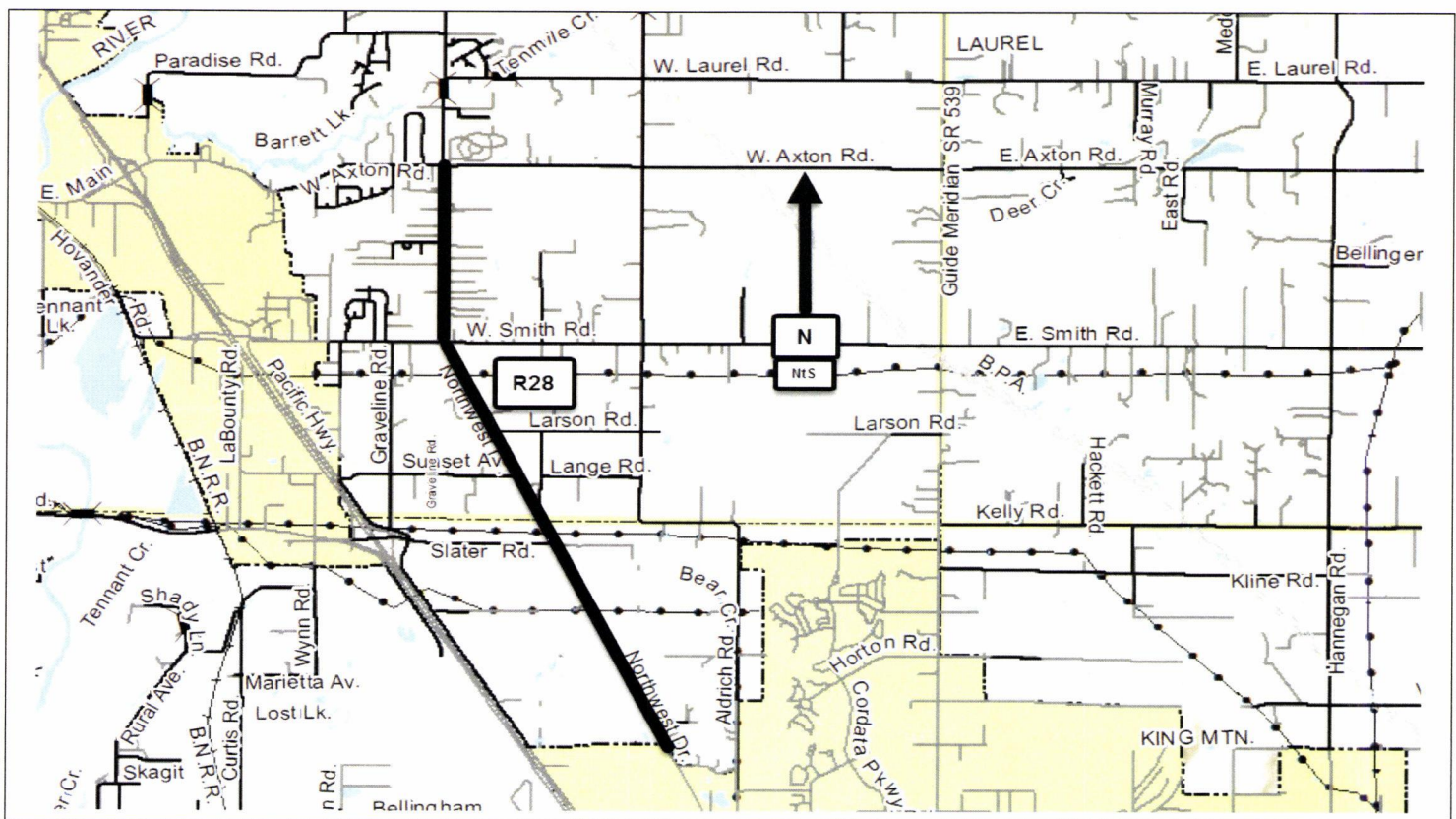
Funding Sources:

Federal	\$0
State	\$
Local	\$1,760,000

Environmental Permitting	HPA, SEPA, CLR/CAO,
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Right-of-Way Acquisition (Estimate)	\$10,000
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County Forces (Estimate)	N/A
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E. Smith Rd., Everson Goshen Rd. to SR 542 Pavement Rehabilitation CRP # 918018

Construction Funding Year(s): 2020

Project Narrative:

This East Smith Road project is located between Hannegan Road and Everson-Goshen Road in Sections 26, 27, 28 of T39N, R3E. The work will involve the pavement rehabilitation of approximately 3 miles of roadway. This project is listed **#R29** on the 2020-2025 Six-Year Transportation Improvement Program.

Project Status: Project received Rural Arterial Preservation Program (RAPP) grant funds in mid-2019. Working on design in late 2019, with good possibility of construction in 2020. Will combine with other E. Smith paver if allowed by funding source (CRAB).

Total Estimated Project Cost: \$1,500,000

Expenditures to Date: \$0

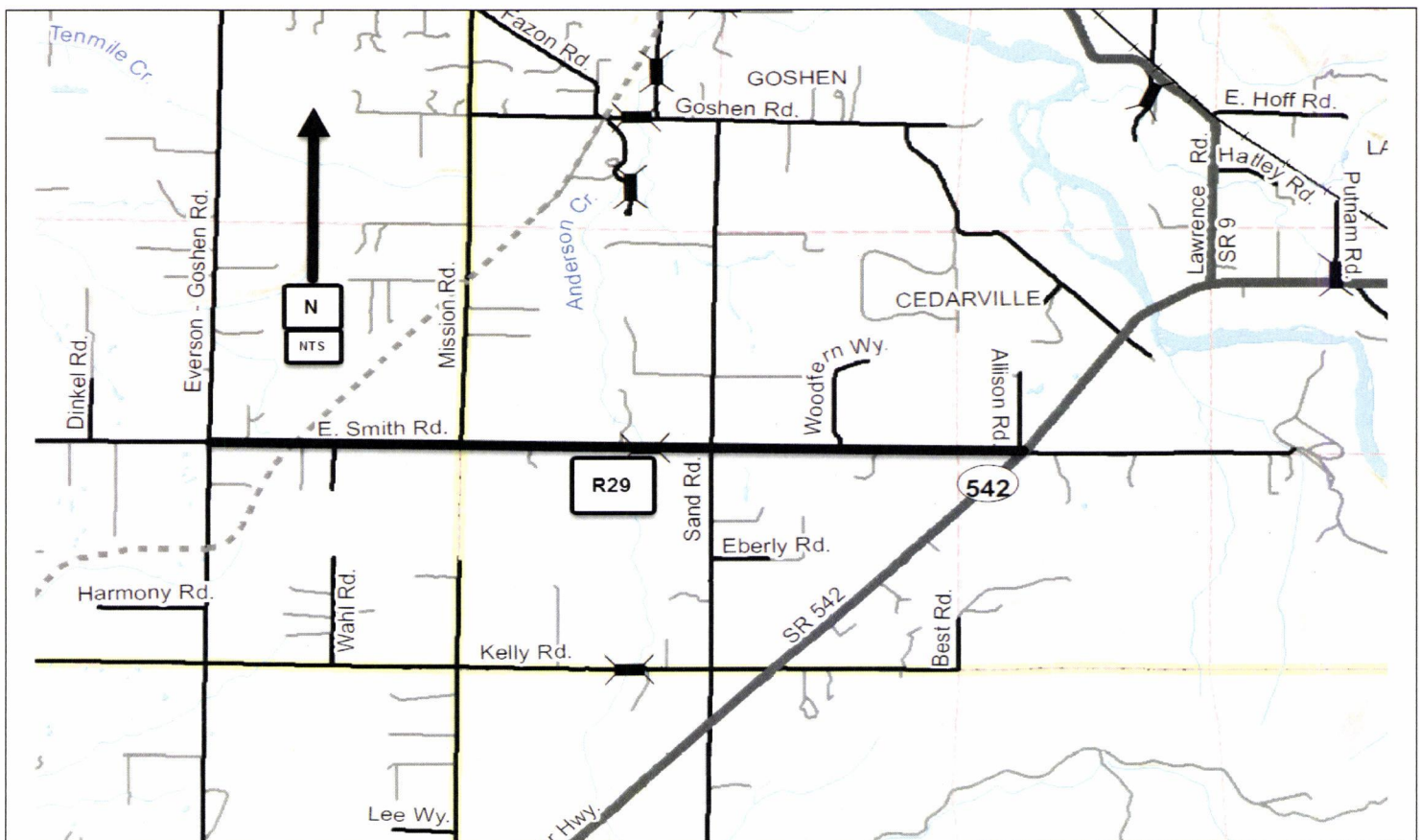
Funding Sources:

Federal	\$0
State	\$1,035,000 of RATA funds
Local	\$465,000

Environmental Permitting SEPA,

Right-of-Way Acquisition (Estimate) N/A

County Forces (Estimate) N/A



Birch Bay Lynden Rd, Enterprise Rd. to Rathbone Rd. Pavement Rehabilitation CRP # 919018

Construction Funding Year(s): TBD

Project Narrative:

This Birch Bay Lynden Road project is located between Enterprise Road and Rathbone Road in Sections 27 & 28 of T40N, R2E. The work will involve the pavement rehabilitation of approximately 2 miles of roadway. This project is listed #R30 on the 2020-2025 Six-Year Transportation Improvement Program.

Project Status: Project received Rural Arterial Preservation Program (RAPP) grant funds of \$165,000 in mid-2019. Will initiate design work in late 2019 / early 2020, with construction planned for 2024.

Total Estimated Project Cost: \$1,210,000

Expenditures to Date: \$0

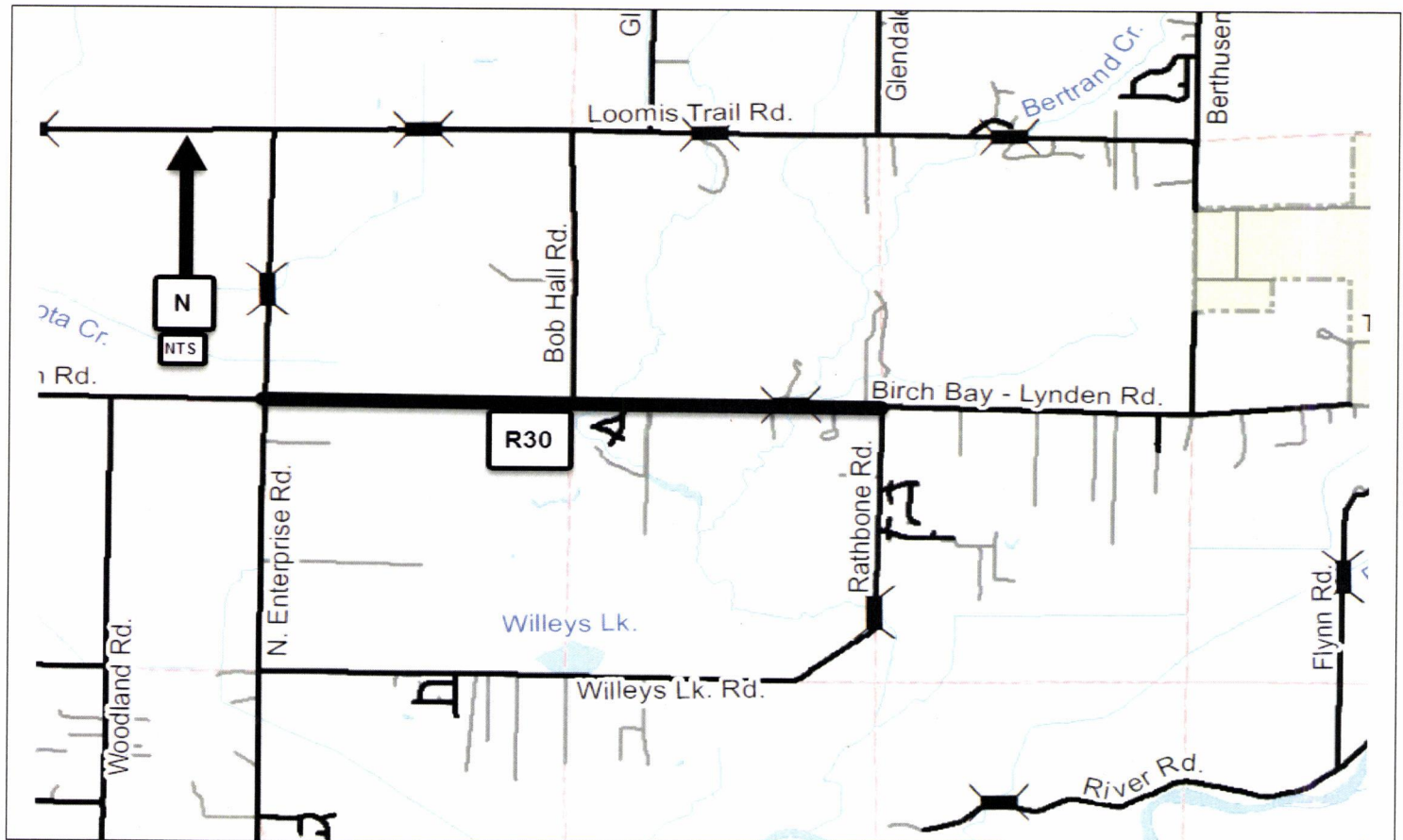
Funding Sources:

Federal	\$0
State	\$165,000 RATA funds
Local	\$1,045,000

Environmental Permitting SEPA

Right-of-Way Acquisition (Estimate) N/A

County Forces (Estimate) N/A



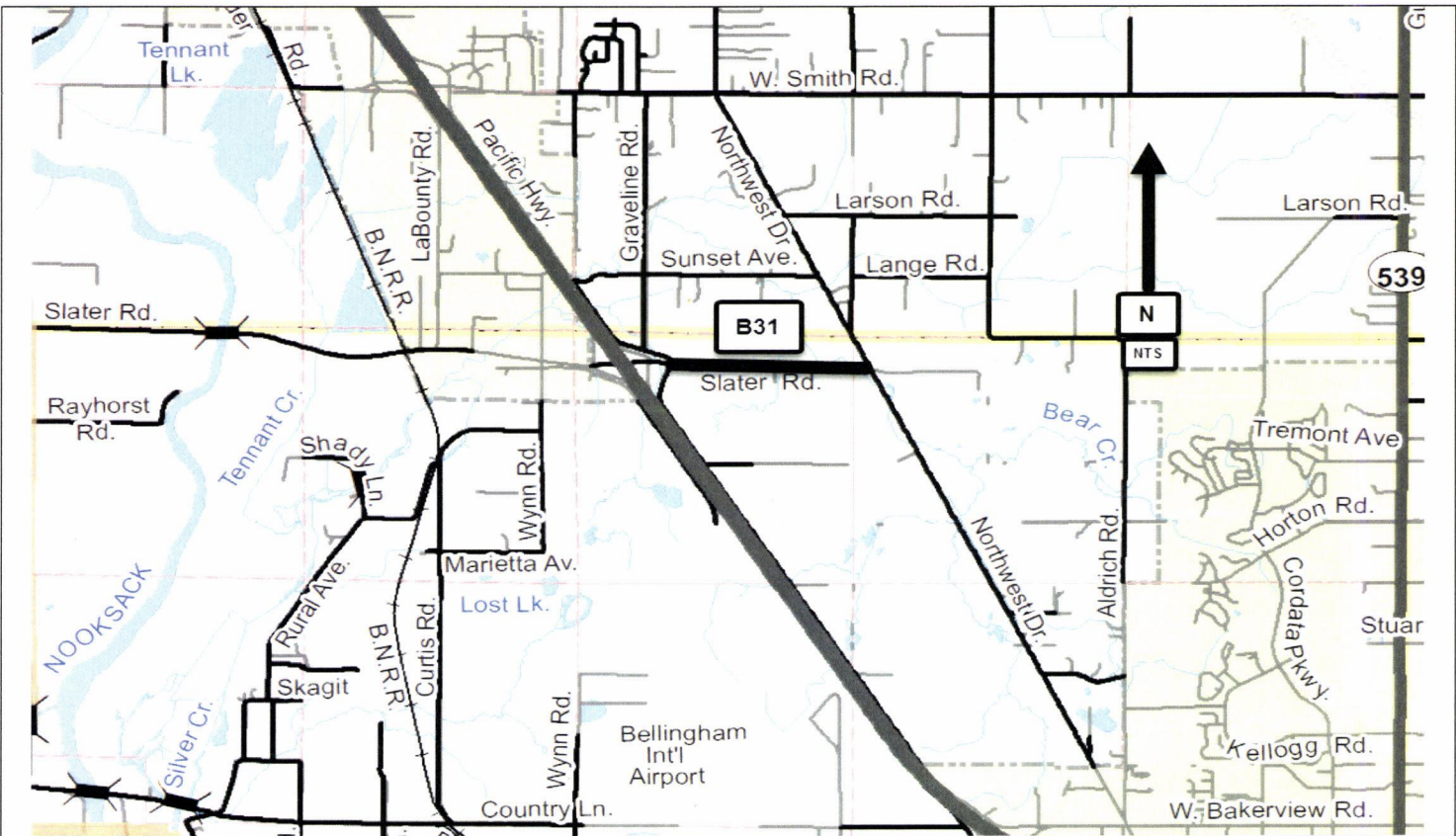
Construction Funding Year(s):	2020
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<p>Project Narrative:</p> <p>This project is located in Sections 3 of T38N, R2E. The work will involve the structural overlay of approximately ¾ miles of roadway along with other minor improvements. This project is listed #R31 on the 2020-2025 Six-Year Transportation Improvement Program.</p>
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Project Status: Design work will occur in late 2019, with Construction planned for Summer of 2020.

Total Estimated Project Cost: \$500,000 Expenditures to Date: \$ 0	Funding Sources:	
	Federal	\$ 0
	State	\$ 0
	Local	\$500,000

Environmental Permitting	SEPA,
Right-of-Way Acquisition (Estimate)	\$0
County Forces (Estimate)	TBD



**2020 Small Area Paving
Bridge Approach, Pavement Rehabilitation, Minor Widening
CRP #920002**

Construction Funding Year(s): 2020

Project Narrative:

This work will address multiple locations throughout Whatcom County that are in need of corrections to settling bridge approaches, minor widening for safety issues, and pavement rehabilitation. This project is listed **#R32** on the 2020-2025 Six-Year Transportation Improvement Program.

Project Status: Working with the Maintenance & Operations Division to scope out potential projects.

Total Estimated Project Cost: \$250,000

Expenditures to Date: \$ 0

Funding Sources:

Federal	\$ 0
State	\$ 0
Local	\$250,000

Environmental Permitting

Right-of-Way Acquisition (Estimate)

County Forces (Estimate)

Due to the nature of this item, no map exists. Final locations of the Small Area Paving sites will be determined in late 2019 / early 2020.

Jackson Road / Terrell Creek - Bridge No. 81 Replacement CRP # 917004

Construction Funding Year(s): TBD

Project Narrative:

This project is located near Birch Bay in Section 31, T40N, R1W. This is a project to replace the existing 62-foot structurally deficient bridge. This project is listed **#B2** on the 2020-2025 Six Year Transportation Improvement Program.

Project Status:

Project was submitted for BRAC funding in 2017 and was not selected for funding. Preliminary design work, including a type, size, and location study to begin in 2020. Outside funding will be pursued for the construction phase of this project.

Total Estimated Project Cost: \$ TBD

Expenditures to Date: \$ 0

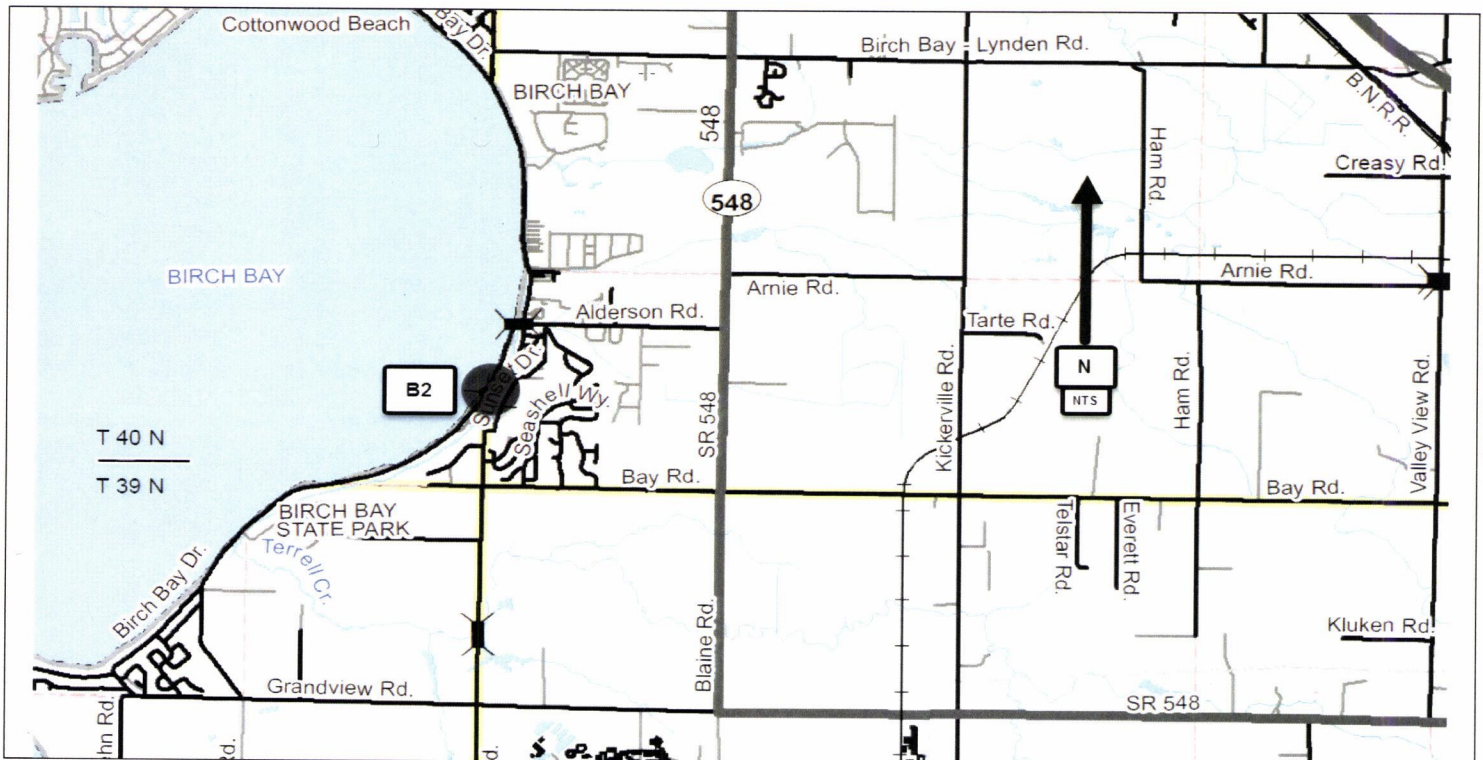
Funding Sources:

Federal	\$TBD
State	\$TBD
Local	\$390,000

Environmental Permitting TBD

Right-of-Way Acquisition (Estimate) TBD

County Forces (Estimate) TBD



N. Lake Samish Road Bridge No. 107 Replacement CRP # 913006

Construction Funding Year(s): TBD

Project Narrative:

This project is located on Lake Samish in Section 27, T37N, R3E. This project will replace the existing 250-foot timber bridge which is structurally deficient. This project is listed **#B4** on the 2020-2025 Six-Year Transportation Improvement Program.

Project Status:

The type, size, and location study for the replacement bridge was completed in 2017. Design, permitting, and real estate work is underway and it is anticipated that the design will be nearing the 90% stage by the end of 2019. An application for federal bridge replacement funds for the construction phase of this project was submitted to WSDOT in May of 2019 and it is expected that successful applicants will be notified in October of 2019.

Total Estimated Project Cost: \$10,000,000

Expenditures to Date: \$550,000

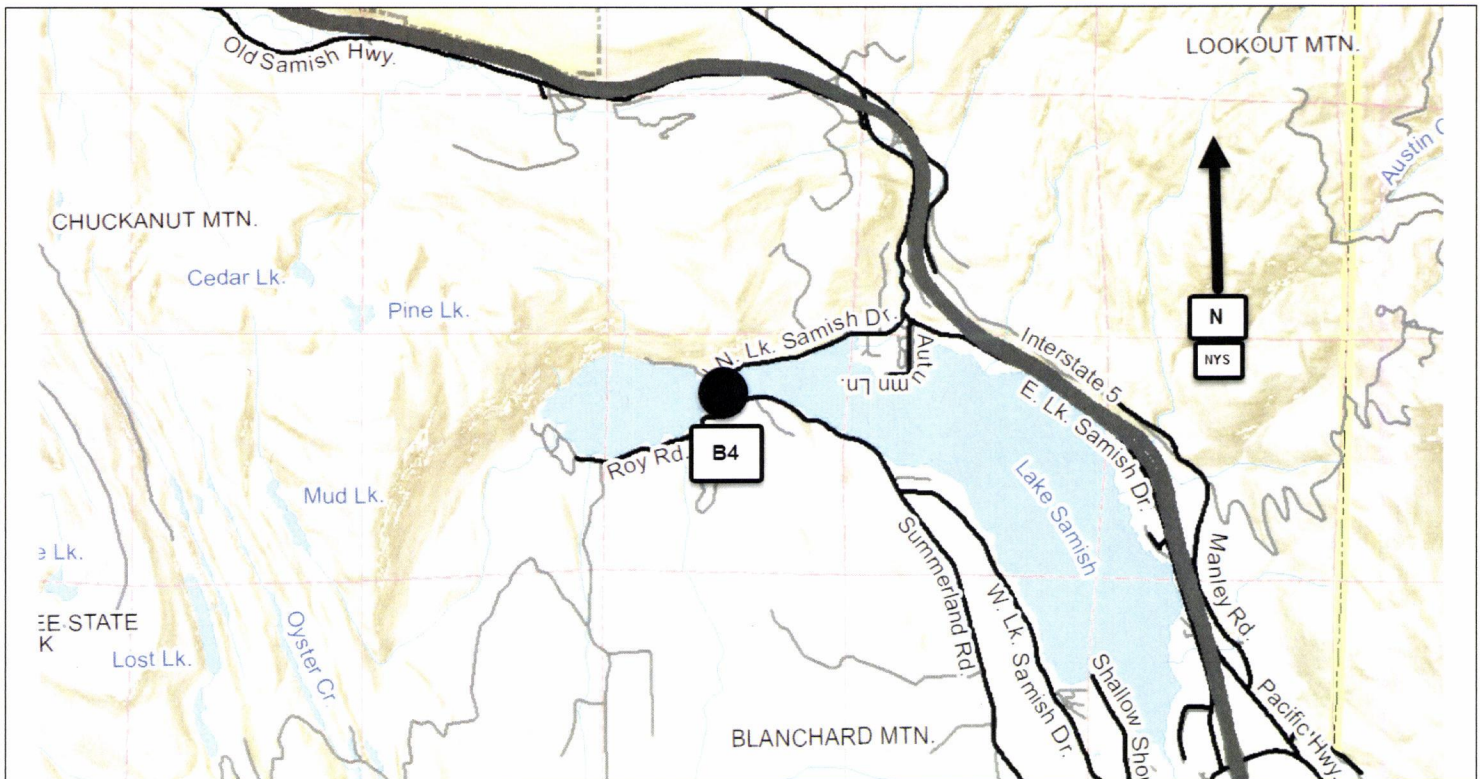
Funding Sources:

Federal	\$0
State	\$0
Local	\$770,000

Environmental Permitting TBD

Right-of-Way Acquisition TBD

County Forces TBD



Goshen Road/Anderson Creek Bridge No. 248 Replacement CRP # 920003

Construction Funding Year(s): TBD

Project Narrative:

This project is located south of Everson/Goshen in Section 19, T39N, R4E. This is a project to replace the existing 62-foot structurally deficient bridge. This project is listed **#B5** on the 2020-2025 Six Year Transportation Improvement Program.

Project Status: Preliminary design, permitting and real estate work to begin in 2020. An application for federal bridge replacement funds for this project was submitted to WSDOT in May of 2019 and it is expected that successful applicants will be notified in October of 2019.

Total Estimated Project Cost: TBD

Expenditures to Date: \$ 0

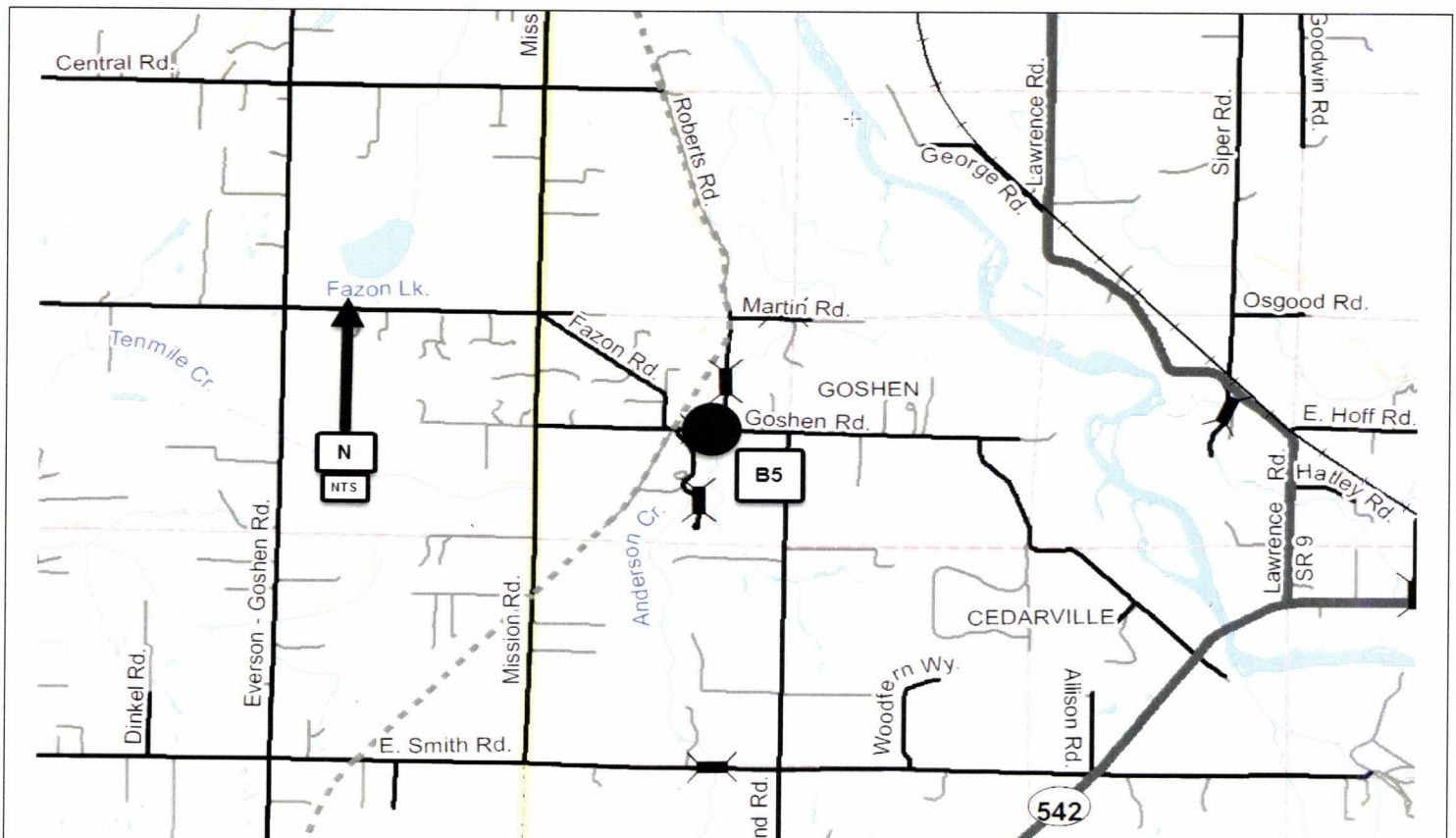
Funding Sources:

Federal	\$0
State	\$0
Local	\$390,000

Environmental Permitting TBD

Right-of-Way Acquisition (Estimate) TBD

County Forces (Estimate) TBD



Mosquito Lake Rd/Hutchinson Creek Tributary Fish Passage CRP # 919006

Construction Funding Year(s): 2021

Project Narrative: The existing 30-inch diameter concrete culvert at this location was damaged in early 2018 and a temporary fix completed in late 2018. This culvert has been identified as a barrier to fish passage. Permits for the temporary repair project requires that the existing culvert is replaced with a structure that meets current fish passage requirements. This project is listed **#B11** on the 2020-2025 Six-Year Transportation Improvement Program.

Project Status: Design, permitting and real estate work underway. Construction of this project planned for 2021.

Total Estimated Project Cost: \$750,000

Expenditures to Date: \$50,000

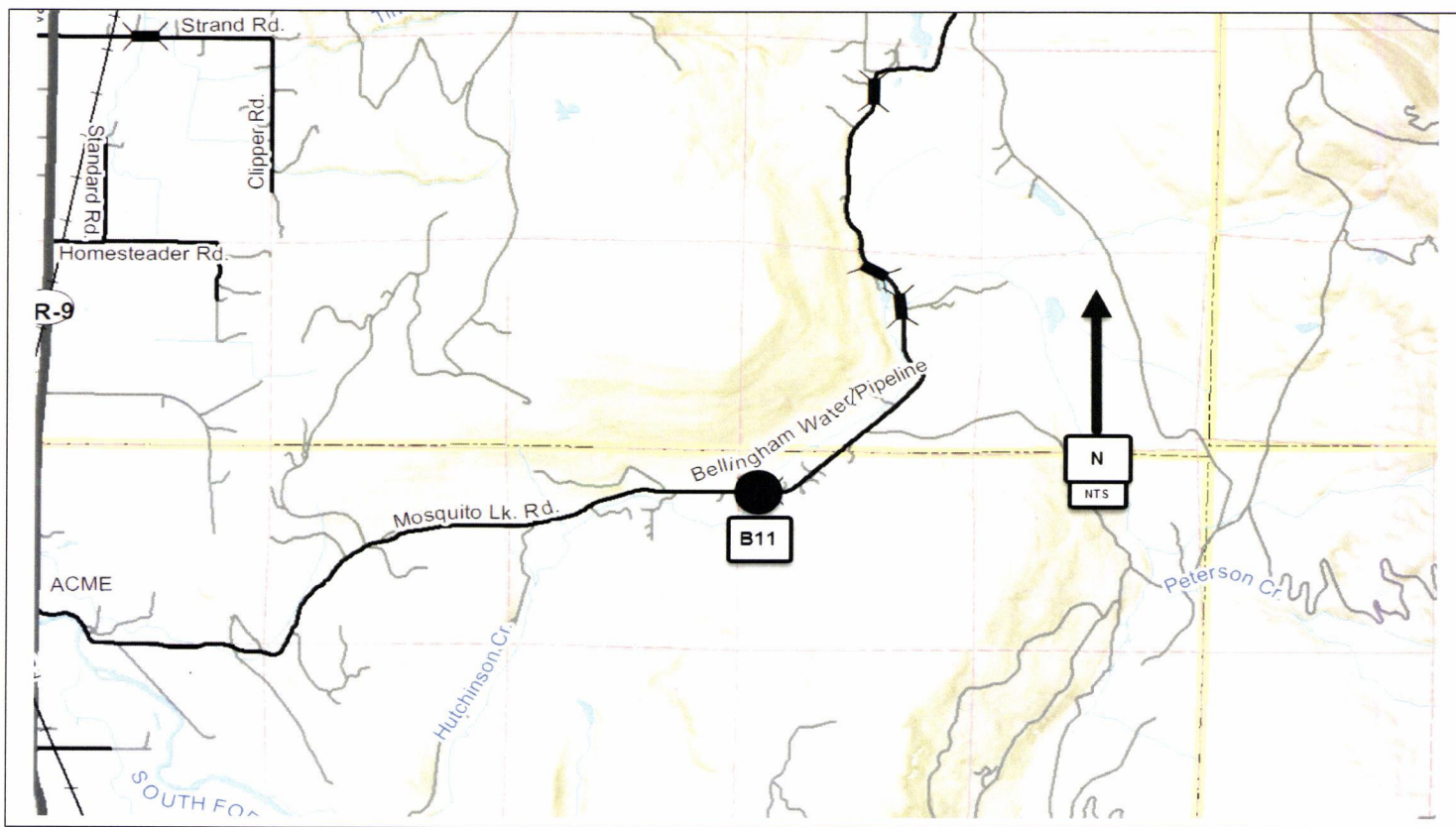
Funding Sources:

Federal	\$0
State	\$0
Local	\$750,000

Environmental Permitting TBD

Right-of-Way Acquisition (Estimate) TBD

County Forces (Estimate) TBD



North Fork Road/Kenny Creek Fish Passage CRP # 919007

Construction Funding Year(s): TBD

Project Narrative: The existing 5-foot diameter corrugated steel culvert which carries Kenny Creek under the North Fork Road has been identified as a barrier to fish passage and, considering habitat to be gained, is considered one of the highest priority barriers within the County road system. Washington State Fish Barrier Removal Board (FBRB) funding has been secured for the design phase of this fish passage project. This project is listed as **#B12** on the 2020-2025 Six-Year Transportation Improvement Program.

Project Status: Project design, permitting and real estate began in 2019. Whatcom County has been awarded \$443,000 of State FBRB funds for the design phase of this project. Additional FBRB funds will be pursued for the construction phase of this project.

Total Estimated Project Cost: TBD

Expenditures to Date: \$0

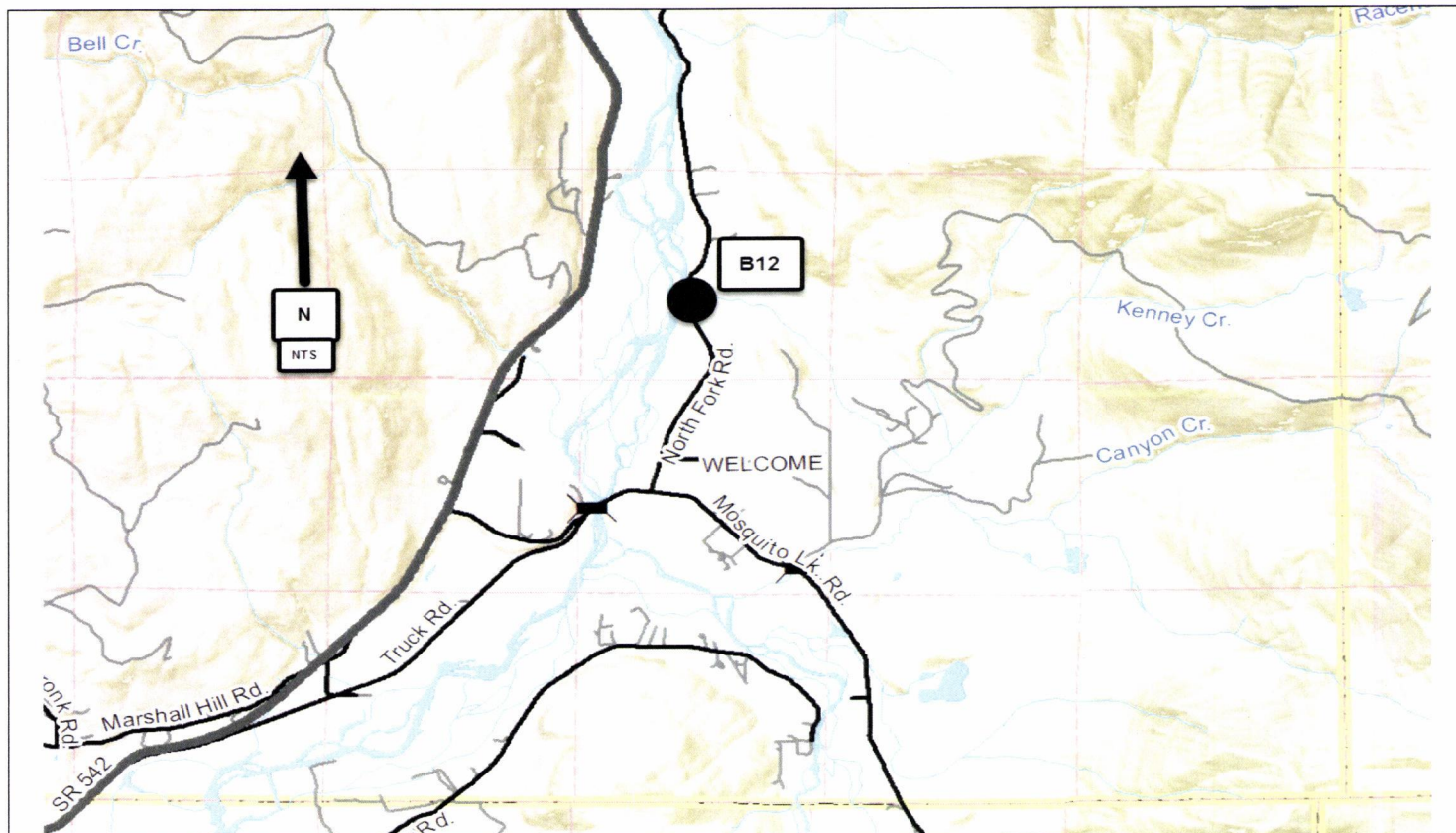
Funding Sources:

Federal	\$0
State	\$443,000 (FBRB funds)
Local	\$150,000

Environmental Permitting TBD

Right-of-Way Acquisition (Estimate) TBD

County Forces (Estimate) TBD



Truck Road/Deal Road Fish Passage Culverts CRP # 920004

Construction Funding Year(s): 2020

Project Narrative: This project is located in Sections 33, T39N, R5E. The project. This project is listed **#B13** on the 2020-2025 Six-Year Transportation Improvement Program. Project includes replacing three existing culverts that have been identified as barriers to fish passage in the Truck Road and Deal Road area with culverts that meet current fish passage requirements.

Project Status: Construction of these three (3) fish passage culverts is planned for 2020.

Total Estimated Project Cost: \$250,000

Expenditures to Date: \$ 0

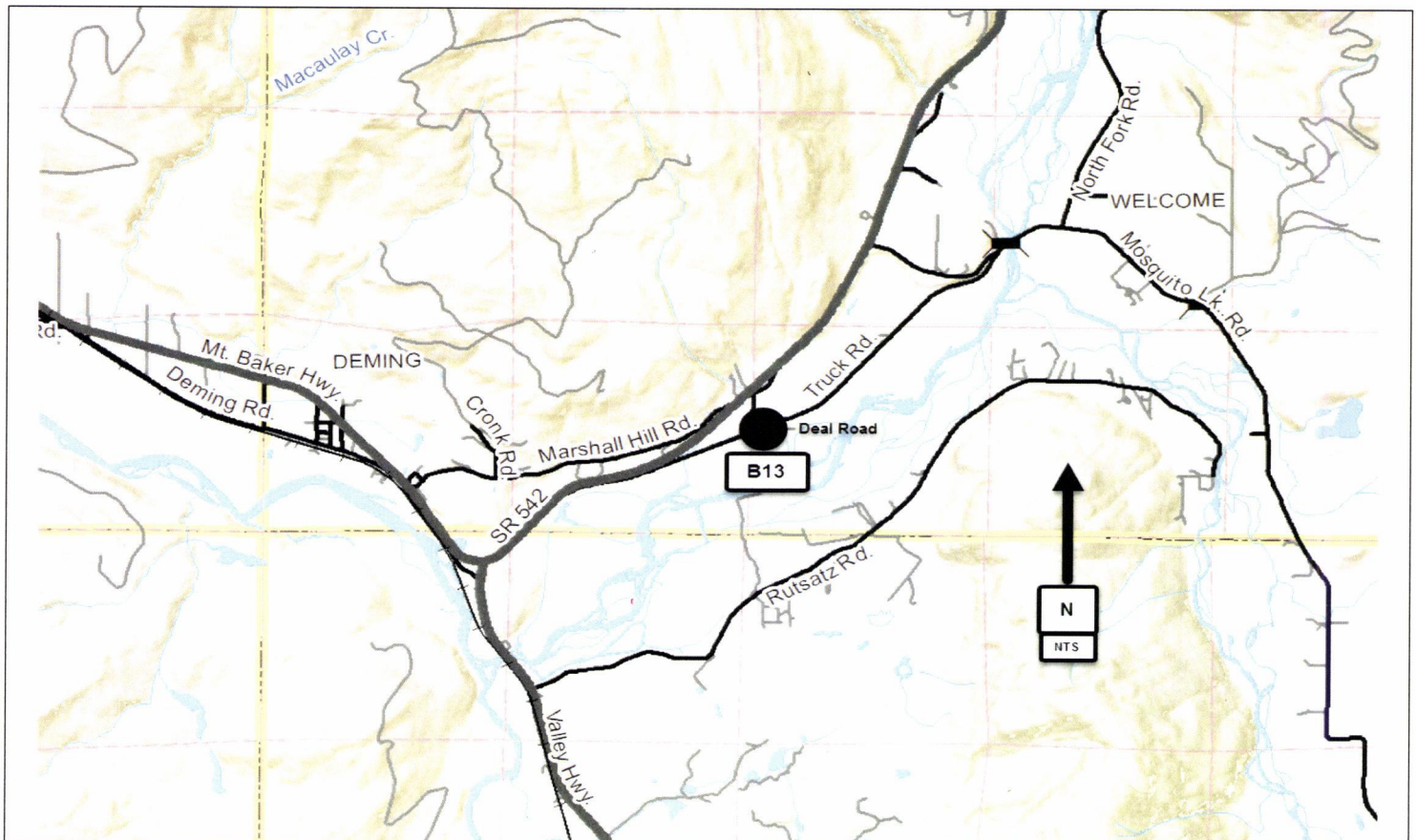
Funding Sources:

Federal	\$ 0
State	\$ 0
Local	\$250,000

Environmental Permitting	SEPA, CLR/CAO, Shorelines, HPA
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Right-of-Way Acquisition (Estimate)	TBD
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County Forces (Estimate)	TBD
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Replacement of Whatcom Chief & Terminal Modification CRP # 919008

Construction Funding Year(s): TBD

Project Narrative:

This project includes replacement of the Whatcom Chief with a 34 car vessel and modifications of the existing ferry terminals to accommodate the new vessel. This work will be accomplished as outlined in the Lummi Island Ferry Service Level of Service Action Plan approved by the Whatcom County Council via Resolution 2018-026. This project is listed **#F1** on the 2020-2025 Six Year Transportation Improvement Program.

Project Status:

Design work for the new vessel is underway. This work will coincide with the next cycle of funding by the County Road Administration Board.

Total Estimated Project Cost: TBD

Expenditures to Date: \$375,000

Funding Sources:

Federal	\$0
State	\$0
Local	\$730,000

Environmental Permitting	None Required
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Right-of-Way Acquisition (Estimate)	None Required
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County Forces (Estimate)	N/A
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M/V Whatcom Chief



Lummi Island Terminal Preservation Project CRP # 919020

Construction Funding Year(s): 2020

Project Narrative: This project includes replacing corroded high strength bolts, removing and replacing the transfer span paint system and application of overcoat paint system to the tower and apron systems. This project is listed **#F2** on the 2020-2025 Six Year Transportation Improvement Program.

Project Status: Design and permitting work for this project completed in 2019. Construction scheduled for 2020 to coincide with the dry dock period of the Whatcom Chief. Approximately \$656,000 in federal Ferry Boat Program funds will be utilized for the construction phase of this project.

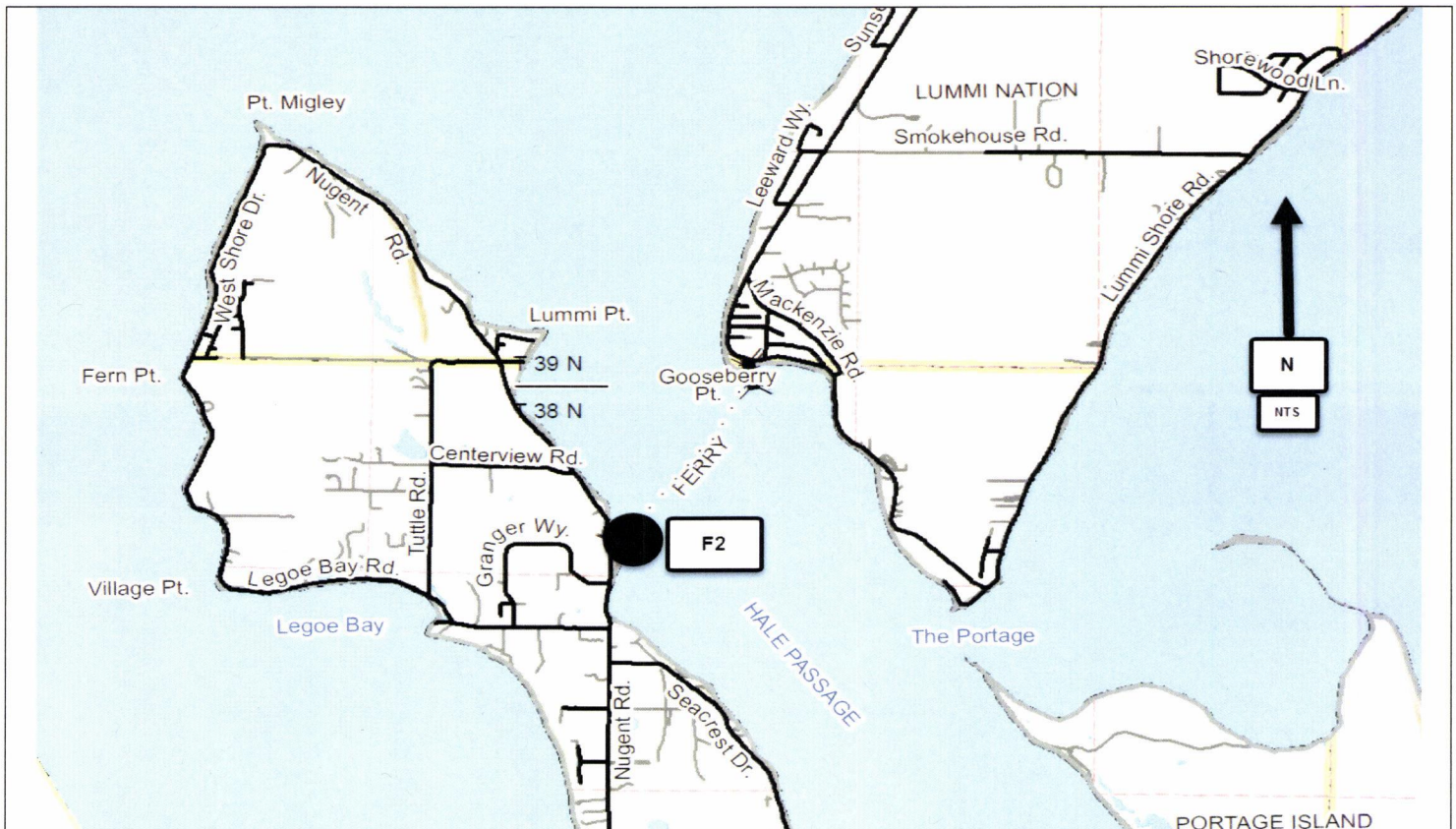
Total Estimated Project Cost: \$925,000

Expenditures to Date: \$100,000

Funding Sources:

Federal	\$656,000 (FBP funds)
State	\$
Local	\$269,000

Environmental Permitting	HPA, SEPA, CORPS 404, COUNTY SHORELINES
Right-of-Way Acquisition (Estimate)	None Required
County Forces (Estimate)	N/A



Gooseberry Point Terminal Preservation Project CRP # 919021

Construction Funding Year(s): 2021

Project Narrative: This project includes removing and replacing the transfer span paint system and application of overcoat paint system to the tower and apron systems. This project is listed #F3 on the 2020-2025 Six Year Transportation Improvement Program.

Project Status: Design and permitting work anticipated to be completed in 2020. Construction scheduled for 2021 to coincide with the dry dock period of the Whatcom Chief.

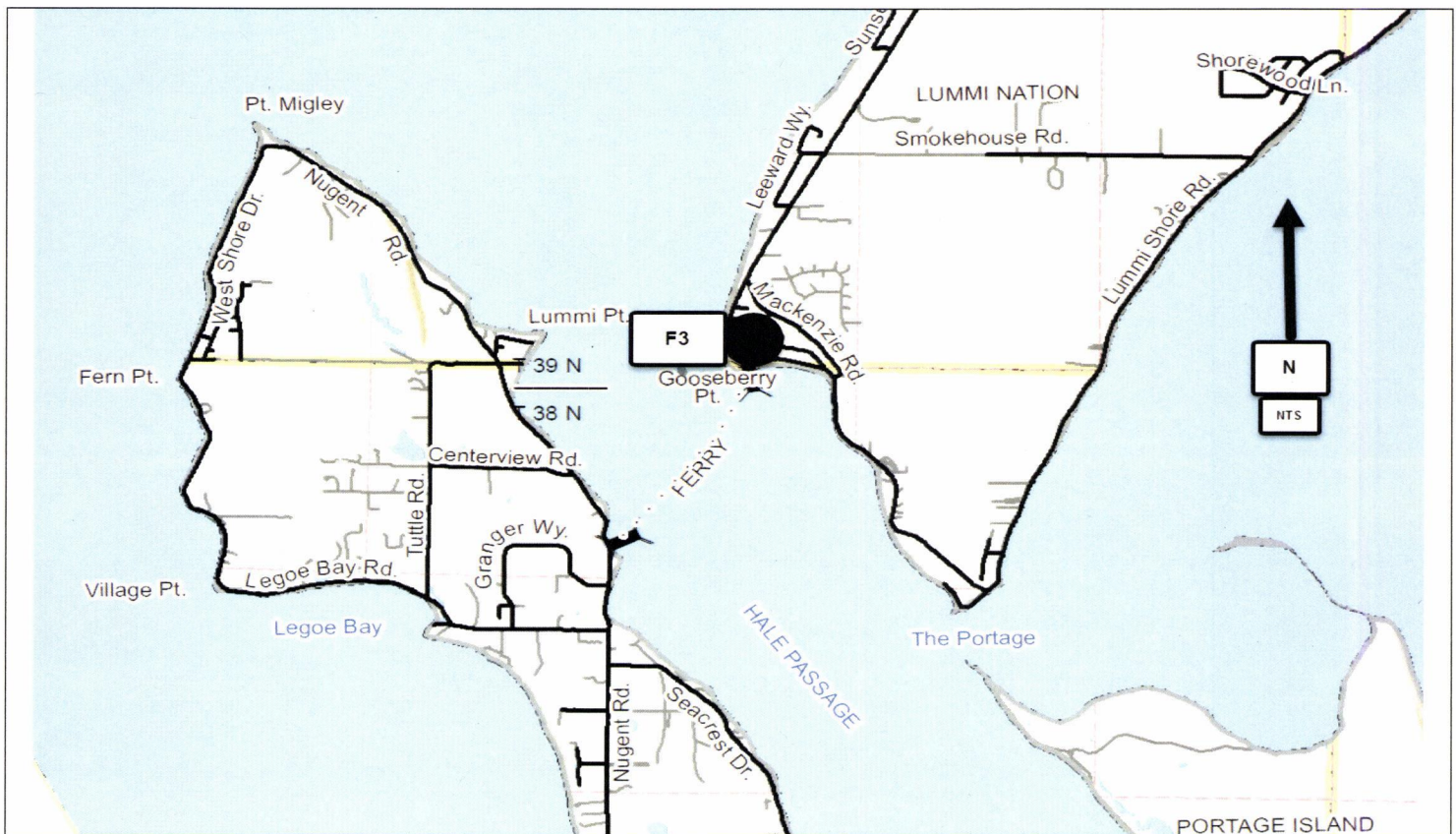
Total Estimated Project Cost: \$850,000

Expenditures to Date: \$75,000

Funding Sources:

Federal	\$
State	\$
Local	\$850,000

Environmental Permitting	HPA, SEPA, CORPS 404, COUNTY SHORELINES
Right-of-Way Acquisition (Estimate)	None Required
County Forces (Estimate)	N/A



Lummi Island Breakwater Replacement CRP #914015

Construction Funding Year(s): 2021

Project Narrative:

This project includes replacing the southerly breakwater at the Lummi Island ferry terminal. This structure was constructed in the mid 1980's and is reaching the end of its service life. This project is listed **#F4** on the 2020-2025 Six Year Transportation Improvement Program.

Project Status:

Design and permitting work expected to be completed in early 2021, with construction of this project scheduled in late 2021. Approximately \$650,000 in federal Ferry Boat Program funds will be utilized for the construction phase of this project.

Total Estimated Project Cost: \$2,250,000

Expenditures to Date: \$175,000

Funding Sources:

Federal	\$770,000 (FBP)
State	\$
Local	\$ 1,480,000

Environmental Permitting

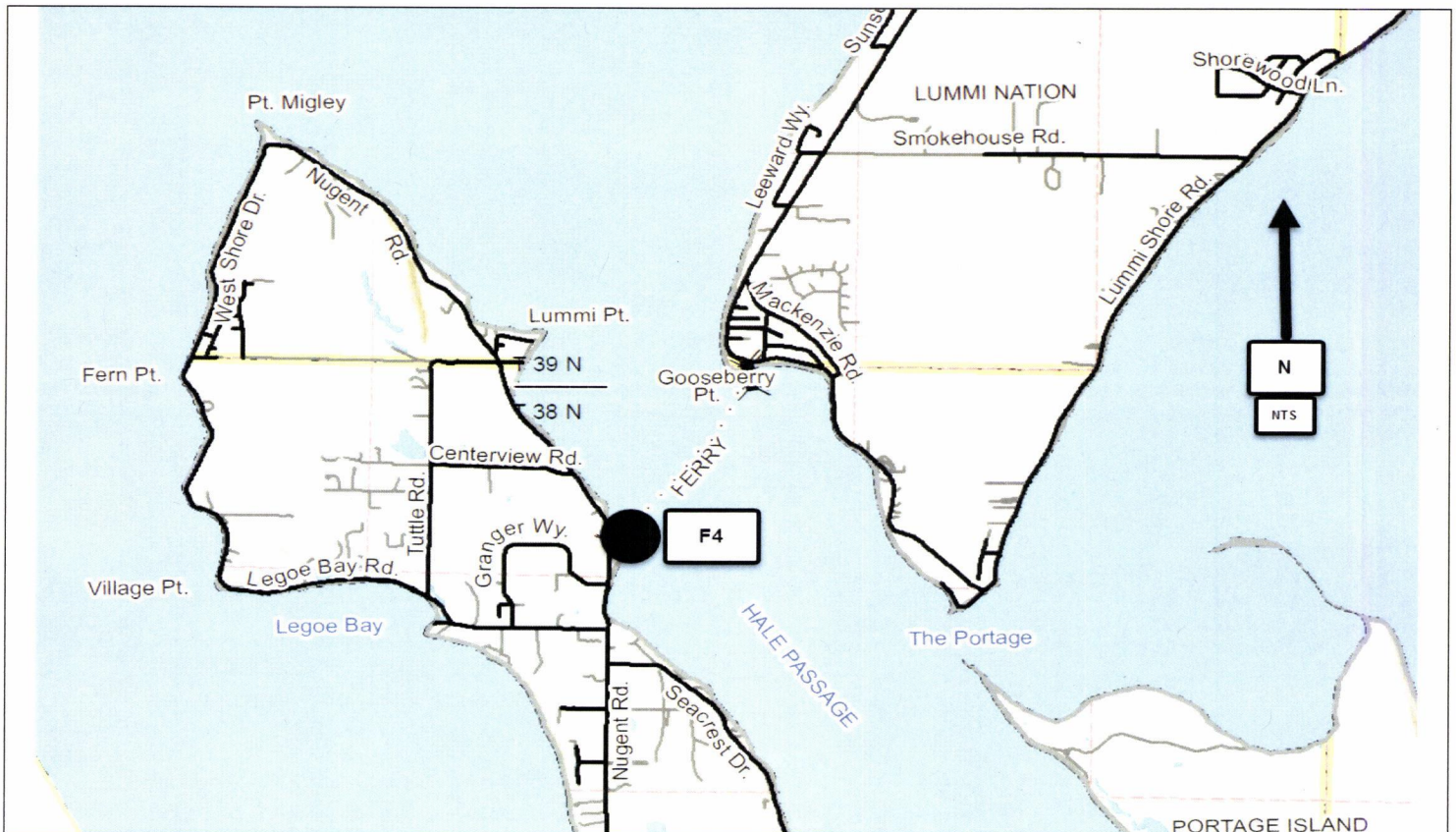
HPA, SEPA, CORPS 404, COUNTY SHORELINES

Right-of-Way Acquisition (Estimate)

None Required

County Forces (Estimate)

N/A



Relocation of Gooseberry Terminal CRP # 919009

Construction Funding Year(s): TBD

Project Narrative:

This project involves relocation of the Gooseberry Point Ferry Terminal. This work will be accomplished as outlined in the Lummi Island Ferry Service Level of Service Action Plan approved by the Whatcom County Council via Resolution 2018-026. This project is listed **#F5** on the 2020-2025 Six Year Transportation Improvement Program.

Project Status:

Early action items will likely include EIS and real estate work. This work will coincide with the next cycle of funding by the County Road Administration Board.

Total Estimated Project Cost: TBD

Expenditures to Date: \$

Funding Sources:

Federal	\$0
State	\$0
Local	\$400,000

Environmental Permitting	None Required
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Right-of-Way Acquisition (Estimate)	None Required
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County Forces (Estimate)	None Required
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Various Bridges Rehabilitation / Replacement CRP # 920005

Construction Funding Year(s): 2020 - 2025

Project Narrative:

This item provides funding to address unanticipated bridge rehabilitation and/or replacement. It is listed **#Y1** on the 2020-2025 Six Year Transportation Improvement Program.

Project Status:

Design and construction to occur as necessary.

Total Estimated Project Cost: \$1,800,000

Expenditures to Date: N/A

Funding Sources:

Federal	\$
State	\$
Local	\$1,800,000 (STIP 2020-2025)

Environmental Permitting	TBD
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Right-of-Way Acquisition (Estimate)	TBD
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County Forces (Estimate)	TBD
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Due to the nature of this item, no map exists. Council review and prioritization will be sought at the appropriate times.

Right of Way Acquisition
CRP # 920006

Construction Funding Year(s): 2020-2025

Project Narrative:

This item addresses the unanticipated need for Right-of-Way that may arise during a given year that requires immediate action. This project is listed **#Y2** on the 2020-2025 Six Year Transportation Improvement Program.

Project Status:

N/A.

Total Estimated Project Cost: \$180,000

Expenditures to Date:

Funding Sources:

Federal	\$0
State	\$0
Local	\$180,000 (2020-2025)

Environmental Permitting	TBD
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Right-of-Way Acquisition (Estimate)	TBD
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County Forces (Estimate)	N/A
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Due to the nature of this program item, no map exists. Council review and prioritization will be sought at the appropriate time.

Unanticipated Site Improvements CRP # 920007

Construction Funding Year(s): 2020 - 2025

Project Narrative:

This Annual Construction Program item addresses the unanticipated project(s) that may arise during a given year that require immediate action due to safety concerns, environmental factors, traffic volumes, accident history, funding or grant availability and other issues not related to an existing program project. This project is listed #Y3 on the 2020-2025 Six Year Transportation Improvement Program.

Project Status:

It is anticipated that the design and construction of projects will occur yearly as the needs and locations are determined.

Total Estimated Project Cost: \$1,800,000

Expenditures to Date:

Funding Sources:

Federal	\$0
State	\$0
Local	\$1,800,000 (2020-2025)

Environmental Permitting	TBD
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Right-of-Way Acquisition (Estimate)	TBD
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County Forces (Estimate)	N/A
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Due to the nature of this program item, no map exists. Council review and prioritization will be sought at the appropriate time.

Unanticipated Stormwater Quality Improvements CRP # 920008

Construction Funding Year(s): 2020 - 2025

Project Narrative:

This project varies in location. Identification and prioritization to be addressed and reviewed through County Council. This project is listed **#Y4** on the 2020-2025 Six Year Transportation Improvement Program.

Project Status:

It is anticipated that the design and construction of projects will occur yearly as the needs and locations are determined.

Total Estimated Project Cost: \$345,000

Expenditures to Date:

Funding Sources:

Federal	\$0
State	\$0
Local	\$345,000 (2020-2025)

Environmental Permitting	TBD
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Right-of-Way Acquisition (Estimate)	TBD
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County Forces (Estimate)	TBD
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Due to the nature of this program item, no map exists. Council review and prioritization will be sought at the appropriate time.

Unanticipated Non-motorized Transportation Improvements CRP # 920009

Construction Funding Year(s): 2020 - 2025

Project Narrative:

This program item addresses the need to identify and prioritize non-motorized projects for future consideration. Projects would include pedestrian and bike facilities (eg: sidewalks, trails, shoulder widening) in various locations around the county. This project is listed **#Y5** on the 2020-2025 Six Year Transportation Improvement Program.

Project Status:

It is anticipated that the design and construction of projects will occur yearly as the needs and locations are determined.

Total Estimated Project Cost: \$600,000

Expenditures to Date:

Funding Sources:

Federal	\$0
State	\$0
Local	\$600,000 (2020-2025)

Environmental Permitting	TBD
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Right-of-Way Acquisition (Estimate)	TBD
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County Forces (Estimate)	TBD
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Due to the nature of this program item, no map exists. Council review and prioritization will be sought at the appropriate time.

Fish Passage Project
CRP # 920010

Construction Funding Year(s): 2021

Project Narrative:

This project is for the design and construction of fish passage projects. This project is listed **#Y6** on the 2020-2025 Six Year Transportation Improvement Program.

Project Status:

Design work will begin in 2020 with construction of the first project scheduled for 2021.

Total Estimated Project Cost: TBD Expenditures to Date: N/A	Funding Sources:	
	Federal	\$0
	State	\$0
	Local	\$200,000 (2020-2025) *

Environmental Permitting	TBD
Right-of-Way Acquisition (Estimate)	TBD
County Forces (Estimate)	N/A

Due to the nature of this program item, no map exists. Council review and prioritization will be sought at the appropriate time.

Swift Creek Transportation Impacts

CRP # 920011

Construction Funding Year(s): TBD

Project Narrative:

This item addresses the various projects related to Sumas Mountain/Swift Creek Slide. Locations to be determined. This project is #Y7 on the 2020-2025 Six Year Transportation Improvement Program.

Project Status:

Design and construction for the various projects will be initiated in 2020 and extend through 2025.

Total Estimated Project Cost: \$600,000

Expenditures to Date:

Funding Sources:

Federal	\$0
State	\$0
Local	\$600,000 (2020-2025)

Environmental Permitting	N/A
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Right-of-Way Acquisition (Estimate)	N/A
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County Forces (Estimate)	N/A
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Due to the nature of this program item, no map exists. Council review and prioritization will be sought at the appropriate time.

Railroad Crossing Improvements CRP # 920012

Construction Funding Year(s): 2020 - 2025

Project Narrative:

Locations to be determined. Identification and prioritization to be addressed. This project is listed **#Y8** on the 2020-2025 Six Year Transportation Improvement Program.

Project Status:

Locations and prioritization of projects is on-going. Negotiations with BNSF will be a factor on timing and cost.

Total Estimated Project Cost: \$300,000

Expenditures to Date: - 0 -

Funding Sources:

Federal	\$0
State	\$0
Local	\$300,000 (2020-2025)

Environmental Permitting	TBD
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Right-of-Way Acquisition (Estimate)	TBD
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County Forces (Estimate)	TBD
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Due to the nature of this program item, no map exists. Council review and prioritization will be sought at the appropriate time.

Beam Guardrail Replacements/Upgrades
CRP # 920013

Construction Funding Year(s): 2020 - 2025

Project Narrative:

Locations to be determined. Identification and prioritization to be addressed. This project is listed **#Y9** on the 2020-2025 Six Year Transportation Improvement Program.

Project Status:

Locations and prioritization of projects is on-going, with close coordination with M&O Division and Traffic Section.

Total Estimated Project Cost: \$600,000

Expenditures to Date: - 0 -

Funding Sources:

Federal	\$0
State	\$0
Local	\$600,000 (2020-2025)

Environmental Permitting	SEPA, Clrg/CAO,
Right-of-Way Acquisition (Estimate)	TBD
County Forces (Estimate)	TBD

Due to the nature of this program item, no map exists. Council review and prioritization will be sought at the appropriate time.